March 13, 2019

The Honorable Carolyn Maloney, Chair
Subcommittee on Investor Protection,
Entrepreneurship, and Capital Markets
United States House of Representatives
Washington, DC 20515

Dear Chairwoman Maloney,

Consumer Reports (CR)[1] appreciates the opportunity to submit a written statement for the House Financial Services Committee 's hearing entitled, "Putting Investors First? Examining the SEC's Best Interest Rule" (Regulation Best Interest). The proposed Regulation Best Interest would establish a standard of conduct for brokers-dealers when giving investment advice. This proposal is flawed, and we appreciate your Committee providing oversight regarding the SEC's plans. We have detailed our concerns in two sets of comments submitted to the SEC and will summarize them here.[2]

Strong rules governing standards of conduct for individuals providing advice to investors are necessary because many retail investors may not have the necessary financial expertise or tools to make critical decisions about how and where to invest their money. Investors may turn to financial professionals, either a broker-dealer or investment adviser, for help in navigating the complex and often confusing world of securities investments. Research shows that many retail investors cannot distinguish between advisers and broker-dealers, the different legal obligations

[1] Consumer Reports is an independent, nonprofit member organization that works side by side with consumers for truth, transparency, and fairness in the marketplace. We use our rigorous research, consumer insights, journalism, and policy expertise to inform purchase decisions, improve the products and services that businesses deliver, and drive regulatory and fair competitive practices.
[2] See, Consumer Reports' October 19, 2018 comments on the SEC's proposed Regulation Best Interest and recommendations regarding Form CRS (https://advocacy.consumerreports.org/research/consumers-union-letter-to-the-sec-on-the-proposed-best-interest-standard-for-broker-dealers/), and Consumer Reports February 15, 2019 comments on the RAND Corporation Report of Form CRS (https://advocacy.consumerreports.org/research/comment-on-the-rand-corporation-report-on-investor-testing-of-the-securities-and-exchange-commissions-sec-proposed-client-relationship-summary/).

that they owe to their clients, or how those legal obligations may affect their conduct.[3] For example, many retail investors do not understand the various conflicts of interest that arise and how those conflicts may influence investment recommendations.[4] Importantly, many retail investors also lack an understanding of how different professionals are compensated for their services. Unfortunately, the proposal does not address these problems, and may further compound them by increasing confusion among retail investors seeking advice.

- **The SEC's proposed Regulation Best Interest**

The stated intention of the proposed Regulation Best Interest is to enhance investor protections for retail investors and provide them with disclosures that will enable them to make informed decisions. However, it establishes a different set of standards for broker- dealers than exist for investment advisors and gives firms too much discretion in determining what is required and what is prohibited under the rule.

Moreover, it is not readily apparent how the proposed Regulation Best Interest would meaningfully change current broker-dealer practices and improve outcomes for retail investors. For example, the proposed Regulation Best Interest rule would not require brokers to recommend the best of the available options to their customers. Also, firms would continue to be allowed to implement compensation practices and other incentives that encourage brokers to recommend higher cost, lower quality products and services. Because of these and other flaws, it's likely that investors would continue to receive conflicted advice to their detriment.

Rather than adopting an approach that appears to merely rebrand the existing "suitability" rules for broker-dealers as a "best interest" standard, we asked the SEC to implement a robust, enforceable uniform fiduciary standard of conduct that applies to all professionals providing investment advice. This standard should genuinely require all securities professional to work in their client's best interest when providing investment advice and require firms to rein in harmful incentives that encourage and reward advice that is not in investors' best interest.

In addition, we asked the SEC to explicitly require firms to adopt and implement written policies to ensure that certain practices such as sales quotas, sales contest, bonuses, and steering are prohibited, or in limited circumstances, mitigated. We also asked the SEC to prohibit the use of

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[3] Brown, S. Kathi, *Fiduciary Duty and Investment Advice: Attitudes of 401(k) and 403(b) Participants*, AARP Research, September 2013, http://bit.ly/1HO5d5f.
[4] See *e.g.,* Jeremy Burke et al., *Impacts of Conflicts of Interest in the Financial Services Industry,* RAND Labor & Population, Working Paper, August 2014, https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32-2/impacts-of-coi-in-the-financial-services-industry.pdf

titles that improperly suggest an advisory-type relationship and restrict misleading marketing of titles.

- **Form CRS**

We also commented on proposed Form CRS, which is designed to help investors make informed decisions when choosing an investment professional and the type of account preferred, by providing them with clear information to understand the differences and key characteristics of the professional and the type of services provided.[5] Clear, unambiguous disclosures that are understandable to the average investor is paramount to retail investors' ability to make informed decisions about their investments and investment professionals. Form CRS as proposed by the SEC does not provide investors, especially financially unsophisticated investors, with sufficient information, in easy to understand language, to make informed decisions about their investment choices.[6]

Moreover, we cautioned the SEC that even the best disclosures cannot improve upon a flawed rule, and would do little to create a safe market for investment advice and to protect investors from conflicts of interests. The substance of the proposed Regulation Best Interest must be changed, and Form CRS revised and re-tested to determine whether investors comprehend the information conveyed.

We look forward to working with the Subcommittee on this important issue.

Respectfully submitted,

Pamela Banks
Senior Policy Counsel
Consumers Union

cc: The Honorable Bill Huizenga, Ranking Member
Members, Committee on Financial Services

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[5] See, Form CRS Relationship Summary; (SEC Release No. 34-83063; File No. S7-O8-18; RIN No. 3235-AL27).
[6] Form CRS Relationship Summary; (SEC Release No. 34-83063; File No. S7-O8-18; RIN No. 3235-AL27).