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I want to begin by thanking the Chairman for making this rulemaking a priority for the Commission. There has been tremendous confusion in recent years among retail investors about what legal standards apply and what type of financial professional they are engaging to provide them with investment advice. To get us to today's recommended proposals, many hours and much hard work were expended by staff in the Divisions of Trading and Markets, Investment Management, and Economic and Risk Analysts, together with the General Counsel's Office, the Office of Investor Education and Advocacy, the Chairman's staff, and many others throughout the Agency. Thank you all for your efforts.

I support putting these proposals out for comment. My hope is that today's proposals are a step along the way to the ultimate adoption of a clear standard for broker-dealers to abide by when providing investment advice to retail investors; clear, simple, and informative disclosure for retail investors choosing a financial professional; and clarity as to investment advisers' duties to clients. Done right, this package will result in clear guideposts for investors, regulators, and

providers of financial services. I hope that whatever is ultimately adopted preserves investor choice, so that retail customers still have the option to choose how and where to seek investment advice.

Today's proposals, I anticipate, will generate substantial feedback as to what the proposals get right and, more importantly for producing a strong set of final rules, where they miss the mark. To that end, each release contains many questions. I have a number of concerns, on which I particularly welcome feedback.

Anyone who endeavors to read all the releases will be daunted by their collective heft. SEC printers are all crying out for new toner cartridges, and lugging our best interest binders around the halls has become a substitute for going to the SEC gym. While the length of these releases provides lots of fodder for jokes, it's a serious matter. It makes it difficult for readers to understand what we are proposing, and thus harder for us to elicit comment on key points. In a proposal asking our registrants to be clear with their customers, we ought ourselves to provide clear standards and requirements for our registrants.

Disclosure should be the centerpiece of our reforms. We are proposing today a new customer or client relationship summary. The most valuable aspect of the relationship summary may be the list of questions included at the end, which may help to inspire a healthy skepticism and inquisitiveness in investors. The rest of the summary may not be as useful. While I favor requiring firms to spell out clearly the services they are offering and the fees they charge, I am concerned that the approach we are taking will simply mean a few more pages of unread paper landing in investor trash cans. Specifically, I am concerned that:

- First, although we make room for electronic delivery and ask questions about other modes of delivery, the proposed disclosure has an unimaginative paper-based default; we are mandating a standardized 4-page summary with specific instructions about font size, placement in the stack of papers handed to investors, and filing requirements. If instead we encouraged firms to be creative in their use of videos, interactive computer-based disclosure, mobile apps, and so forth, investors would be more likely to take in and think about the information we want them to understand. Allowing more creativity would complicate our oversight efforts, but this drawback seems outweighed by the potential benefits.

- Second, the prescribed language and model forms in today's package are not, in my opinion, a model of clarity. That said, my opinion matters less than the opinions of investors who will use the form. I look forward to seeing the results of our own and others' investor testing of the forms.
- Third, the relationship summary, along with new requirements in Regulation BI, will be additive disclosure. Disclosure overload is also an issue for investors—a problem today's proposed changes only exacerbate.
- Fourth, the relationship summary mandate asks firms to make disclosures about services they offer, but also requires them to disclose information about services they do *not* offer. Directing firms to talk about what other firms do is unusual and not likely to produce accurate, meaningful information for investors.
- Fifth, the relationship summary would use ongoing monitoring as the main line of demarcation between advisers and broker-dealers. Broker-dealers can disclose that they offer monitoring, but they must describe how often they monitor. The implication that advisers monitor continuously, while broker-dealers, if they monitor at all, do so only periodically, may not reflect the reality for either advisers or brokers. Moreover, the

term monitor is commonly understood to mean "to watch, keep track of, or check . . . "[1] The apparent deviation from this standard understanding of the word—in the release's use "monitoring" is not necessarily an ongoing activity—could generate further confusion.

- Sixth, one of the most valuable things for investors to know is how much the services and products in which they invest will cost them. Such information is very hard to provide with precision in advance, but the proposed summary does not offer much concrete information for investors to grab on to as they seek to get a sense of what they might pay. I look forward to commenters' insights on what we can do at the beginning of the customer relationship and periodically to provide investors more of an idea of how much they are paying for the products and services they are buying. Although providing this type of individualized information for investors might be difficult, technological advances may make it easier for firms to provide more meaningful, personalized fee information to investors. Again, a more interactive approach might help in this regard.

[1] Merriam Webster, online dictionary, https://www.merriam-webster.com/dictionary/monitor?utm_campaign=sd&utm_medium=serp&utm_source=jsonld.

Regulation Best Interest responds to calls—dating back years—for a revamped broker-dealer conduct standard. Although "suitability" has become something of an unspeakable word, it is a standard that has served investors well. There have nevertheless been loud, persistent calls for a more robust standard. I am not necessarily averse to creating such a standard, but we must be clear about what we are doing and about how broker-dealers can comply with it. The proposal lacks clarity on both issues, and I am concerned that, if it is not refined through the public comment process, it will be unworkable as a final standard.

- First, the rule text is not sufficiently clear about what the Best Interest standard is and how it relates to existing broker obligations. It would be better to acknowledge that we are imposing a suitability-plus standard and explain what we mean by the "plus." The release's gloss on the rule text is inadequate; the release suggests both that the new standard may be consistent with interpretations of current standards that apply to broker-dealers and that it is different in some way from the existing obligations on broker-dealers. I welcome suggestions on how we can clarify the rule text so that the contours of the standard are evident to investors, broker-dealers, and regulators.

- Second, if we do not get the conduct standard for broker-dealers right, we risk exacerbating a long-term decline in the number of broker-dealers. The investment adviser regime—with its lack of a self-regulatory organization, its flexible standards that can be tailored through disclosure, its relative lack of rules, and its potentially lucrative asset-based fees—has inspired some financial professionals to switch hats. As the Chairman has underscored, we hope to maintain choice for investors. But to the extent that lack of clarity in the proposed standard creates compliance uncertainty for broker-dealers, I fear that it may intensify the decline of the broker-dealer model. I encourage commenters to address ways we can modify the proposal to avoid pushing more firms to abandon the broker-dealer model that has served many investors so well for so many decades.
- Third, the term Best Interest sets an impossible standard. Determining whether a particular recommendation is in a customer's best interest is a value-laden judgment that could be interpreted to require the broker-dealer to see into the future and to evaluate possible states of the world in light of the broker-dealer's notion of the customer's best interest gleaned from the customer's investor profile. It also requires the

broker-dealer, and its registered reps, to understand the full range of available products. Clearly, we cannot require either of those things, but planning for what the Commission will demand through examinations and enforcement actions could be a very expensive exercise for many broker-dealers. On one hand, I am concerned that some may determine to limit their exposure by, for example, limiting their range of investment products to a number that their most junior registered reps can understand to our satisfaction. On the other, I worry that firms will feel driven by the rule to expand their product offerings to include products they don't understand.

- Finally, I take issue with how the term "Best Interest" will be used. People have been invoking "Best Interest" around Washington over the last decade as if it were an incantation that could cure all that is wrong in the retail investor space. Yet after so many years, I still have not found anybody—whether in industry or otherwise—who can explain to me what it means. I fear, however, that "Best Interest" will continue to be used, only now as a Commission-approved incantation, a spell that, much like the term "fiduciary," charms investors into not asking questions, precisely because it is devoid of concrete content. After all, if the government, through the name of the

regulation, is telling investors that brokers are acting in their best interest, which each investor is likely to interpret differently, what need have investors to press in for more details?

This rulemaking package includes a proposed interpretation intended to provide some definition to the fiduciary standard applicable to investment advisers. Collecting in one place the pieces of this standard is a valuable undertaking. It will be useful to investors, investment advisers, and the Commission. I look forward to hearing feedback about whether we have appropriately captured the fiduciary standard as it is currently understood. I have several concerns about this portion of the package:

- First, the proposed interpretation makes new law. For example, it states that an adviser and its clients can shape their relationship through disclosure and informed consent. The informed consent requirement is new; the only Commission basis is a mention in an instruction to Form ADV.
- In addition to laying out the contours of the federal fiduciary duty for investment advisers, the proposal includes a set of potential new obligations on investment advisers, including federal licensing and continuing education, net capital

requirements, and fidelity bonds. Not only do I believe we lack authority for these requirements, but they represent a paradigm shift in the way we regulate investment advisers. The adviser regime is largely a principles-based one, not one in which the SEC signs off on the quality of the advice provided or the advisers providing it. Custody rules already exist to protect investor funds. This portion of the proposal is a distraction from today's focus on establishing and articulating standards for broker-dealers and investment advisers. I do not favor steps that would force investment advisers to look more like broker-dealers any more than I favor forcing broker-dealers into the adviser mold.

A final global concern is that these proposals will change for the worse the way investors and their financial professionals interact. We do not want to turn an investor's visit to her investment adviser or broker-dealer into a sterile compliance exercise that focuses on delivering a pile of documents and checking off a list of required disclosures rather than engaging with the investor's needs. An interaction scripted to satisfy regulators risks leaving investors entirely unsatisfied. First-time investors who would benefit from saving even fifty or a hundred dollars a month may be intimidated

by basic terms like “stocks” and “bonds” and “mutual funds.” What many of these investors need is simply a frank, earnest, non-technical conversation with a professional who can persuade them to start putting away a bit of money. I worry that what this package may provide instead is just another excuse, in the form of more disclosures involving even more challenging terms like “fiduciary” and “best interest,” for them to avoid thinking about their finances at all.

These proposals are an extensive undertaking, so my list of concerns is also extensive. I look forward to hearing from commenters about these and other issues. I want to close by again commending the staff for their unflagging commitment to this difficult, but important project. Your willingness to work with us through many difficult questions made the proposals better. I know there is still a lot of hard work ahead, but I am confident that—after a bit of rest—you will all enthusiastically take on the next phase of this important rulemaking.