

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 undersigned associations, representing investment advisers, broker-dealer firms, life insurers and their financial professionals as well as registered investment companies, appreciate the opportunity to comment on H.R. 1815, the “SEC Disclosure Effectiveness Testing Act,” which would impose on the Securities and Exchange Commission (“SEC”) an investor testing requirement for all past and future regulations, with some exceptions, about disclosure to retail investors.

We appreciate and share the interest of Representative Casten and the Committee on Financial Services in advocating for robust investor testing of retail investor disclosures. Retail investors should be provided clear and understandable disclosures, and we agree that in many cases, investor testing makes good common sense. However, we are concerned that this legislation will have an immediate negative impact on retail consumers as it would interfere with the implementation of the Regulation Best Interest rulemaking package (collectively, “Reg BI”)¹ - the most comprehensive enhancement of standard of conduct rules governing broker-dealers since the enactment of the Securities Exchange Act of 1934. This result is nonsensical – as investor testing was part of SEC’s Reg. BI rulemaking promulgation. Specifically, the SEC conducted extensive investor testing of the proposed Form CRS,² an important component of the Regulation Best Interest rulemaking package. The SEC’s testing involved both a comprehensive national survey as well as qualitative interviews with investors.

Reg BI has been fully effective since September 10, 2019 and has a compliance date of June 30, 2020. Financial services firms have spent months developing Reg BI compliance programs, and further testing of Reg BI would unduly interfere with and delay this ongoing implementation process. Based on our firm belief in the heightened strength of the Reg BI conduct standards that will better protect forty-three million households, we respectfully oppose H.R. 1815.

Further, despite the carve outs in the manager’s amendment, enactment of the bill as written will subject other rules regarding disclosure to retail investors to retroactive review and testing. These rules include, among others, retail disclosure requirements that are designed to give consumers the information they need to make informed investing decisions. Under H.R. 1815, however, these existing rules could be held up in an endlessly iterative loop of repeated testing.

In addition, with respect to future rulemakings, the SEC is well-positioned to determine the most efficient way to test and support their disclosure related rulemakings. The SEC conducting investor testing may or may not be appropriate, depending on the rulemaking. For each rulemaking,

¹ 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).

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

however, the SEC already is required to seek public comment; the comment period is intended to get public input, including from investors and entities that represent investors and entities that regularly engage with investors. In this way, the SEC is able to get real insights into what may or may not work well for investors. H.R. 1815 may impede rulemakings intended to provide valuable information to investors, a cost that exceeds its possible benefits.

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

Sincerely,

American Council of Life Insurers (ACLI)
Financial Services Institute, Inc. (FSI)
Institute for Portfolio Alternatives (IPA)
Insured Retirement Institute (IRI)
Investment Company Institute (ICI)
National Association of Insurance and Financial Advisors (NAIFA)
Securities Industry and Financial Markets Association (SIFMA)
U.S. Chamber of Commerce