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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

June 1, 2020

The Honorable Jay Clayton
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Clayton:

I write regarding the Securities and Exchange Commission's (Commission or SEC) Regulation Best Interest: The Broker-Dealer Standard of Conduct¹ (Reg. BI), which was finalized in June 2019, along with the Form CRS Relationship Summary² and two interpretations under the Investment Advisers Act.³

As you announced in April, Reg. BI will take effect on the scheduled compliance date of June 30, 2020. I reiterate my concern that Reg. BI fails to provide a fiduciary standard as authorized by Congress in Section 913(g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and to require that broker-dealers put investors' interest first, placing investors at a disadvantage when planning and saving for their future.⁴ Without a clear standard that requires all financial professionals to prioritize their client's best interests, investors will have to decipher lengthy, legalistic disclosures to understand their rights and what to expect from brokers and advisors.

Given these shortcomings, it is critical that the Commission fulfill its investor protection mandate through tough compliance examinations and enforcement of Reg. BI. I am aware that the SEC and the Financial Industry Regulatory Authority have begun to establish expectations and provide guidance⁵ to market participants in advance of the upcoming compliance date. Your recent statements, however, that "SEC examiners will be focusing on whether firms have made a good faith effort to implement policies and procedures necessary to comply with Reg. BI,"

¹ Release No. 34-86031; File No. S7-07-18, RIN 3235-AM35; 17 C.F.R. 240.15f-1.

² Release Nos. 34-86032; IA-5247; File No. S7-08-18; RIN 3235-AL27.

³ Release No. IA-5248; File No. S7-07-18; RIN: 3235-AM36; Release No. IA-5249.

⁴ Senate and House letter to Securities and Exchange Commission Chairman Jay Clayton, Sept. 12, 2018, <https://www.sec.gov/comments/s7-07-18/s70718-4403388-175590.pdf>.

⁵ <https://www.finra.org/rules-guidance/key-topics/regulation-best-interest>; <https://www.sec.gov/regulation-best-interest>; <https://www.sec.gov/files/Risk%20Alert-%20Regulation%20Best%20Interest%20Exams.pdf>.

suggests that investors do not come first and sends the message that investor protection is not a priority.⁶

In light of the difficulty and dangers posed to all of us by the COVID-19 pandemic, I commend the work of the SEC staff to ensure stable functioning of the markets during the recent periods of extreme volatility and uncertainty. At the same time, investor protection must remain a focal point of the SEC's efforts, especially as firms begin to comply with Reg. BI. Indeed, the SEC's Office of Investor Education and Advocacy began highlighting in February the risk of coronavirus related investment frauds,⁷ and the Enforcement Division recently halted trading in a stock and charged the company and its CEO for alleged false and misleading claims about acquiring and supplying N95 masks.⁸

Savers and retirees managing the financial strain of the pandemic face new considerations. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides economic assistance to American workers, families, and small businesses by lifting restrictions on retirement accounts, offering options to savers who need to access retirement savings during the crisis. By waiving early withdrawal penalties and other limitations tied to retirement accounts, Congress provided investors helpful flexibility to weather financial hardships related to the pandemic, but using that relief means savers and retirees must navigate complex rules and make fundamental spending and investment decisions. According to a study released last week, more than 27 percent of those working or recently unemployed have already taken a withdrawal from their retirement savings accounts, such as a 401(k) or IRA, or plan to use them as a source of income.⁹ For those investors and others, the Commission's comprehensive oversight of brokers and dealers and thorough enforcement the protections of Reg. BI will be crucial to establishing the confidence to trust the advice from investment professionals as our economy and job markets begin to recover and Americans seek financial stability.

In order to allow Congress and other stakeholders to monitor how investors fare under Reg. BI, I ask that you offer increased transparency into the Commission's enforcement of Reg. BI. Specifically, the Commission must: (1) track, categorize, and publicly report data and statistics on Regulation BI examination and inspection violations and enforcement matters, (2) establish metrics and criteria that will indicate to you increased investor protection or outcomes over existing standards, and (3) identify additional investor protections and safeguards that you may employ if violations or investor complaints begin to trend higher. These basic steps would demonstrate your commitment to protecting investors and the optimal implementation of Reg. BI.

⁶ <https://www.sec.gov/news/public-statement/statement-clayton-investors-rbi-form-crs>.

⁷ https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_coronavirus; https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_frauds.

⁸ <https://www.sec.gov/news/press-release/2020-97>.

⁹ <https://www.bankrate.com/surveys/coronavirus-withdrawing-from-retirement-savings/>.

The success or failure of Reg. BI will depend on how the Commission assesses its effectiveness and how it is enforced. In the same way that the Commission looks ahead and around corners to simplify disclosures and reduce requirements on issuers and regulated firms, you must look ahead and find ways to protect investors and maintain confidence in our markets, during this pandemic crisis and beyond.

Sincerely,

A handwritten signature in blue ink that reads "Sherrod Brown". The signature is written in a cursive, slightly slanted style.

Sherrod Brown
Ranking Member

cc: Mr. Robert Cook, President and CEO
Financial Industry Regulatory Authority