Speech

The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice

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Philadelphia

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Good afternoon.

It is wonderful to be in Philadelphia.

It is wonderful to be at Temple University. It is very kind of Temple to host this event. I will speak for about 30 minutes and then take questions.[1]

Before I move to today's topic — the relationship between Main Street investors and investment professionals — I ask for your indulgence because I want to elaborate on Pennsylvania, Philadelphia and Temple University.

Pennsylvania is my home state.[2] My brothers and I were fortunate to experience much of the best of Pennsylvania growing up. Through the sixth grade, we lived in what many people would call "rural" Pennsylvania. Our address was "RD-1". We loved it. Climbing coal piles, playing in barns, swimming in streams and quarries — what could be better?

Then, we spent high school in Delaware County. I went to college, and later law school, here in Philadelphia and worked at the Jersey shore hanging awnings and lifeguarding. We loved all of that too. It was the 80s. It was, until recently, the last time Philadelphia was a city of Champions. I have vivid memories of Moses Malone, Dr. J, Mo Cheeks, Andrew Toney, Mark Ivaroni and Bobby Jones bringing home the '83 championship.

After law school, I clerked for Marvin Katz. A great man who grew up in Kensington and Germantown and graduated from Central High School.

Philadelphia is, and always will be, my home town.

Why? Not just because of all the great memories, including playing pickup basketball around the city with future greats in politics, business and — when they desperately needed one more player to get to

five — basketball. Only in Philly, could an ordinary guy get a "run" with one or more of Jerome Allen, Matt Maloney and Temple's own Tim Perry.

More importantly than memories, and most importantly, I love Philadelphia because of the people. People from Philadelphia give it to you straight. They work hard. They know no one is perfect. They are optimistic and loyal — hey, we hung with the Eagles for 50 years and were richly rewarded. Philadelphians have a "show me" perspective[3] and make judgments based on actions and results.

That brings me to Temple University. Thankfully, even though I'm in Washington, I get a healthy dose of Philadelphia-style hard work, pragmatism and results-oriented focus every day. The SEC benefits from a large and talented group of Temple alumni and friends.

I'll list just a few. The head of the SEC's Philadelphia office, Jeff Boujoukos. The co-head of our Enforcement Division, our largest Division, Stephanie Avakian. Bill McLucas, a former head of the Enforcement Division. My senior policy advisor, Alan Cohen, has a particularly close relationship with Temple, going back many years. My Enforcement counsel, Kristy Littman, also has a Temple connection, serving as the Co-Chair of Philadelphia's High School Mock Trial program, through Temple LEAP. There are many more, past and present. They are fabulous people who put the interests of our Main Street investors first.

Temple University, thank you for hosting today and, on behalf of the SEC, thank you for giving us people who make a difference, a big difference, every day, all day.

I will now turn to today's issue — regulation of the relationship between investment professionals and their retail customers and clients.

I. The Importance of our Retail Investment Market

This market — the retail investment market — is large in size and scope. And is important, very important on a national, local and individual level.

A few statistics: Forty three million U.S. households hold a retirement or brokerage account. Fifty six million U.S. households (44% of all households) own at least one U.S. mutual fund. There are 2,857 registered broker-dealers that serve retail investors, with $3.6 trillion in balance sheet assets and 128 million customer accounts. There are approximately 7,600 investment advisers registered with the SEC that serve retail investors, with over $12 trillion in retail client assets under management, and approximately 34 million clients. U.S. broker-dealers and investment advisers employ almost one million people.[4]

Philadelphia benefits greatly from this industry. And protecting Philadelphia's Main Street investors is a focus of the 127 people who work in our Philadelphia office and the 4,500 people who work at the Commission nationwide.

I'm going to pause here for emphasis. Note that I provided statistics on both "broker-dealers" and "investment advisers". They are different. They provide services in different ways and are compensated differently. Some commentators say one approach is better than the other. Depending on the particular investor's needs, that may be true. For many, the broker-dealer relationship is the better choice, and, for many, the investment adviser relationship is the better choice. Some may want both. A principal focus of mine is working to ensure that both relationships remain available. I firmly believe we can preserve this choice, increase access to investment advice, lower costs, <u>and</u>, importantly, enhance investor protection.

The statistics I cited — including 44% of all households owning at least one U.S. mutual fund — are just a part of the story. Our capital markets — including the broad participation of the public in our capital markets — are the envy of the world. No other country has anything comparable. They want it. They come to see me to ask me how to duplicate it. Why? Because it is a competitive advantage for our economy, and our capital markets have made many Americans' lives better.

Our markets provide a deep pool of capital upon which businesses can draw to finance their growth. This pool of capital is separate from, and complementary to, financing through our banking sector. In exchange for contributing long-term capital to our capital markets, retail investors get access to the returns on corporate growth and innovation, which increases their own wealth and security. As participation has broadened, it has been a democratizing force in our society.

A word of caution: It is easy to take this powerful dynamic for granted, that it's preordained that our markets invite, and benefit from, broad participation. It is not preordained, and we should not take it for granted. Indeed, in 1952, only 6.5 million Americans (4.2% of the U.S. population) owned stock,[5] and transactions were incredibly expensive, due to fixed commissions, wide "bid-ask" spreads, and other factors that directly and indirectly raised the costs and risks of retail investing.

Improving our markets to facilitate retail participation has been a decades-long endeavor between the SEC and market participants. For the SEC's part, we have sought to design pragmatic, effective regulation that is true to our mission including, importantly, investor protection.

Chairman Levitt, for example, helped bring significant transparency to our markets through municipal securities reporting, enhancing use and accessibility of EDGAR, putting in place Regulation ATS, and fostering the growth of ETFs through the 1990s.[6] In turn, industry participants supplied competition and innovation. For example, Philadelphia's own Jack Bogle brought us the index fund. Investors chimed in by shopping around and demanding better, lower-cost products and services. As a result, since my days as a student of economics in the late 80s, we have seen the combination of forward-looking regulation and market forces benefit our markets and our retail investors.[7]

If you think I have already made a good case for how important it is to preserve, protect and grow our capital markets, and participation in our capital markets, wait until we look forward.

Continued broad, long-term retail participation in our capital markets is so important because, in a few words, we need it and we are counting on it. We now are largely responsible for funding our own higher education and our own retirement.

Higher education is very expensive. Temple is well-known for its efforts to keep the costs of a high-quality university education within reach. Temple's value for money proposition goes a long way to explaining why one in seven people with college degrees in the tristate area graduated from Temple University. All that said, my advice to parents with young children who may want to go to Temple is "start investing now."

All of us need to look ahead to — and plan for — retirement. We have placed an increasing obligation on individuals to save for their own retirement. Defined benefit (i.e., pension) plans have transitioned to defined contribution (i.e., 401(k) plans) over time — in 1992, 44% of households near retirement age had a DB plan, 20% had a DC plan, and 37% had both, but by 2010, the number with "both" was roughly the same, but the DC and DB numbers had flipped.[8] People are living longer too: in 1992, the average life expectancy was 75.8 years; by 2010 it had increased to 78.7.[9] This seems small, but

the annual price tag, across our country, is in the hundreds of billions of dollars,[10] with health care costs in these later years increasing almost exponentially.[11]

It is more important than ever that people save and invest for their own futures. Here, it troubles me that over half of Americans have no retirement account savings.[12]

Some of this is undoubtedly income-based. People are strapped for cash and barely have money in savings accounts — more than half of Americans have under $1000 there.[13] And by all means, that size of rainy day fund should be in safe assets, such as bank accounts insured by the FDIC. But, to the extent you can, there is no substitute for investing in your own future; and, in investing, there is no substitute for starting early and investing regularly.

It is here that access to personal investment advice — to help cut through the jargon, and patiently encourage people to put a little bit away here and there — is of critical importance.[14] Markets can be intimidating and complex and, if you're not experienced or well informed, it is easy not to begin at all, or you may get burned by taking on more risk than you want. It is an investment professional's job to bridge this knowledge, information, and comfort gap.

II. Issues that Require Attention

Now that we have explored the broad importance of our markets for all of us, I want to shift to a personal level. Suppose your friend comes to you and says: "My financial advisor suggests that I get some exposure to large-cap technology stocks by buying 100 shares of one of the FAANG companies.[15] What should I do?"

Setting aside your friend's reference to a "financial advisor," —a topic I will come back to later — here are some questions to ask your friend in return: Why is that a good investment? Why is it a good investment for you? How much does it cost to buy it? How much will it cost to sell it? What did you hire your advisor to do for you? How is your advisor getting paid? Is there anything else in this for your advisor?

These are the good, threshold questions. They are the questions a Temple graduate likely would ask.

To me, they also frame our job at the SEC in regulating this market.

In short, I believe we should:

1. Ensure that investors can get clear, plain language answers to these types of questions from both investment advisers and broker dealers;
2. Require that investment professionals follow standards of conduct that embody key fiduciary principles tailored to the client relationship, including acting with care and not placing their interests ahead of the interests of their client; and
3. Have effective enforcement tools we can bring to bear if the answers are false or misleading, or the conduct standards are not followed.

And, we should do these three things in ways where (1) investor expectations are aligned with legal standards and (2) Main Street investors have access to a variety of investment advice services at reasonable cost.

Now the SEC and various other regulators have been spending a lot of time for a number of years thinking about how best to achieve these objectives. These efforts, and the debates they have

spawned, have become complex and, in some cases, emotional.[16]

In July of last year, I asked our staff to take a step back, use the framework I just listed, identify where the current results are not satisfactory, and, then, identify solutions that preserve and enhance our broad retail market. In Philadelphia speak: identify the problems and find real-world solutions.

Here, as they so often do, the SEC staff did a fabulous job!

A. Key issues

What are the key issues we face with respect to the provision of investment advice to retail investors? I believe there are three.

First, our studies have shown that there is long-standing confusion in the market for investment advice.[17] The answers to the questions I listed — for example, how much is your investment professional making if you buy what she's offering — are not well understood. People may feel generally content about the relationship they have with an investment professional, but too often they do not understand the different types of investment professional that exist, and what those differences mean for the services they can expect to receive and the price they will pay.

Second, and related, the legal obligations that investment professionals owe to their customers and clients should be clarified and brought in line with what a reasonable investor would expect.

Third and finally, many different regulators have been approaching this issue from a number of different perspectives in recent years, with too much variation in approach and not enough coordination. Investors are unlikely to understand, or benefit from, different regulatory approaches to the same relationship, and investment professionals will struggle to navigate these differences, generating additional costs that often are borne by consumers.

I will speak about each of these.

1. Confusion and lack of Clarity

"Financial advisor," "financial consultant," "wealth manager." Your financial professional may have any of a number of different titles that firms use to advertise their services. But from the SEC's perspective, the federal securities laws recognize, and we regulate, two different types of legal entity: investment advisers, or IAs, and broker-dealers, or BDs.[18]

Why does this matter? Because a lot turns on this distinction. For example, the fees you will pay to your investment professional — fees that impact the value of your investment over time — differ between BDs and IAs.

BDs generally charge their customers per transaction — that is, they charge for their advice, execution, and related services in the form of a commission that is associated with each transaction.

Investment advisers typically charge an ongoing management fee that is a percentage of your assets that they manage. You may have to pay an additional brokerage fee for trades that the IA places on your behalf, or you may choose a so-called "wrap fee" — a single fee covering advice and most or all of the transactions in your account.

Similarly, the type of service you receive differs. Broker-dealers, as I just mentioned, interact with their customers in connection with each transaction that they recommend or that their customer directs. While you may have a long-term relationship with a single broker-dealer, and they may or may not

monitor your account to determine whether they should recommend additional transactions to you, the relationship is fundamentally a transaction-by-transaction relationship.

Investment advisers commonly have a broader and deeper approach, which typically includes services over time, such as understanding your investment objectives, building a portfolio for you that matches those objectives, then monitoring progress of that portfolio.

We have found that most investors are not aware whether they are dealing with an investment adviser or a broker-dealer. That confusion may be most acute when they are dealing with a firm that is dually-licensed or an individual that is dual-hatted — that is, someone who offers both investment adviser and broker-dealer services.

As a result, people may be signing up for a relationship or account type that does not match their expectations and can be more costly.[19]

2. Professional Obligations, Conflict Disclosure and Mitigation, and Other Investor Protection Requirements

Another key distinction between broker-dealers and investment advisers, at least under current law, is the different legal standards they must follow.

If you are dealing with an investment adviser, then that relationship is governed by a fiduciary duty under federal law. This is a principles-based approach. As a general matter, any personalized advice must be in your best interest and is subject to a duty of care, as well as a duty of loyalty to fully and fairly disclose material conflicts of interest and obtain your informed consent. I'm going to pause here and repeat that. The IA duty of loyalty requires full and fair disclosure of conflicts and client consent. It does not require or guarantee conflict-free advice, and does not prohibit IAs from making fees in addition to advisory fees. I'll come back to this.

I'll now discuss required duties currently owed by broker dealers. Under SEC and FINRA standards the broker-dealer must make only recommendations of securities that are "suitable" for you. Suitability generally requires the broker-dealer to understand the product, determine that the product is suitable for you, and then not trade excessively in your account.

Here is a key issue that I believe needs focused attention. As between two products that are, broadly-speaking, suitable for you, the broker-dealer is not explicitly required to recommend the security that he or she believes is in your best interest. Practically speaking, this means that, under applicable regulations, the broker-dealer is not prohibited from recommending to you a security that makes the broker-dealer more money (e.g., because the broker-dealer is selling out of inventory, or the product is a proprietary one that the broker-dealer manufactures), as compared to another security that better fits your needs, but pays the broker-dealer less, so long as both securities are "suitable."

The extent to which this self-serving behavior exists in practice is subject to debate.[20] There are many broker-dealers who, as a matter of professionalism and principle, do not put their interests ahead of the interests of their clients. That said, to me, there is a gap here between what retail customers would reasonably expect the law to provide and what our regulations actually require. We should eliminate that gap.

Our current regulations do provide broker-dealer customers with additional protections. For example, there are limits on the amount broker-dealers can charge you, and they are subject to FINRA inspections and enforcement.

Importantly, broker-dealers have registration, licensing, and continuing education obligations that are stricter than those applicable to investment advisers. BDs are also required to maintain certain amounts of capital on their books, while IAs have no specific financial responsibility obligations. As a practical and general matter, this means, BDs have more oversight and, if there is a problem, more required resources to compensate harmed investors.

One important issue that is not a distinction between IAs and BDs is that neither the IA nor the BD is required to give conflict-free advice.[21] Both investment advisers and broker-dealers have a number of conflicts of interest. These conflicts flow from the way that you compensate them, the type of products they make available, and the cash flows they receive from other financial market participants as a result of your relationship with them. In other words, whenever money changes hands for a service, a conflict of interest is likely present.

For example, broker-dealers, as I discussed earlier, have an incentive to execute trades in your account — to trade often, so as to make more commissions for themselves. If taken to excess, we refer to this as "churning". Investment advisers have the opposite incentive: to collect your fee, then engage in minimal ongoing monitoring of your account, and spend their time recruiting additional customers to collect more assets that will generate fees from more people. When excessive, we refer to this as "reverse churning".

Similarly, investment professionals — investment advisers and broker dealers — make money in a variety of other ways. Beyond commissions and fees, they may get additional payments from others in exchange for recommending certain products or share classes. They may manufacture their own products so they receive fees on both the advice and the underlying product. Broker-dealers may make extra profit from selling securities out of their own inventory, and investment advisers may profit from directing your orders to favored broker-dealers for execution.

Here there also is a gap between reasonable investor expectations — in get-to-the-bottom-of-it Philadelphia speak "tell me all the ways you're making money on my money" — and the practices of too many industry participants. We should close this gap too.

I believe that these conflicts of interest need to be disclosed to the retail investor in plain language and in reasonable detail so that they can understand the financial incentives of their investment professional. Many industry participants already make sure their clients understand these issues. However, the efforts of others fall far short. It is time for those others to come into line.

3. Multiple Regulators, Lack of Regulatory Consistency and Coordination

The final challenge in this area is that there are too many regulatory "cooks in the kitchen." If you have a portfolio with a few stocks, a couple of mutual funds in a 401(k), and an annuity, then your relationship with your investment professional could be subject to regulation by the SEC, FINRA, the Department of Labor, state insurance regulators, state securities regulators, state attorneys general, and, if the investment professional is associated with a BD or IA or both that is part of a bank, federal and/or state banking regulators.[22]

No one entity has jurisdiction over the entire whole, even though people think of their portfolios as a whole. As I mentioned, today, differing standards confuse investors and may impose compliance costs on investment professionals — costs that are passed on to the consumers.[23] Again, what a reasonable investor would expect — a single regulator or, at least, consistent and coordinated

regulation — does not match reality. So it is incumbent on us as regulators to work together to ensure a seamless relationship from the perspective of the customer.

III. How Do We Address These Issues?

So, to address the problems we have identified with investor confusion, professional obligations that could and should be more robust, and insufficient regulatory coordination, without undermining investor choice, we developed a pragmatic, multi-pronged solution.

The way we arrived at our proposed solution is illuminating. I mentioned "gaps" several times. After identifying the problems, and noting that they were interrelated, we settled on an overarching design objective: eliminate, or at least substantially address, the "gaps" or mismatches between investor expectations and understanding, on the one hand, and market and legal realities on the other hand. We then decided to close those gaps from both ends — changing investor understanding and changing market regulation. And, importantly, to make those efforts complementary.

With that design objective and broad approach in hand, we turned to our regulatory toolbox which has 84 years of history and includes, to name a few, (1) disclosure mandates — "you must tell clients X, Y, and Z"; (2) broad, principles-based conduct mandates — "you must act with care"; (3) more narrow conduct-specific mandates — "you must adopt policies and procedures that address A, B, and C"; and (4) experience with inspections, examinations and enforcement proceedings, including deterring bad conduct, bringing actions, collecting ill-gotten gains and distributing recovered funds to harmed investors.

Tool selection is critical. Why? Because there are many combinations that would close the gaps, but it is essential, for the many reasons I discussed at the outset, that we do so without adversely affecting the market, including, importantly, access to a broad range of high quality, low cost investment advice.

What tools did we select? First, to improve investor understanding we are proposing a new disclosure mandate. BDs and IAs must disclose to investors the key aspects of their relationship in a form that is clear, short, and complete.

On this point, and going back to "gaps," some investors may hold expectations that have been fostered through slick marketing campaigns instead of honest, straightforward discussions. For example, some investment professionals may not be entirely straightforward about the existence or scope of their conflicts of interest, or the ways in which they make money from their customer or client's investment activity. Our proposed disclosure rules would require investment professionals to be clear and transparent about the type of professional that they are, the services they provide (and do not provide), the fees they charge, the conflicts of interest they have, and other key information such as any disciplinary history. An educated, informed consumer is an empowered consumer.

But importantly, increasing understanding is not the only function of this required disclosure.

This requirement should enable us to pick a lot of low-hanging fruit — rotten fruit. Week in and week out, our Enforcement cases show retail investors being victimized by unregistered "professionals," who are disproportionately likely to be bad guys, or "professionals" with lengthy disciplinary histories that scurry like cockroaches from bucket shop to boiler room. Disclosure that unambiguously addresses basic skills — checking if your professional is registered, and whether they have a disciplinary history — can do a lot of good.[24] It will make it easier for us to identify and pursue the bad guys and, I hope, will make it easier for those who are behaving well to demonstrate that fact to us, other regulators, and, most importantly, their clients.

The second tool we selected is a combination of a principles-based, broad conduct mandate and a related specific conduct mandate. Taking a step back, I believe retail investors rightfully expect that investment *advice*, whether through the relationship-based IA, or the transaction-based BD, be provided in their best interest. And we have proposed a rule for broker-dealers that would do just that.

The proposed rule heightens broker-dealer current standards of conduct by requiring that recommendations to retail investors be in the best interest of those retail investors, without putting the financial interest of the broker-dealer ahead of the retail customer. That duty would then be satisfied through a broker-dealer (1) disclosing material facts about the relationship, including conflicts, services provided, and fees; (2) exercising reasonable diligence, care, skill, and prudence to make recommendations that are in the best interest of the retail customer; and (3) eliminating, or disclosing and mitigating, conflicts of interests related to financial incentives. Here, our disclosure tools and our conduct tools are complementary.

With regard to the obligations of investment advisers, we are also proposing an interpretation to address in one release and reaffirm and, in some cases clarify, certain aspects of the fiduciary duty an investment adviser owes to its clients, including application of the duties of care and loyalty in practice. Again, here, making our disclosure tools and conduct tools more complementary and effective.

By raising the conduct standard applicable to broker-dealers, we are applying consistent, fiduciary principles across the spectrum of investment advice. In a word: harmonization.

Broker-dealers will be, and investment advisers already are, required to act in the investor's best interests. They have to make disclosures. They have to exercise due care. And they have to address conflicts of interest. Some of the specific obligations underlying these principles will differ, because the relationship types of the investment professionals differ. This is a practical necessity. But the principles are the same, and I believe the outcomes in both cases should be the same: investors expect high-quality advice that is in their best interest — and I believe our proposals are designed to make sure they get precisely that.

Finally, we believe that our model — a rigorous standard that, in practice, can cover a range of relationship types — will produce high-quality advice while maintaining a range of options for retail investors. More pointedly, we believe that our basic approach puts us in a good position to work with our fellow federal and state regulators to seek consistency and cohesion across the entire spectrum of investment professionals and products — and we intend to work closely with them to promote regulatory harmonization.

But while I believe our proposed approach is fundamentally right, particularly the proposed rules' architecture, I also believe firmly in the importance of getting public input. We want to understand, for example, whether certain aspects of the proposals need to be better calibrated. That is where you all come in — we need to hear from investors and other market participants to know if we've hit our marks, and we look forward to receiving your input.

Thank you everyone for coming today.

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[1] My views are my own, and do not necessarily reflect the views of the Commission, my fellow Commissioners, or the staff.

[2] Technically, Pennsylvania is not a state but a commonwealth, a distinction it shares with only 3 other U.S. "states."

[3] Not in the same way as Missourians, but no less true.

[4] See Rel. No. 34-83063, *Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles* (Apr. 18, 2018) (for statistics except the mutual fund data); 2017 Investment Company Fact Book (ICI, 57th ed. 2017) (mutual fund statistics).

[5] Lewis H. Kimmel, *Share Ownership in the United States* (Brookings, 1952) at 122-123.

[6] See, e.g., SEC Biography, Chairman Arthur Levitt, at https://www.sec.gov/about/commissioner/levitt.htm.

[7] Average commissions on round-lot transactions in NYSE stocks was nearly 1% at the beginning of 1975, and have fallen sharply since then. *See* Charles M. Jones, *A Century of Stock Market Liquidity and Trading Costs* (May 23, 2002). Average mark-ups in less-liquid, lower-priced securities were 40% less in the mid-2000s than in the mid-1940s. Allen Ferrell, *The Law and Finance of Broker-Dealer Mark-Ups* (Apr. 7, 2011).

[8] Alicia H. Munnell et al., *How Has the Shift to 401(k) Plans Affected Retirement Income?* (Mar. 2017), available at http://crr.bc.edu/wp-content/uploads/2017/03/IB_17-5.pdf .

[9] See Sherry L. Murphy et al., CDC, *Deaths: Final Data for 2015*, National Vital Statistics Reports (Vol. 66 No. 6, Nov. 27, 2017), at https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_06.pdf.

[10] See IMF, *The Financial Impact of Longevity Risk* (Apr. 2012) (noting that a sudden increase to longevity rates of 3 years would increase the cumulative costs of aging by nearly 50% by 2050, adding between 1.5 to 2.0% of GDP to the annual cost of aging).

[11] Berhanu Alemayehu & Kenneth E. Warner, *The Lifetime Distribution of Health Care Costs,* Health Services Research (June 2004), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361028/.

[12] See Monique Morrissey, *The State of American Retirement* (Mar. 3, 2016), at Figure 5, available at https://www.epi.org/publication/retirement-in-america/#charts ; GAO, *Most Households Approaching Retirement Have Low Savings* (May 12, 2015) (noting that some of the nearly half with no retirement savings accounts may be anticipating relying on a DB plan or other source of retirement income).

[13] Kathleen Elkins, *Here's how much money Americans have in their savings accounts,* CNBC.com (Sept. 13, 2017), at https://www.cnbc.com/2017/09/13/how-much-americans-at-have-in-their-savings-accounts.html .

[14] If you had put $1,000 in an S&P 500 index fund on January 1, 1988, you would have around $10,500 today. Put a different way, if you're a student and you're starting off at investments of $0 today, and invest only $100 per month in an S&P 500 index fund, you'd have a portfolio of $1 million by approximately 2070.

[15] Not to pick on Facebook, Apple, Amazon, Netflix or Google, but rather to illustrate a simple recommendation of a large-cap company in a popular (technology) sector.

[16] See, e.g., Rel. No. 34-83062, *Regulation Best Interest* (Apr. 18, 2018) at Section I.A (discussing long-standing Commission consideration of these issues, including the 1995 Tully Committee report, the

Commission's consideration of fee-based brokerage in the mid-2000s, and the Commission's 2011 study under Section 913 of the Dodd-Frank Act).

[17] See, e.g., Angela A. Hung, et al., RAND Institute for Civil Justice, *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers* (2008).

[18] IAs and BDs have individuals associated with them called investment adviser representatives, or broker-dealer registered representatives. Firms can be licensed as both at once, or have an affiliate that holds the other registration. Similarly, individuals can be licensed as both at one firm, or can be a representative of one IA and a different BD.

[19] For example, a "buy-and-hold" investor who wants some help constructing a simple diversified portfolio, and only transacts a handful of times a year (e.g., for rebalancing or for adding new capital), and is generally comfortable making decisions with respect to his or her account otherwise, may do far better in a brokerage account, paying for advice on a per-transaction basis. An investor looking for a more active approach to investing, or who wants to outsource discretionary management of the account to the investment professional, may find it worthwhile to pay the investment adviser's AUM-based fee.

[20] See, e.g., Rel. No. 34-83062 at n. 460.

[21] Similarly, neither IAs nor BDs are required to recommend the absolute "best" product for a retail investor — putting aside the question of whether it's meaningful to talk about a "best" product given that investing is not an exact science and reasonable professional minds may differ, IAs and BDs may tailor their investment options to a particular set of products, and recommend from among those to their clients or customers.

[22] See Exhibit A.

[23] See, e.g., Comment Letter from Deneen L. Donnley, USAA, on Chairman Clayton's June 1, 2017 Request for Information on Standards of Conduct for Investment Professionals ("Clayton Statement") (Aug. 31, 2017); Comment Letter from David Certner, AARP on the Clayton Statement (Sept. 6, 2017); Comment Letter from Derek B. Dorn, TIAA on the Clayton Statement (Sept. 26, 2017).

[24] In that vein, earlier today we announced the launch of an online search feature that will empower retail investors to make better-informed investment decisions. The SEC Action Lookup for Individuals – or "SALI," for short – is a new feature available on SEC.gov and Investor.gov that enables the public to look up whether a person has had a judgment or order entered against him or her in an enforcement action brought by the SEC.

Related Materials

- Complexity of a regulation