



October 16, 2019

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy:

The Securities Industry and Financial Markets Association (SIFMA)<sup>1</sup> appreciates the opportunity to comment on H.R. 1815, the “SEC Disclosure Effectiveness Testing Act.” H.R. 1815 would impose on the Securities and Exchange Commission (“SEC”) an investor testing requirement for all past and future broker-dealer regulations, with some exceptions, about disclosure to retail investors.

SIFMA appreciates and shares the interest of Representative Casten and the Committee on Financial Services in advocating for robust investor testing of retail investor disclosures. We agree that in many cases, investor testing is appropriate and makes good common sense. In fact, the SEC conducted extensive investor testing of the proposed Form CRS,<sup>2</sup> an important component of the Regulation Best Interest rulemaking package (collectively, “Reg BI”)<sup>3</sup> - the most comprehensive enhancement of standard of conduct rules governing broker-dealers since the enactment of the Securities Exchange Act of 1934. The SEC’s testing involved both a comprehensive national survey to collect information on the opinions, preferences, attitudes, and level of self-assessed comprehension of the Form CRS, as well as qualitative interviews to obtain further insights related to the reasoning and beliefs behind individuals’ attitudes toward the Form CRS.

Reg BI has been fully effective since September 10, 2019 and has a compliance date of June 30, 2020. Further testing of Reg BI would unduly interfere with and delay the implementation process which is already well underway. Ultimately, the bill would divert valuable and limited regulatory resources and thereby undermine the roll-out of a significantly strengthened best interest standard of conduct designed to better protect and serve retail investors.

Over the past several months, the SEC and FINRA have been working diligently to assist financial services firms in answering Reg BI interpretive questions and developing Reg BI compliance programs. Late last month, the SEC published a small entity compliance guide to Reg BI.<sup>4</sup> Just last

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See <https://www.sec.gov/about/offices/investorad/investor-testing-form-crs-relationship-summary.pdf>.

<sup>3</sup> See, e.g., Regulation Best Interest (SEC Release No. 34-83062; File No. S7-07-18); and Form CRS Relationship Summary, Amendments to Form ADV, Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles (SEC Release No. 34-83063; IA-4888; File No. S7-08-18).

<sup>4</sup> See <https://www.sec.gov/info/smallbus/secg/regulation-best-interest>.

week, FINRA published a Reg BI compliance checklist and announced additional resources to aid firms in compliance.<sup>5</sup>

Based on our firm belief in the heightened strength of the new Reg BI conduct standards and their value to everyday investors, SIFMA respectfully opposes H.R. 1815. We believe the bill would likely unnecessarily delay the implementation of historically new set of regulations that would provide strong investor and consumer protections for forty-three million households. SIFMA has long supported enhancing the standard of conduct applicable to broker-dealers when providing personalized investment advice about securities to retail investors and we believe the SEC has succeed in accomplishing this important goal through Reg BI.

Further, enactment of the bill as written, despite the carve outs listed in the Rules Committee print (116-34), will subject other rules that apply to broker dealers under the federal securities laws to retroactive review and testing, including Form ABD, Investment Company Act disclosures, Trust Indenture Act disclosures, order routing, order execution, penny stock disclosures and others. These disclosures are designed to give the investing public the information they need to make informed financial decisions, but could be held up in an endless loop of repeated testing under the bill. While we understand and appreciate that this was likely not the Committee's intent or purpose, we believe that imposing such a requirement would likely result in an unprecedented, costly, resource intensive undertaking by the SEC.

We appreciate the opportunity to comment and we appreciate your consideration of our views. If you have any questions or require any additional information, please feel free to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Bentsen", with a stylized flourish at the end.

Kenneth E. Bentsen, Jr.  
President & CEO  
Securities Industry and Financial Markets Association

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<sup>5</sup> See <https://www.finra.org/media-center/newsreleases/2019/finra-provides-new-reg-bi-and-form-crs-resources>.”