Public Statement

Statement at the Open Meeting on Commission Actions to Enhance and Clarify the Obligations Financial Professionals Owe to our Main Street Investors

Chairman Jay Clayton

June 5, 2019

Good morning, we have four separate items on today's agenda.

I am going to begin with some historical perspective.

Just two days ago, on Monday evening, we celebrated the 85th anniversary of the Commission. The overriding issue we address today—the obligations of financial professionals when they provide investment advice and services to retail customers—has been at the heart of our mission for those 85 years. This is a vast, multifaceted, complex and critically important facet of our economy and our society. It directly affects 43 million American households.

Today, thanks to the career professionals here at the Commission—and true to our mission—we elevate, enhance and clarify these obligations in a comprehensive manner.

This action is long overdue. The fact that it is overdue does not make it easier. I believe the delay has made it more difficult as many interested parties have developed strident and divergent views on the state of the market, as well as current law and regulation, and what should be done to better serve the interests of our Main Street investors. Another complicating factor is that we regulate two types of financial professionals that play important roles in this vast market—broker-dealers and investment advisers—but do so in significantly different ways and under different regulatory regimes.

So, with all those headwinds, how did we make it here today? A mix of law, expertise, duty, courage and commitment.

- On law, this space is squarely within the Commission's regulatory authority. Our authority is not exclusive, and we enjoy cooperative and productive relationships with many of our fellow regulators at the state, federal and international levels, but no regulatory body has a comparable interest in these matters.
- On expertise, we with the assistance of the regulatory organizations we oversee, including FINRA, are principally responsible for interpreting, enforcing and inspecting for compliance with these obligations. I note that over the last five years, we conducted over 8,200 examinations of investment advisers and, in our two most-recent fiscal years, we have brought more than 180 enforcement actions (against more than 290 parties) involving retail investors in the investment advisory and broker-dealer space.

- On duty, we must constantly ask ourselves if action is necessary or appropriate to further our tripartite mission. Here, I believe the answer is a clear yes.
- On courage and commitment, I go back to our career staff. We set you a task that was easy to say and difficult to do: we asked you to use your collective experience and expertise, engage with interested parties, and, in the end, do what you believe is right. You've done just that. The sheer amount of information you have reviewed in developing these recommendations, your engagement with Main Street investors and others to solicit feedback, and how you refined our proposals in light of your careful consideration of all of this information and feedback, is truly remarkable. I know your predecessors and your current colleagues are proud of you. I could not be more proud. Thank you!

I will now turn to the proposals.

Broadly speaking, these rules and interpretations address the obligations of broker-dealers and investment advisers when they provide investment advice and services to our Main Street investors. They are designed to enhance the quality and transparency of the financial professional-retail investor relationship, and include two overarching objectives: (1) to bring the required standards of conduct for financial professionals and related mandated disclosures in line with reasonable investor expectations; and (2) to preserve retail investor access (in terms of both choice and cost) to a variety of investment services and products.

Specifically, we are considering the adoption of four separate but complementary staff recommendations:

- Regulation Best Interest, which will substantially enhance the broker-dealer standard of conduct beyond existing suitability obligations, requiring broker-dealers, among other things, to act in the best interest of their retail customers when making a recommendation, including not placing their financial or other interests ahead of the interests of the retail customer. The standard of conduct draws from key fiduciary principles and cannot be satisfied through disclosure alone;
- Form CRS, which will require registered investment advisers and broker-dealers to deliver to retail investors a relationship summary providing succinct, plain English information about the relationships and services the firm offers, the fees, costs, conflicts of interest and required standard of conduct associated with those relationships and services, and whether the firm and its financial professionals have reportable legal or disciplinary history;
- An interpretation reaffirming—and in some instances clarifying—the fiduciary duty investment advisers owe to their clients under the Investment Advisers Act of 1940 ("Advisers Act"); and
- Finally, an interpretation of the "solely incidental" prong of the broker-dealer exclusion under the Advisers Act, which is intended to delineate more clearly when a broker-dealer's performance of advisory activities causes it to become an investment adviser within the meaning of the Advisers Act.

The women and men of the SEC staff have worked across all five of our Divisions and many of our Offices, always with the interests of our Main Street investors front of mind. Your work establishes a framework for the regulation of Main Street investment advice that moves us forward, building on our past successes and your unrivaled regulatory, inspection and enforcement expertise. I want to emphasize the words "framework" and "moving forward." We should recognize that, while today's actions are significant steps forward, our markets are ever changing. Moving forward, we and our successors will need to assess our efforts and make adjustments. The framework we adopt today will make those future efforts easier.

In my posted remarks, I provide a more detailed overview of the rulemaking package, including the modifications and enhancements we have made to our proposals of April 2018. In today's Open Meeting, I will provide some background on our rulemaking and then highlight the remarkable experience and expertise of our inter-Divisional SEC team that developed the recommendations we are considering today, the feedback we received on our proposed rulemaking, and some key next steps.

1. Background and Need for Action

As I discussed at the April 2018 Open Meeting approving our proposed standards of conduct rulemaking package, it became clear to me early during my confirmation process in 2017 that Commission action in this area would be both appropriate and timely.[1] In particular, I believe action is needed to address the following key issues: (1)the potential harm from misalignment between reasonable investor expectations and actual

legal standards that apply to financial professionals; (2)investor confusion regarding the differences between broker-dealers and investment advisers; and (3)increasing regulatory complexity and the potential to increase confusion and reduce service offerings and investor choice.

Recent examples of increases in this regulatory complexity include, among other things, (1)the Department of Labor's now vacated Fiduciary Rule, which would have imposed a standard of conduct different from both our existing standard of conduct for broker-dealers and the fiduciary standard applicable to investment advisers under the Advisers Act,[2] and (2)the potential patchwork of inconsistent state-level standards. I and many others believe a patchwork approach to the regulation of the vast market for retail investment advice will increase costs, limit choice for retail investors and make oversight and enforcement more difficult. I am hopeful that our regulatory colleagues will continue to work with us to minimize inconsistencies and maximize the effectiveness of our collective efforts.[3]

I want to thank the staff of the Department of Labor and our many friends at the state securities and insurance authorities for sharing with us your detailed views on our proposals. The final rules reflect many of your constructive suggestions. As we move forward, our doors—as well as our ears—will remain open to you and the many others who care deeply about our Main Street investors.

Today's rulemaking package is of significant importance to a vast number of retail investors, to registered broker-dealers and investment advisers, and to our markets more generally. To put this into perspective, consider the following:

- There are an estimated 43 million American households that have a retirement or brokerage account;
- There are over 2,700 SEC-registered broker-dealers that provide services to retail investors, with nearly $4 trillion in total assets and almost 139 million customer accounts;
- There are over 8,000 SEC-registered investment advisers that provide services to retail investors, with over $41 trillion in assets under management and over 40million client accounts;
- There are approximately 960,000 women and men employed by broker-dealer and investment advisory firms that provide services to retail investors.[4]

Based on the extensive feedback we have received on our proposals—which I will highlight later in my remarks—and developments since our proposals in the regulatory landscape, it has become even clearer to me that Commission action in this area is needed. This feedback and our deliberations over the past 14 months have also solidified my view that, with our proposals, we had the right perspective on, and proposed the right framework for, the regulation of personalized investment advice.[5]

This perspective and framework were largely driven by the experience and expertise of our career staff and the leaders of our Divisions and relevant Offices.

2. Experience and Expertise of Commission Staff

We are considering this rulemaking package with the benefit of the Commission's extended history of broker-dealer and investment adviser regulation, the substantial experience and expertise of our dedicated staff, and our analysis over many years of prior efforts to regulate in this area.

a. Historical Perspective

At the outset, I'd like to emphasize that the Commission has a deep appreciation of the evolution of broker-dealer and investment adviser regulation over time. As the primary regulator of these entities and for our securities markets generally for the past 85 years, the SEC is uniquely positioned to develop, implement and enforce standards of conduct and mandated disclosures that will work effectively for both retail investors and regulated firms. On Monday, I participated in a roundtable discussion with nine former Chairs of the Commission. They each emphasized the importance and power of transparency. Today, we benefit from and our building on the work of our predecessors.[6]

As a former Commissioner noted in a 2012 speech discussing the potential implementation of new standards of conduct for financial professionals, it is instructive to consider not just the current state of affairs—the services that broker-dealers and investment advisers currently offer, the protections currently available to

investors and our markets, and the way that firms and financial professionals are regulated—but also to consider the reasons why things are the way they are today.[7] This history underscores the fact that, while both broker-dealers and investment advisers play important roles in helping retail investors achieve their long-term financial goals, they do so in significantly different ways—offering different types of relationships, different services, and different fee models. Accordingly, to be effective and not unduly disruptive, the obligations applicable to each type of financial professional should reflect these different characteristics.

These differences between broker-dealers and investment advisers, and how they interact with their customers and clients, make it clear that a "one size fits all" approach to regulating standards of conduct for financial professionals presents significant risk. Not only would that approach discard decades of regulatory and judicial precedent that has in many respects worked well for retail investors and our markets, it likely would reduce investor choice and access to products and services and increase costs, including as a result of many firms and financial professionals responding to a single regulatory framework with a single type of account offering or payment option. Put simply, this would be a loss for our Main Street investors. I firmly believe we can enhance the obligations of financial professionals for the benefit of our Main Street investors without adopting such a "one size fits all" approach.

b. Selected Experience and Accomplishments

The recommendations before us have been informed by the substantial experience and expertise of the Commission staff, drawing on decades and decades of experience across our agency, which includes, among other things, overseeing broker-dealer and investment adviser compliance with our laws and regulations, overseeing and partnering with FINRA, and the extensive analysis of our economists in the Division of Economic and Risk Analysis (DERA). Our talented and dedicated staff has the experience and specialized expertise necessary to craft rules that will effectively serve our retail investors and our markets. The women and men of the SEC staff, working together across multiple Divisions and Offices within the Commission, have the first-hand experience examining and enforcing compliance with our rules, and come to work every day to protect our Main Street investors.

Let me highlight some of the work and accomplishments of our staff in this area.

- In the last five years, our Office of Compliance Inspections and Examination (OCIE) conducted more than 8,200 examinations of SEC-registered investment advisers. During fiscal year 2018 alone, we examined 17% of all SEC-registered investment advisers (more than 2,300 examinations). We have deep insight into how investment advisers operate and how they develop and provide advice to retail investors.
- Over the years, our staff has also gained significant insight and perspective into how broker-dealers operate and how they develop and provide recommendations to retail investors, both through our broker-dealer regulatory and examination functions, and through our interactions with FINRA. For example, we regulate FINRA—helping to ensure that FINRA effectively fulfils its statutory responsibility to ensure that the broker-dealer industry operates fairly and honestly—and we partner with FINRA in our role in overseeing broker-dealers. Staff from across our Divisions and Offices work closely with FINRA on a daily basis on a range of issues and topics, including—to name just a few: culture and compliance, sales practices, firm registration and personnel licensing, arbitration, and investor education. In light of the Commission's actions today, we anticipate that FINRA will need to review and revise its rulebook and examination program in light of the enhanced broker-dealer standard of conduct reflected in Regulation Best Interest. We look forward to working with FINRA in these efforts.
- Our Quantitative Analytics Unit (QAU) within OCIE has developed tools that greatly improve the Commission's ability to detect instances of misconduct, such as potential "churning." Regulation Best Interest, if adopted today, will allow us to bring enforcement actions against broker-dealers engaging in this type of misconduct more efficiently and thereby return money to harmed retail investors more quickly, without having to prove whether the broker-dealer exercised actual or de facto control over the customer's account.
- When we see instances of financial professionals engaging in conduct that harms retail customers, our Division of Enforcement takes action. In our two most-recent fiscal years, we have brought more than 180 cases (against more than 290 parties) involving retail investors in the investment advisory and

broker-dealer space. In March, we announced that our Share Class Selection Disclosure Initiative, an effort to identify and promptly correct ongoing harm in the sale of mutual fund shares by investment advisers, had at that time resulted in the return of more than $125 million to clients, with a substantial majority of the funds going to retail investors.[8]

- The robust economic analysis for our rules was prepared by a team of more than 13 DERA staff members, including 8 Ph.D economists, and led by our new Chief Economist and DERA Director, S.P. Kothari, a former MIT accounting and finance professor.[9] The economic analysis reflects a careful review of the comments and other information we received, and considers over a hundred academic studies relevant to disclosure, conflicts and investor harm in market for retail investment advice.

c. Analysis of Prior Efforts to Regulate in This Area

The development of the approach before us also benefited from our consideration of prior efforts to regulate in this area. This included a recent and highly relevant data point which our staff considered extensively: the adoption, and subsequent vacating of, the DOL Fiduciary Rule, which would have applied a fiduciary standard —different from the fiduciary standard under the Advisers Act—to persons who provide investment advice or recommendations with respect to ERISA plan assets or individual retirement accounts in a wider array of advice relationships than under the previous regulation.

While our actions today include many elements that are similar to the DOL Fiduciary Rule, including the enhancements to the standards of conduct required of broker-dealers and the disclosure requirements of Form CRS, the initial implementation of the DOL Fiduciary Rule illustrated that our concerns for investor access, choice and cost are not theoretical. With the adoption of the DOL Fiduciary Rule, it was widely reported that there was a significant reduction in retail investor access to brokerage services, and the available alternative services were higher priced in many circumstances.[10] The recommendations today reflect a careful study of the DOL Fiduciary Rule, incorporating certain aspects of the rule that will enhance the broker-dealer standard of conduct in line with reasonable investor expectations, while avoiding other aspects of the rule that appear to have been primary drivers of the rule's unintended consequences, such as the introduction of a best interest contract exemption and private right of action, and the uncertainty of whether, and if so to what extent, a commission-based fee model was compatible with the DOL Fiduciary Rule.

Our senior staff and DERA economists have met with staff at the Department of Labor on many occasions, both during and after the development of the DOL Fiduciary Rule and during the development of our standards of conduct rulemaking, to discuss the approaches taken by our respective staffs.

3. Solicitation and Consideration of Feedback on our Proposed Rulemaking

I appreciate that the legal requirements and mandated disclosures of financial professionals is an important issue for many people—and rightly so. The decision of whether and what type of financial professional to engage, and the legal standard of conduct that applies to investment advice provided by that professional, can significantly impact whether retail investors are able to achieve their financial goals, for example, saving for retirement or their children's college tuition. With this in mind, we adopted an approach to solicit feedback proactively on our proposed rulemaking in April 2018,[11] helping to ensure that we had carefully considered the multitude of perspectives on this issue.

Let me highlight some key examples of the information and feedback our staff has considered in developing the recommendations we have before us today.

- We received over 3,000 unique comment letters (over 6,000 total comment letters) from individual investors, consumer advocacy groups, financial services firms, investment professionals, industry and trade associations, state securities regulators, bar associations and others.
- We solicited individual investors' input through a number of other forums in addition to the traditional requests for comment, including seven investor roundtables held in different locations across the country, and also received more than 90 responses from individuals on a "feedback form" regarding the proposed relationship summary.[12]

- We engaged a consultant to conduct investor testing of the proposed relationship summary, surveying over 1,400 individuals through a nationally representative panel and conducting qualitative interviews of a smaller sample of individuals. We carefully considered that investor testing as well as additional feedback on investor testing provided by commenters, which included a number of other third-party surveys and studies.
- In addition to hearing directly from investors, we opened our doors and encouraged input from diverse viewpoints. I have personally participated in more than 50 meetings with consumer advocacy groups, financial services firms, investment professionals, industry and trade associations and our fellow regulators; and combined with meetings with staff and other Commissioner offices, we have hosted more than 200 such meetings since April 2018.

It would be an obvious understatement to say the amount of information that our staff considered is extensive.

4. SEC Staff's Recommended Approach

The approach recommended today would establish a new standard of conduct specifically tailored to the structure and characteristics of the broker-dealer relationship model and reaffirm—and in some instances clarify—the investment adviser fiduciary duty. The staff has not recommended the approach advocated for by some groups to adopt a uniform rule set that would apply equally to both broker-dealers and investment advisers.

Our staff's decades of experience and expertise, the information and feedback we received from investors and other market participants before and during the rulemaking process, and nearly 14 months of careful deliberation following our proposals, have all led to the conclusion that a more tailored approach will better serve our retail investors and our markets. I firmly believe this is the right approach.[13]

For those that may have a different perspective, I believe it is important to keep in mind that the recommendations we are considering today are consistent with and effectively achieve many of the key goals advocated for by supporters of a uniform standard of conduct.[14] Indeed, Regulation Best Interest incorporates fiduciary principles, but is appropriately tailored to the broker-dealer relationship model and will preserve retail investor access and choice.

I'd like to say just a few words about some of the potential criticism you may hear about our rulemaking package—criticism that I believe is clearly misguided.

- You may hear that Regulation Best Interest does not truly enhance the broker-dealer standard of conduct beyond existing suitability obligations, that it can be satisfied by disclosure alone, or that we are doing a disservice to investors by calling it a "best interest" standard. This is simply not true—you will hear from the Division of Trading & Markets specifically how the rule goes significantly beyond existing broker-dealer obligations. To be clear, Regulation Best Interest cannot be satisfied through disclosure alone.
- You may hear that our Relationship Summary will confuse retail investors, will not accomplish its goals, or should have been subject to further testing. This criticism misses the point of how much an improvement the Relationship Summary will be for retail investors over existing disclosures. No existing disclosures provide the level of transparency and comparability that the Relationship Summary will provide. The criticism also ignores the extensive amount of investor testing and other information our staff considered in developing the final recommendation, leveraging their considerable expertise with investor disclosures.
- Finally, you may hear that our Fiduciary Interpretation weakens the existing fiduciary duty that applies to investment advisers—also not true. The interpretation reflects how the Commission and its staff have applied and enforced the law in this area, and inspected for compliance, for decades.

5. Key Features of the Standards of Conduct Rulemaking Package

The recommendations we are considering today are designed to serve Main Street investors. Among other things, these rules and interpretations are designed to enhance the quality and transparency of retail investors' relationships with investment advisers and broker-dealers, bringing the legal requirements and mandated

disclosures of financial professionals in line with reasonable investor expectations. They are also designed to increase transparency and comparability among firms, and to preserve access (in terms of choice and cost) to a variety of types of advice relationships and investment products.

The rulemaking package would: (1) require broker-dealers to act in the best interest of their retail customers; (2) require both broker-dealers and investment advisers to state clearly key facts about their relationship, including their financial incentives; (3) reaffirm, and in some instances clarify, the fiduciary duty owed by investment advisers to their clients and (4) more clearly delineate when a broker-dealer's performance of advisory activities causes it to become an investment adviser subject to registration under the Advisers Act. Our final rulemaking package has been refined based on comments and other feedback in an effort to more effectively achieve the goals of our proposals, including aligning the rulemaking package with reasonable investor expectations.

a. Regulation Best Interest – Enhancing the Standards of Conduct for Broker-Dealers

Regulation Best Interest creates an enhanced standard of conduct applicable to broker-dealers at the time they recommend to a retail customer a securities transaction or investment strategy involving securities. When making a recommendation, a broker-dealer must act in the retail customer's best interest and cannot place its own interests ahead of the customer's interests. Regulation Best Interest draws upon key fiduciary principles, including those that apply to investment advisers under the Advisers Act, while providing specific requirements to address certain aspects of the relationships between broker-dealers and their retail customers. At the time a recommendation is made, key elements of the Regulation Best Interest standard of conduct that applies to broker-dealers will be similar to key elements of the fiduciary standard for investment advisers. **Importantly, regardless of whether a retail investor chooses a broker-dealer or an investment adviser (or both), the retail investor will be entitled to a recommendation (from a broker-dealer) or advice (from an investment adviser) that is in the best interest of the retail investor and that does not place the interests of the firm or the financial professional ahead of the interests of the retail investor.**

The staff recommendation today retains the overall structure and scope of the proposed rule, with certain enhancements and modifications.

Account Recommendations: Regulation Best Interest will now expressly apply to account recommendations, including recommendations to roll over or transfer assets in a workplace retirement plan account to an IRA, recommendations to open a particular securities account (such as a brokerage account or advisory account), and recommendations to take a plan distribution for the purpose of opening a securities account. These recommendations are often provided at critical moments (such as at retirement) and may be irrevocable, can involve a substantial portion of a retail investors net worth, and can have significant long-term impacts on the retail investor.

Disclosure Obligation: Before or at the time of the recommendation, a broker-dealer must disclose, in writing, material facts about the scope and terms of its relationship with the customer. This includes disclosure that the firm or representative is acting in a broker-dealer capacity; the material fees and costs the customer will incur; and the type and scope of the services to be provided, including any material limitations on the recommendations that could be made to the retail customer. The broker-dealer must also disclose all material facts relating to conflicts of interest associated with the recommendation that might incline a broker-dealer to make a recommendation that is not disinterested, including, for example, conflicts raised by the sale of proprietary products, payments from third parties, and compensation arrangements.

We are refining the treatment of conflicts of interest by (1) defining "conflict of interest" in the rule text and (2) revising the Disclosure Obligation to require disclosure of "material facts" regarding conflicts of interest associated with the recommendation. We are further modifying the Disclosure Obligation to explicitly require broker-dealers to provide "full and fair" disclosure of material facts. We are clarifying that a broker-dealer needs to disclose whether or not account monitoring services will be provided (and if so, the scope and frequency of those services), account minimums, and any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer.

We considered, but are not requiring, personalized fee disclosures as part of Regulation Best Interest. However, we encourage firms to consider ways to provide more personalized disclosures to retail investors

and we will continue to consider whether to require more personalized fee disclosure, particularly as technology evolves, and operational and technological costs fall.

Care Obligation: A broker-dealer must exercise reasonable diligence, care, and skill when making a recommendation to a retail customer. The broker-dealer must understand potential risks, rewards, and costs associated with the recommendation. The broker-dealer must then consider those risks, rewards, and costs in light of the customer's investment profile and have a reasonable basis to believe that the recommendation is in the customer's best interest and does not place the broker-dealer's interest ahead of the retail customer's interest. A broker-dealer should consider reasonable alternatives, if any, offered by the broker-dealer in determining whether it has a reasonable basis for making the recommendation. When recommending a series of transactions, the broker-dealer must have a reasonable basis to believe that the transactions taken together are not excessive, even if each is in the customer's best interest when viewed in isolation.

We are enhancing the proposal by expressly requiring that a broker-dealer (1)understand and consider the potential *costs* associated with its recommendation, and (2)have a reasonable basis to believe that the recommendation does not place the financial or other interest of the broker-dealer ahead of the interest of the retail customer. Cost will always be relevant and must be considered; however, it is only one of many important factors to be considered regarding the recommendation and the standard does not necessarily require the "lowest cost option." We are also providing additional guidance on what it means to make a recommendation in a retail customer's "best interest." Determining whether a broker-dealer's recommendation satisfies the Care Obligation will be an objective evaluation turning on the facts and circumstances of the particular recommendation and the particular retail customer. When a broker-dealer materially limits its product offerings to certain proprietary or other limited menus of products, it could not use its limited menu to justify recommending a product that does not satisfy the obligation to act in a retail customer's best interest.

Conflict of Interest Obligation: We are revising the Conflict of Interest Obligation by (1) similar to the proposal, establishing an overarching obligation to establish written policies and procedures to identify and at a minimum disclose (pursuant to the Disclosure Obligation), or eliminate, all conflicts of interest associated with the recommendation and (2) setting forth explicit requirements to establish written policies and procedures reasonably designed to mitigate or eliminate certain identified conflicts of interest. Specifically, the policies and procedures must be reasonably designed:

- to mitigate conflicts of interests that create an incentive for an associated person of the broker-dealer to place its interests or the interest of the firm ahead of the retail customer's interest;
- when a broker-dealer places material limitations on recommendations that may be made to a retail customer (e.g., offering only proprietary or other limited range of products), to disclose the limitations and associated conflicts and to prevent the limitations from causing the associated person or broker-dealer from placing the associated person's or broker-dealer's interests ahead of the customer's interest; and
- to identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time.

Compliance Obligation: We are establishing a new, general "Compliance Obligation" to require broker-dealers to establish policies and procedures to achieve compliance with Regulation Best Interest in its entirety.

b. Form CRS Relationship Summary – Enhancing Transparency and Comparability

The relationship summary is designed to help retail investors select or determine whether to remain with a firm or financial professional by providing better transparency and summarizing in one place selected information about a particular broker-dealer or investment adviser. Both broker-dealers and investment advisers must provide plain English disclosures on the same topics under standardized headings in a prescribed order, allowing retail investors to more easily compare services by comparing different firms' relationship summaries.

Compared with the existing disclosures, which are often lengthy and difficult for ordinary investors to comprehend, it is clear that the relationship summary we are considering today significantly advances our goals of providing transparency and comparability. The format of the relationship summary also allows for comparability among the two different types of firms in a way that is distinct from other required disclosures.

The relationship summary also encourages retail investors to ask questions and highlights additional sources of information. All of these features should make it easier for investors to get the facts they need when deciding among investment firms or financial professionals and the accounts and services available to them.

Finally, the relationship summary will also include a link to the Commission's investor education website, Investor.gov, which offers educational information about investment advisers, broker-dealers, and financial professionals and other materials.

c. Fiduciary Interpretation – Affirming and Clarifying the Investment Adviser Fiduciary Duty

Investment advisers owe a fiduciary duty to their clients. I continue to believe that it is appropriate and beneficial to address in one release and reaffirm—and in some instances clarify—certain aspects of the investment adviser fiduciary duty. Our final interpretation regarding the standard of conduct for investment advisers under the Advisers Act generally follows our proposal, with some clarifications to address the comments we received. The interpretation reflects how the Commission and its staff have applied and enforced the law in this area, and inspected for compliance, for decades.

d. Solely Incidental Interpretation – Clarifying Broker-Dealer and Investment Adviser Activities

Finally, the rulemaking package today includes a new interpretation of the solely incidental prong of the broker-dealer exclusion under the Advisers Act, which excludes from the definition of investment adviser—and thus from the application of the Advisers Act—a broker or dealer whose performance of advisory services is solely incidental to the conduct of his or her business as a broker or dealer and who receives no special compensation for those services. Although this interpretation was not part of our proposed rulemaking package, comments we received demonstrated that there is disagreement about when broker-dealer investment advice falls within the solely incidental prong. This interpretation confirms and clarifies the Commission's position, and illustrates the application in practice in connection with exercising investment discretion over customer accounts and account monitoring. Consistent with the goals of our proposals, this interpretation will help address confusion in the retail investor market for investment advice.

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Individually and collectively, these actions are designed to help retail customers better understand and compare the services offered by broker-dealers and investment advisers and make an informed choice of the relationship best suited to their needs and circumstances, provide clarity with respect to the standards of conduct applicable to investment advisers and broker-dealers, and foster greater consistency in the level of protections provided by each regime, particularly at the point in time that a recommendation is made.

I firmly believe that the overall design of the rulemaking package achieves these enhancements and clarity in a manner that is workable for broker-dealers and investment advisers, and will therefore benefit retail investors by not only enhancing legal standards and mandated disclosures, but at the same time preserving retail investor access (in terms of choice and cost) to different types of investment services and products.

6. Key Next Steps

My posted remarks include a more detailed overview of the rulemaking package. In the interest of time, let me now highlight some key next steps, before turning it over to the staff to present their recommendations.

In connection with our rulemaking, we are rolling out a Main Street investor education campaign designed to help retail investors understand key differences between broker-dealers and investment advisers, and to help them decide whether working with one of these types of financial professionals is right for them. This is a critical decision, and unfortunately the key distinctions are not well understood by many of our Main Street investors. I believe the relationship summary as well as other components of our rulemaking will help in this regard, but the Commission also has an important role to play in general investor education.

Features of this campaign will include:

- a series of short educational videos designed to provide ordinary investors with some basic information about broker-dealers and investment advisers—these videos will be available to the public on our investor education website, investor.gov;
- additional updates to investor.gov, including a specific landing page for investors that click through Form CRS; and
- one or more retail investor events later this summer to help us get the message out.

To help investors and firms digest the rule release and interpretations, the staff will be posting a chart providing a high-level comparison of the key components of the investment adviser fiduciary duty and Regulation Best Interest.

In order to assist firms with planning for compliance with these new rules, the Commission is establishing an inter-Divisional Standards of Conduct Implementation Committee, comprised of representatives from our Division of Investment Management, Division of Trading and Markets, Division of Economic and Risk Analysis, Office of Compliance Inspections and Examinations, and Office of the General Counsel. We encourage firms to actively engage with this committee as questions arise in planning for implementation. You may send your questions by email to IABDQuestions@sec.gov.

We also plan to maintain an active dialogue with our fellow regulators, and hope that we can work together to establish clear and consistent legal standards and protections across the regulatory landscape.

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Before I turn it over to the staff to present their recommendations, I would like to acknowledge a few individuals, noting that countless current and former members of the staff also contributed to this effort:

- From the Division of Investment Management: Dalia Blass, Sarah ten Siethoff, David Bartels, Sara Cortes, Jennifer Porter, Parisa Haghshenas, Jennifer Songer, Roberta Ufford, Elizabeth Miller, Emily Rowland, Gena Lai, Ben Kalish, Benjamin Tecmire, Jamie McGinnis, Sirimal Mukerjee, Olawale Oriola, Alexis Palascak, Matthew Cook and Holly Hunter-Ceci.
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- From the Office of the General Counsel: Bob Stebbins, Meridith Mitchell, Lori Price, Marie-Louise Huth, Cathy Ahn, Bob Bagnall, Maureen Johansen, Monica Lilly, Natalie Shioji, Michael Conley, Jeff Berger, and Dan Matro.
- From the Office of Investor Education and Advocacy: Lori Schock, Owen Donley, Jill Felker, Vanessa Meeks, and Suzy McGovern.
- From OCIE: Peter Driscoll, Chris Mulligan, Carrie O'Brien, Christine Sibile, Aaron Russ, Dan Kahl, Jen McCarthy.
- From the Division of Enforcement: Stephanie Avakian, Steven Peikin, Dabney O'Riordan and Adam Aderton.

I would also like to briefly thank my fellow Commissioners and their staffs for their constructive engagement and careful attention to this project. I believe many aspects of the recommendations we are considering today have been improved by your constructive input. You have my sincere thanks.

And now, I'd like to turn it over to Brett Redfearn and Dalia Blass, our Directors of Trading and Markets, and Investment Management, respectively, for the staff's presentation of their recommendations. S.P. Kothari, our Chief Economist and DERA Director, will then summarize his views on the potential economic effects of the rulemaking package. I note that Dalia, Brett and S.P. are supported today not only by their staffs but also by the heads of other Divisions and Offices.

[1] *See* Chairman Jay Clayton, Statement at the Open Meeting on Standards of Conduct for Investment Professionals (April 18, 2018), available at: https://www.sec.gov/news/public-statement/clayton-statement-open-meeting-iabd-041818.

[2] On April 8, 2016, the DOL adopted a new, expanded definition of "fiduciary" and issued certain related prohibited transaction exemptions (together, the "DOL Fiduciary Rule"). The rule was subsequently vacated in toto by the United States Court of Appeals for the Fifth Circuit. *See Chamber of Commerce v. U.S. Dep't of Labor*, 885 F.3d 360 (5th Cir. 2018).

[3] *See, e.g.,* Chairman Jay Clayton, The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice (May 2, 2018), available at: https://www.sec.gov/news/speech/speech-clayton-2018-05-02; Chairman Jay Clayton, Overview of the Standards of Conduct for Investment Professionals Rulemaking Package (April 18, 2018), *supra* note 1.

[4] Consistent with the application of the rulemaking package considered today, as used herein "retail investors" includes both high net worth and non-high net worth individuals.

[5] *See* Chairman Jay Clayton, Statement on Investor Roundtables Regarding Standards of Conduct for Investment Professionals Rulemaking (Aug. 22, 2018), available at: https://www.sec.gov/news/public-statement/statement-clayton-082218.

[6] Transparency has long been a hallmark of the U.S. securities markets, and the Commission continuously strives to ensure that investors are provided with timely, accurate and fair information when they make investment decisions. *See, e.g.*, Disclosure of Order Handling Information, 83 Fed. Reg. 58338 (Nov. 19, 2018); Order Execution Obligations, 61 Fed. Reg. 48380 (Sept. 12, 1996).

[7] *See* Commissioner Daniel M. Gallagher, Keynote Address at the National Society of Compliance Professionals National Meeting (Oct. 23, 2012) (discussing the evolution of law, regulation and market practices of broker-dealers and investment advisers in the context of considering action under Section 913 of the Dodd-Frank Act), available at: https://www.sec.gov/news/speech/2012-spch102312dmghtm.

[8] *See* Press Release, SEC Share Class Initiative Returning More Than $125 Million to Investors (Mar. 11, 2019), available at: https://www.sec.gov/news/press-release/2019-28.

[9] *See* Press Release, SEC Names S.P. Kothari as Chief Economist and Director of the Division of Economic and Risk Analysis (Feb, 26, 2019), available at: https://www.sec.gov/news/press-release/2019-20.

[10] *See, e.g.,* Daisy Maxey, *Winners and Losers in a Post-Fiduciary World*, Wall St. J., May 24, 2017, *available at* https://www.wsj.com/articles/winners-and-losers-in-a-post-fiduciary-world-1495638708; Crystal Kim, *BofA, JPMorgan, and the Fiduciary Rule: Will They or Won't They*, Barron's, Mar. 15, 2017, https://www.barrons.com/articles/bofa-jpmorgan-and-the-fiduciary-rule-will-they-or-wont-they-1489588442; Imani Moise, *Merrill Lynch Does about Face on Fiduciary-Era Policy*, Reuters, Aug. 30, 2018, https://www.reuters.com/article/us-bank-of-america-fiducuary/merrill-lynch-does-about-face-on-fiduciary-era-policy-idUSKCN1LF1R9.

[11] *See* Press Release 2018-68, *SEC Proposes to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships with Investment Professionals* (Apr. 18, 2018), available at: https://www.sec.gov/news/press-release/2018-68.

[12] The transcripts from the seven investor roundtables, which took place in Atlanta, Baltimore, Denver, Houston, Miami, Philadelphia, and Washington D.C., are available in the comment file at https://www.sec.gov/comments/s7-08-18/s70818.htm#transcripts. The feedback forms are available in the comment file at https://www.sec.gov/comments/s7-08-18/s70818.htm.

[13] In developing these recommendations, our staff extensively considered the 2011 staff study on investment advisers and broker-dealers required by Section 913 of Dodd-Frank, which recommended a uniform standard of conduct. Staff of the U.S. Securities and Exchange Commission, *Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 2011) ("913 Study"), *available at* www.sec.gov/news/studies/2011/913studyfinal.pdf. I believe that the

enhancements we are considering today incorporate and, in many aspects (such as the concept of mitigation), build upon and go beyond the recommendations in the study.

[14] For example, former Commission Chair Elisse Walter advocated for a uniform standard of conduct that would (1)provide specific details that determine what it really means to act in the best interest of an investor, (2)impose business practice rules that prohibit certain conflicted behavior or require mitigation or management of conflicts, and (3)not deviate from the basic principle that financial professionals should always act in the best interests of investors, both large and small. *See* Commissioner Elisse B. Walter, Regulating Broker-Dealers and Investment Advisers: Demarcation or Harmonization? (May 5, 2009), available at: https://www.sec.gov/news/speech/2009/spch050509ebw.htm.