Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers- Pefin Advisors Response

To the members of the Commission and all interested parties:

We appreciate the opportunity to provide comment regarding the very important topic of Standards of Conduct for Investment Advisors and Broker Dealers for the protection of Retail Investors.

To adequately answer the questions posed regarding the implementation and enforcement of a Fiduciary standard, it is first critical to establish appropriate definitions and a common understanding of the problem for which we are attempting to craft a solution.

Some of the points in this proposal may be construed as idealistic, or not taking into account the realities of existing business models. We would argue that where the investment industry is today- in a world where some Brokers and unscrupulous Advisors are misrepresenting or being unclear about their obligations to their clients in order to promote their own financial interests- the need for more radical reformation is required. The balance needs to be restored with appropriate constraints to insure the best outcome for clients. There are obvious, and readily available solutions that can be implemented to restore a fair balance. Given technological advances, the cost of implementation for regulatory oversight and transparency for clients is more available than ever.

It is important that readers of this document are aware that I am the CEO of Pefin, which has developed proprietary AI technology to provide fiduciary financial advisory services for US Consumers. Because this is my focus, many of the comments relate to how Robo-advisors, and AI advisors, should be held to the same standards of regulation as human financial advisors. I have endeavored to remain unbiased - to keep the comments objective and in the retail client's best interests, but wanted to make it known that I do have a vested interest in the outcome of this inquiry.

As background, prior to my current role as CEO of Pefin, I have over 20 years of experience in very senior roles in the Financial Services industry, including roles as Head of Americas for BNP Paribas for Commodities, FX and Emerging Markets, as well as Chief Marketing Officer for JP Morgan. All of my comments, reflect these years of experience on existing business practices in the industry, and my own views regarding the necessity of abiding by the letter of the regulatory rule as well as to the spirit and intention. I would be happy to appear before the commission to discuss in more detail any of the proposals.

Sincerely,

Catherine Flax
CEO, Pefin

The collective goal of regulators and the financial services industry should be to protect consumer interests in the provision of retail investment advice. To that end, we must create a shared vocabulary, and define certain commonly used terms, that are at times unclear- which are often at the root of suboptimal outcomes for the retail client.

What is a Fiduciary?

A Fiduciary:

- always acts in its client's best interests, and can validate that it does so.
- is completely transparent on fees, and its fee structure has no conflicts of interest – specifically that there are no incentives to sell certain products, more product or inappropriate products to generate more fees.
- provides advice that sometimes encourages you *not* to invest – despite that potentially having a lower- fee outcome for the Advisor.
- provides clients a way to evaluate fees and understand when and why they may be paying more fees.
- provides advice in the context of a holistic financial plan
- provides advice that is uniquely tailored to the specific needs, risk profile, goals and financial situation of a client
- updates its plans, advice and models regularly and changes the investment portfolio accordingly.

Agreeing on this definition of Fiduciary provides a baseline against which we can evaluate the services that are provided in the market place, and against which disclosures should be made to retail clients.

What does it mean to offer Personalized Service?

Personalized Service, as it pertains to providing Fiduciary Investment Advice, must be holistic in nature. Currently "personalized" is a term that is used by many firms providing generic advice and sales of investment portfolios. By virtue of using certain high-level details, such as the client's age and income, a proposed portfolio for investment is offered, but this cannot be Fiduciary as it lacks sufficient detail and understanding of the client. It is very easy to imagine two individuals of the same age and income who should receive very different advice regarding investments, when you consider things like whether they have a family, own a home, are sending children to private school vs have no children, have debt, have other investments or savings, have stability of income or additional earners in their home- and so much more.

For a service to be Personalized it must take into account ALL of the relevant information pertaining to the financial life of the client.

What does it mean to have a Holistic understanding of a client or to provide Holistic service?

To be a Fiduciary, the Advisor must have a way to understand and analyze the complete picture of a client's financial situation. Without that information and understanding, it is not possible to give advice that is in the best interest of the client. It is also impossible for an Advisor to be Fiduciary on one part of a portfolio or service but not on other parts. Currently, the term Holistic is used without regard for whether it is applied to all aspects of the services provided.

What is Transparency?

A client should receive information on at least a quarterly basis on the fees that they have been charged on their account, as well as clarity on the high-level calculation used to determine these fees, and a breakdown of the charges by category.

This should be provided in a simple to use methodology both in terms of dollars paid, as well as in percentage terms of assets under management in an investment account, if related to investment account fees.

What is an Advisor?

a. An Investment/Financial Advisor ***must be a Fiduciary***, as defined above
b. If a firm is a Fiduciary, it must be so over **its complete range of products** for the retail clients they serve. It is impossible to be a Fiduciary over a subset of products offered, which is currently the case for some firms which hold themselves out as Investment/Financial Advisors.
c. Any firm or individual who is an Investment Advisor, must, by definition, deliver advice -not just investment execution services or the selling of investments – which takes into account **the holistic** financial situation of the client (current financial position- savings, investments, debt, as well as future goals, obligations, and any other salient fact that impacts the risk and appropriate investment profile of the client).

Proposition 1:

The terms "Advisor", "Fiduciary", "Personalized" and "Holistic" should be standardized by regulators

"Investment Advisor" or "Financial Advisor" are not defined terms, and are currently a "catch all" for firms with wildly different practices, standards, and responsibilities to their clients.
Many of these firms attempt to imply in external communication that they are a Fiduciary, while disclaiming their responsibilities in the fine print. The terms Advisor, Fiduciary, Personalized and

Holistic should be defined terms with the Regulators seeking principle based standards and guidance on how they apply.

Proposition 2:

There should be a designation for people who sell investment products but are not a Fiduciary- perhaps something like "Investment Portfolio Manager"?

This is a proposed title for a firm or professional that is managing Investments, and may provide best fees and risk/reward analysis for clients, but is not a Fiduciary as defined above. Investment Portfolio Managers are not Holistic, may or may not provide a best-pricing standard, and may or may not have conflicts of interest inherent in their fee structures. They are not able to provide advice that is in every instance in the best interest of the clients.

In general, we think the SEC should categorize all firms or individuals who sell investment advice in one capacity or another into one of the following categories.

a. Investment Advisor / Financial Advisor

- All advice offered is in client's best interests across all aspects of their financial life and plans, and across all products provided.
- Will tell you not to invest if investing is not appropriate for your life situation / cash flow situation and plans
- There is a clear process by which the investments provided tie back to the client's plans
- Will provide investment advice on a holistic basis – also considering when it is better to save more in cash or pay of debt instead of investing
- There is auditable interaction recording all recommendations to clients and how they connect back to the client's goals, risk profile, and financial circumstances
- fees charged are without conflict of interest, and demonstrably low cost
- Fees must be AUM-based, and/or flat fee only – no transaction based fees paid to the IPM or its affiliates (only to third parties)

b. Investment Portfolio Manager

- Not Fiduciary- not holistic and not comprehensive advice
- No conflicts of interest- not commission bases sales or any kickbacks from the sale of products
- Fees must be AUM based and/or flat fee only – no transaction based fees paid to the Investment Portfolio Manager or its affiliates (only to third parties)

- Held to a standard of providing the lowest fee for services provided
- Must provide a fee comparison with competitors to clients. Fees must be low compared to the intended return on the account.
- Must provide total commissions and other fees paid if not included in the fees above

c. Investment Sales/ Brokers-

- Not Fiduciary- not holistic and not comprehensive advice
- May or may not receive direct kickbacks or commissions from sales of investment products
- Full direct and indirect fee disclosure
- Standard of care is to not harm the client, but not acting in the best interest of the client (focused on selling product)
- Not discretionary authority, all decisions must be approved by the client
- Fees must be transaction based and/or flat fee only

Proposition 3:

The SEC test should have a Principle based framework to test for Fiduciary responsibilities of the Advisors. In addition, an Investment/Financial Advisor must satisfy these three tests to maintain Fiduciary Status:

a. Frequency Test- In order to maintain fiduciary status, the advisor must check at a periodic frequency each account, and ensure that it is reviewing the advice that is being dispensed to clients against changes in their financial situation and market factors. The advisor needs to do this at least once a month, and communicate to the client that they have completed an account review and believe it is correct, as well as communicate any action items the client should undertake.

b. Replicability Test -A client should receive identical advice (output) for the same financial circumstances and economic data (inputs), from anyone at the same firm. If the advice is different, one client has not received fiduciary advice. Likewise, if clients with very different economic circumstances receive the same advice, one of them has not received fiduciary advice. Similarly, if the Advisor chooses a conflicted investment that has higher fees or commissions, they must prove that, over a reasonable period of time, such investments on average add value to the client versus the intended benchmark. In short- the advice to clients should be able to be recreated in such a way to validate that the advice given was in fact in the best interest of the clients.

c. Audit Test- Every firm must have internal standards and checks to prove that the investment advice it provides is Fiduciary, including validation of assumptions and methodology used. This must be auditable and available to regulators upon request.

It is essential that Financial Advisors be responsible to their clients in a quantifiably justifiable way. This is the best way to ensure that Fiduciary standards are not just window dressing, but can be proven.

Proposition 4:

Conflict of Interest Standards: Every Financial Advisor must have a clear framework on how to manage the conflicts. This is an essential criterion to be considered a Fiduciary. The Financial Advisor must be transparent with clients and regulators about how all conflicts are handled.

Conflicts of interests arise from the following issues:

a) Pricing structure – currently “advisors” who receive a commission based compensation have an incentive to sell more products, as well as more expensive (usually more complex) products, whether it is in the best interest of the client or not. The current BICE in the DOL Fiduciary Rule are well-meaning, but onerous. It is our view that they should be replaced by principles based and audit driven adherence to “best interest” standards.
b) Limited service offering- “advisors” who are only selling investments- not providing planning or advice- are generating revenue solely from getting as much assets under management as possible. There is no incentive for these “advisors” to ever tell a client that they should not be invested in the markets, or that they should have less invested. This, by definition, implies that they are providing advice with an inherent conflict.
c) Passive vs Active strategies- there are some “advisors” who will never recommend a passive strategy because the fees are lower to them. There is a body of evidence that suggests that over time passive strategies outperform active strategies. In any case, they should be considered- but may not be because of the conflict of interest. Perhaps advisors recommending higher-fee, active, strategies, need to prove their historical accuracy of their recommendations relative to a benchmark.
d) Advice regarding investments, and where and how the investments are executed, should be separate. It should not be the case that if an Investment Advisor provides recommendations that the client is compelled to have their portfolio managed by that Investment Advisor. This criterion strengthens the validity of the Advice, and insures that the client can independently determine the best prices method for achieving their investment goals.

Avoiding these conflicts requires full disclosure to clients – not in the fine print but upfront. It is also essential that Fiduciary Investment Advisors be able to demonstrate – to clients and to the regulators - that none of these conflicts exist, not just in words, but also in demonstrable and historical practice.

If there are conflicts, and the Advisor selects the investment with the higher fees or commission to them, they need to prove that over time, that engaging in these products has added value to their retail client.

Proposition 5:

Standards should be identical for Robo/AI Advisors as well as human financial advisors with a recognition that implementation may be different for these different business models.

For example, given the electronic nature of certain advice, it must be acceptable to electronically record and capture customer consent, and process these correspondence without requiring physical signatures.
Furthermore, rules should not be written with the intention of purely capturing the current Financial Advisory practices, but should envision how they would work under Automated Advisory services. Very often well-meaning rules, that work well in human to human interaction are extremely cumbersome or alternatively not very effective, in automated, or Robo/ AI advice.
The principles of customer protection, transparency and holistic Fiduciary advice cannot be compromised irrespective of the method of communications. Nonetheless, better anticipation of future technological changes is essential given the speed with which the world is evolving.

Conclusion:

We have set forth lofty goals for the Financial Advisor community, which can be implemented if there is a will. We at Pefin, adhere to these rules as the basis for providing advice, irrespective of the current, weaker regulatory standards.

For example, at Pefin- the World's First AI Financial Advisor, we have built our platform to have no conflicts by design. We have a holistic approach that incorporates the client's spending patterns, income, savings and investment accounts, debt, goals for future spending, retirement and so much more. Having a complete and continuously updating picture of the financial position of a client enables us to be able to advise the client on how much they should save, and whether or not investing is the right thing for them. We will tell a client if they should NOT invest, which is a very important measure of whether an Investment Advisor is a Fiduciary. Our fee structure is clear and simple and never commission based. We allow clients to take the advice we provide to them, and to execute that advice wherever they choose. If they do choose to invest with Pefin, our regulated subsidiary, Pefin Advisors, can manage their Portfolio. We believe strongly that it is time for Financial services to be provided in the best interest of the client- always. Because of the power of Artificial Intelligence, the Pefin platform is free from bias, conflicts of interest, and can learn and understand the specifics and complexity of each

client's financial situation. This is powerful in that it is clearly auditable by regulators who can validate that it is always, and 100%, Fiduciary.

We believe this is 100% in the interests of clients and restores the Trust between Clients and their Financial Advisor.

ANSWERS TO THE COMMISSIONS QUESTIONS:

QUESTION 1

Retail investors have expressed confusion about the type of professional or firm that is providing them with investment advice, and the standards of conduct applicable to different types of relationships. To what extent has this reported confusion been addressed? If meaningful confusion remains, is the confusion harming retail investors or resulting in other costs? If so, what steps should be taken to address this situation? What disclosures, advertising, or other information do investment advisers and broker-dealers provide to retail investors currently, and how do those contribute to or mitigate any investor confusion? Are there specific disclosure requirements or other steps the Commission should consider to address any confusion regarding applicable standards?

1) The confusion is significant and is consistent across three basic areas:

    a) What does an Investment Advisor/Financial Advisor Title mean –
    Today anyone can use this title. The use of this title should be restricted to anyone who:

        i) Is a Fiduciary as defined herein
        ii) Are registered under the Investment Advisors, Act 1940
        iii)Both of these titles need to be Defined Terms, and only eligible institutions and individuals can use the term.

    The SEC should provide guidance, regarding who can use these titles as well as guidance on the responsibilities of using this title.

The consumer needs to be clear as to what title means what, without implicitly being marketed to and being disclaimed in fine print.

    b) What does a Fiduciary mean?
    Currently here is no clear, uniform definition today. It is therefore interpreted as anything from "in your best interests", to "no conflicts" to "low fee". We have provided our definition of Fiduciary and the evaluation standards in the

introduction above, which we believe is in the best interests of retail clients. The SEC should provide a clear and detailed definition of Fiduciary and the standards by which a Fiduciary should be evaluated.

We believe that

a. This confusion has never been properly addressed. To the contrary, having SEC registered entities and their agent, claim such title gives false credence and implies a responsibility which the agent never claims to provide (numerous brokers go by the title “Financial Advisor”, implying Fiduciary standard that is not being upheld)
b. This confusion has harmed retail investors in significant ways, with excess commissions, being paid by to Financial Institutions whom they believe are operating under a Fiduciary standard. Firms have no consistent standards by which they control or manage advisory activity, other than in cases of Fraud or Gross Negligence – which nonetheless still persist. This loophole in regulatory standards has resulted in commission flows in excess of $100 Billion, which is precisely why the Industry is opposing the move to a more transparent Fiduciary standard.

While our suggestions, are probably far-reaching and beyond the scope of the original discussion. Here are the steps the we recommend the commission take to resolve the confusion that abounds in consumers’ minds.

1. Title restrictions - only Fiduciaries are Investment Advisors,
   - They are called Investment Advisors or Financial Advisors – they have to act as a Fiduciary and be evaluated as a Fiduciary
   - Propose an Alternate Title: of Investment Portfolio Manager for someone who manages an Investment Portfolio with strict rules on fees, commissions, portfolio management standards.
   - Anyone else should have a title of Investment Broker or Investment Sales.

We further do not believe in deep disclosures in fine print, as no consumer reads them. We suggest a one sentence wording, and the title used on the business card. A simple suggestion would be:

Financial Advisor – I am 100% Fiduciary in all the advice I provide you and if you feel that any recommendations are not in your best interest, please contact my supervisor at XYZ@xyz.com

Investment Portfolio Manager – I manage a portfolio for you, (without considering your personal and holistic life details). This might not be aligned with your personal financial situation. Please independently evaluate your use of my services.

Investment Sales – I am paid by commission on the products I sell you. I am required to provide you a commission list to be paid to me ahead of a transaction being closed.

We propose a clear and explicit labelling standard similar to "SMOKING KILLS" on Cigarette Packets. Simple, direct and no Fine Print.

Furthermore, a registered representative is not allowed to verbally dismiss the language, as merely some "regulatory jargon" if asked to clarify it, as is commonly the case today.

2. Enforce Holistic service standards for Fiduciaries
    - You cannot be fiduciary for only part of a client account
    - You cannot be a fiduciary by being only low fee
    - You need to be fiduciary both in principle and regulatory rules and be able to prove that your clients received a fiduciary service

3. Require standards for Fiduciary advisors. (Frequency Test, Replicability Test and Auditability Test – described in Proposition 3, above)

In addition:

- Regulatory standards for human advisors should be the same as Automated Advisors. The implementation and tests for these standards may be different, but should be clear and in all cases, must be Fiduciary.
- Fiduciary advisors need to show that any client, irrespective of gender, race, ethnicity, religion, sexual orientation, income or any other defining characteristic gets the exact same advice for the same financial parameters, risk profile and goals.
- Advice and recommendations for all Fiduciary Advisors should be recorded, and must be shown to be correct in a sample Audit process. (At least 2% of the recommendations should be audited)

Investment Portfolio Managers cannot claim to be a Fiduciary, and no one who is not a Fiduciary can use Investment Advisor or Financial Advisor to describe their business or themselves.

QUESTION 2

Have potential conflicts of interest related to the provision of investment advice to retail investors in various circumstances been appropriately identified and, if so, have they been appropriately addressed? Are there particular areas where conflicts are more prevalent, have greater potential for harm, or both? To what extent are retail investors being, or expected to be, harmed by these conflicts currently and in the future? For example, do certain types of relationships result in systematically lower net returns or greater degrees of risk in retail investors' portfolios relative to other similarly-situated investors in different relationships? Are there steps the Commission should take to identify and address these conflicts? Can they be

appropriately addressed through disclosure or other means? How would any such steps to address potential conflicts of interest benefit retail investors currently and over time? What costs or other consequences, if any, would retail investors experience as a result of any such steps? For example, would broker-dealers or investment advisers be expected to withdraw from or limit their offerings or services in certain markets or products?

1) The conflicts of interest remain. Many Broker Dealers represent themselves as Financial Advisors but have clear conflicts of interest
2) As long as Advisors generate revenue for themselves based on frequency of trading, or earn more from complex structured transactions vs vanilla transactions, there is a concern that they will recommend a higher level of frequency and complexity of trading than is beneficial to the investor.
3) Advice which tells consumers who should not be investing that they should not be in the markets is essential to actually giving appropriate fiduciary advice. (For example, if a client has high interest rate credit card debt, they should be advised in most instances to pay that down rather than to invest in the markets- advice they are unlikely to receive from many "advisors"- human or Automated).
4) There is evidence that passive strategies result in greater returns to investors. In many instances, this won't be the recommendation to investors because it runs counter to the profitability model of the company giving the advice. (see Warren Buffet's commentary in Berkshire Hathaway's 2016 annual report, in which he explores this issue, and summarizes with "The bottom line: When trillions of dollars are managed by Wall Streeters charging high fees, it will usually be the managers who reap outsized profits, not the clients. Both large and small investors should stick with low-cost index funds.")
5) Regulators must be able to identify the incentives that advisors have, and determine whether they encourage investors into transactions that are not necessarily in their best interest. Only then can they question whether those business models are consistent with being a fiduciary.

QUESTION 3

Market developments and advances in technology continue to transform the ways in which retail investors obtain advice (e.g., Robo-advisers, fintech). How do retail investors perceive the duties that apply when investment advice is provided in new ways, or by new market entrants? Is this perception out of step with the actual obligations of these entities and, if so, in what ways? How should these market developments and advances in technology affect the Commission's consideration of potential future actions? What steps should the Commission take, if any, to address potential confusion or lack of information in these emerging areas?

1) It is incumbent that the Commission understand that all electronic advisors are not the same. There is a fundamental difference between generic "Robo advice", which should be viewed with skepticism, and the tailored advice that can come from emerging AI technologies. AI or Artificial Intelligence allows for the investor is well understood, and in many ways better understood, then by a human advisor. With AI millions of data points describing every aspect of the investor's financial life can be analyzed on a continuous basis, which no human advisor can achieve.
2) The Commission should require that fiduciary standards imply a level of understanding of an investor beyond age and income (which is typically what Robo advisors request) and should warn retail investors of the dangers of acting on generic advice. Human advisors can also give generic advice- and this needs to be understood in the context of their evaluation.
3) The Commission should deploy resources to the deeper understanding of the technology currently available to provide fiduciary, electronic advice, and can audit advisors to determine the appropriateness of the information being delivered to clients.
4) The commission should apply the same standards to Robos or AI based Advisors as to Human advisors. It must be made clear to consumers that despite marketing claims to the contrary, most Robos are not – and cannot be- Fiduciaries and have been operating under that banner erroneously for over seven years. The Massachusetts Securities Regulator opined in the statement in 2016 that Robo-advisors are not Fiduciary. We agree with that for pure Investment related Robo-advisors, this is clearly the case despite many of them claiming to be Fiduciary in marketing language and speech, while disclaiming the same in fine print.
5) Robos today provide a very limited level of service, at a lower fee than a typical advisor, with simple non-tailored portfolios- but do not offer Fiduciary level advice. Simply being low fee doesn't mean the "advice" is in the best interest of the client.

   Examples of disclaimers made by the Robos in deeply imbedded in their fine print include:

   a) "not responsible to Client for any failures, delays and/or interruptions in the timely or proper execution of trades or any other trading instructions placed by [Robo] on behalf of Client through [Robo's broker dealer] due to any reason or no reason."
   b) "if you seek our advice on the appropriate plan, [Robo] has a financial incentive to recommend the higher priced plan"
   c) "[client is] responsible for determining that investments are in the best interests of Client's financial needs"

6) There should be a seamless level of coordination between Federal and State regulators on the standard for being a Fiduciary and holding oneself out as an

Investment Advisor. This should be consistent for both human as well Robo or AI advisory firms.

SOME BACKGROUND:

Robo-advisors have made certain parts (investment portfolio management) cheaper and easier to access for financial advisors. However, their solution does not live up to Fiduciary standards as defined by the DOL, in its "Fiduciary Rule"

In order to compensate for this, they have sought to convert their accounts to a "hybrid Robo" solution, where a human advisor is available to answer questions that a client of the "Robo advisor" has. These hybrid models provide some human interaction, in the form of online chat or human phone conversation, available to answer client's questions about their finances.

It is important to note that this availability of a human "advisor" to answer questions presupposes that clients have enough information and education regarding their finances to ask the right questions. This is a faulty assumption. A proper fiduciary, human or electronic, must possess enough information about the client to proactively suggest what the right questions are, as well as the answers. The hybrid Robo advisors are unable to do this because they still have very limited client information and they lack the ability to adequately analyze that information- so the advice they provide remains too generic to be fiduciary, despite the veneer of tailoring provided by a human "advisor".

Proposed Solution:

Standards across both human and Robo advisors are inconsistent. An Investment Advisor should be a clearly defined title describing someone who offers fiduciary level service, whether human or Robo. They act only in your best interests. While technology is still in flux, there are a couple of key points to ensure we aid in the development of this from a regulatory perspective:

a. Robo-advisors must be fiduciaries in every respect (holistic and no-conflict) or they must be classified as Investment Portfolio Managers – They cannot disclaim their fiduciary nature in their service agreements which is currently the case.
b. Generic advice from Robo's cannot be fiduciary - It needs to be auditable to verify that it is providing tailored advice to meet each client's specific goals, risk profile and holistic needs.
c. Some private banks, Robo advisors or human advisors are disclaiming that they are fiduciaries in the advice that they are giving but given that this is typically in "fine print" or not well explained, it leaves vulnerable the clients they are meant to serve.

Record keeping requirements for Robos and Human Advisors should be consistent. They should be required to be able to produce records of the advice they have provided and products that they buy or sell, based on that advice

QUESTION 4

Is there a trend in the provision of retail investment advice toward a fee-based advisory model and away from a commission-based brokerage model? To what extent has any observed trend been driven by retail investor demand, dependability of fee-based income streams, regulations, or other factors? To what extent is any observed trend expected to continue, and what factors are expected to drive the trend in the future? How has any observed trend impacted the availability, quality, or cost of investment advice, as well as the availability, quality, or cost of other investment products and services, for retail investors? Does any such trend raise new risks for retail investors? If so, how should these risks affect the Commission's consideration of potential future action?

1) Fee based services eliminate a conflict of interest vs commission based brokerage models.
2) Commission based brokerage models are appropriate for self-directed investments made by sophisticated investors.
3) Currently most fee based services are very expensive, leaving many potential investors unable to avail themselves of what may be a more appropriate service.
4) The market is trending to using fee based services, as in many cases it is easier to generate income, without having to deliver adequate returns for the client
5) All fee based services should be wrap fee (commissions cannot be charged in addition to the wrap charge)

Investment/Financial Advisors should charge according to a wrap fee program to eliminate the inherent conflicts in commission and fee based services.

As part of the Transparency, Financial Advisors should provide color on

a. What part of the fee was applied to which service provided by them (Unbundling)
b. How does the fee rank compared to the expected return on their portfolio (Fee Efficiency)?

QUESTION 5

Although the applicability date of the Department of Labor's Fiduciary Rule has not yet passed, efforts to comply with the rule are reportedly underway. What has been the experience of retail investors and market participants thus far in connection with the implementation of the Fiduciary Rule? How should these experiences inform the Commission's analysis? Are there other ways in which the Commission should take into account the Department of Labor's Fiduciary Rule in any potential actions relating to the standards of conduct for retail investment advice?

For both retail investors as well as Advisors, simple rules are the best. Companies providing retail advice should not be able to disclaim away their fiduciary responsibilities, and likewise, companies who claim to be fiduciaries should be able to simply explain how the advice they are giving is in the best interest of their clients, and without conflict of interest. Even with the implementation of the proposed DOL Fiduciary Rule, these principles are not necessarily achieved. The current structure where the DOL has a fiduciary standard for retirement accounts and the SEC a non-fiduciary standard for non-retirement accounts leaves consumers facing an uneven regulatory landscape, and a lack of clarity around the standards being set for the advice they receive.

It is impossible to give fiduciary advice without it being holistic. As it currently stands, an investment advisor can provide low fee products for the retirement account while stuffing the non-fiduciary accounts with high fee products.

The key issue, is that the DOL rule has not been clear about what constitutes a Fiduciary, or what tests can an organization satisfy to ensure its fiduciary. Instead this falls on a court system and legal recourse, which increases the burden of proof on the retail client. Very often, this can happen only in an adverse scenario. It is our opinion that the SEC clearly define the word Fiduciary and the Standards by which an Advisor can state that they are fiduciary.

While there are many concerns that the rules will reduce the services available to small investors, because Investment Advisors will find it too burdensome and costly to deal with them, the rapid evolution of new technologies, like AI, will allow for the provision of fiduciary advice at a fair price, without negatively impacting clients.

QUESTION 6

> ***As of the applicability date of the Fiduciary Rule, there will be different standards of conduct for accounts subject to the Department of Labor's rule and those that are not, as well as existing differences between standards of conduct applicable to broker-dealers and those applicable to investment advisers when providing investment advice. What are the benefits and costs of having multiple standards of conduct?***

1) Multiple standards of conduct create confusion and opportunities for those inclined to find loopholes to do so.
2) If the SEC approaches the regulation of Advisors and others in the advice-giving business as a principles-based approach, rather than a rules-based approach, it will likely have a better result in achieving the protections desired for the retail investor.

3) Because of the current bifurcation in standards between retirement and other accounts, some “advisors” can market products to clients in their retirement accounts under a fiduciary standard, and loosen the standard for non-retirement accounts. Because this is not clearly stated to clients, it creates the façade of being a Fiduciary for all accounts, and creates confusion and potentially deception.

It is our opinion that the DOL rules and future SEC rules should be simpler and less prescriptive, but have standards and tests to prove that the standards are being adhered to. The penalties for violating the standards should be steeper than currently proposed.

The challenge with making prescriptive rules is that Financial Institutions are creative in sidestepping rules and hiding important client information in fine print, resulting in the consumer being no better off.

QUESTION 7

Are there particular segments of the market (e.g., smaller and regional broker-dealers and investment advisers, or smaller investor accounts) to which the Commission should pay particular attention in considering potential future actions?

1) There was a well-articulated concern that complying with the DOL fiduciary rule would create costs that would put a disproportionate burden on smaller investment advisors, and therefore inherently favor large advisors. It is important that regulation not stifle competition.
2) A principles-based approach of determining that an Advisor does not have a conflict of interest, and is not providing generic advice, would cover a large majority of concerns regarding retail investors being burdened with excessive fees or being given inappropriate advice. It is easiest to validate that the principles are being applied when these principles are encoded into AI based financial advice, given the inherent inconsistencies and unconscious bias of human interaction.
3) Scalability and cost reduction is achieved through technology. This is the best mitigant to potential cost increases that would occur in implementation of the DOL fiduciary rule.

We believe that smaller accounts will use technology based solutions to avail themselves of the right financial advice. Enabling Investment Advisors to be held to weaker non-fiduciary standards is not a help to smaller accounts who believe in the SECs ability to regulate on their behalf.

QUESTION 8

If the Commission were to proceed with a disclosure-based approach to potential regulatory action, what should that be? If the Commission were to proceed with a standards-of-conduct-based approach to potential regulatory action, what should that be? Should the standards for investment advisers and broker-dealers be the same or different? Why?

1) The standard of conduct for Broker Dealers and Advisors should be the same- ultimately a best interest standard for the retail customer is paramount. The standard should be relative to the client and the relationship to the client, based on their title and intention of the relationship. There are actually 3 possible approaches to regulatory action- Disclosure based, Standard of Conduct based, and Rules based. In recent decades, the regulatory environment has moved more aggressively towards a rules based approach- attempting to capture every possible step (or misstep) and have a rule that guides the action. This is inefficient to implement and difficult to enforce- and given the plethora of regulatory agencies that many financial institutions are regulated by, almost impossible to get right.
2) The Disclosure based approach is helpful in the sense that both regulators and the retail investors have proactive information distributed by the Institution regarding how they are complying with the rules, but suffers from potential information overload – and therefore lack of usefulness for the ultimate consumer. Many articles and scholarly papers examine this, including http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1160&context=lr.
3) The Standard of Conduct based approach is most appropriate in an environment where technology is changing too quickly to be able to write rules at a fast-enough pace to keep up with the changes. Ultimately the objectives of the regulation are clear- to protect the retail investor and to make sure they are getting the most appropriate advice free from conflicts of interest. This is a perfect environment for a Standard of Conduct based solution, as described herein https://www.americanbanker.com/opinion/time-to-adjust-the-regulatory-diet-fewer-rules-more-principles.
4) Ultimately there could be a hybrid approach where the core is Principles based but where some basic disclosures are required.
5) Today, most disclosures are buried in the fine print of the legal documentation that clients sign. If there is disclosure, it should be a one line similar to "Smoking is dangerous to your health"- or "This advice is NOT Fiduciary", if it does not conform to the requirements.
6) In the event that Fiduciary level advice is being provided, a disclaimer would be along the lines of "This advice is Fiduciary" provided that it conform to the definition provided herein, and be able to be substantiated for the benefit of consumers and regulators

7) Any language along the lines of “This transaction has been independently evaluated by you as to whether it is in your best interest, and I as a broker am held harmless if it is not” should be clearly stamped as NOT FIDUCIARY so the client knows that the “advisor” or broker is not acting in their best interest.

QUESTION 9

How would any such suggested approach (disclosure, conduct standards, etc.) be implemented? Specifically, what initial steps would need to be taken to conform to the new rules, and what ongoing processes (e.g., policies and procedures) would need to be put into place to promote compliance and oversight? Would the Commission need to provide additional regulatory guidance or rules? If so, what should those be and why would it be important for the Commission to provide those? Should the Commission address related disclosures or engage in other regulatory improvements in conjunction with any future action with respect to standards of conduct (e.g., adopt enhanced standards for performance disclosures)?

1) It is our opinion that disclosure and conduct standards are not sufficient without having clear definitions and permissions on who can use what title. Title should be clearly stated on Business Cards or other client Communications (“Investment Advisor”), accompanied by a one sentence clear description of the relationship to the client (e.g. “I am a Fiduciary and will act in my client’s best interest above my own”)
2) Post implementation of these definitions, the investment community must be provided at least 6 months to decide what path to follow and communicate this to their clients.
3) Post 12 months after the implementation of these rules, advisory firms would need to ensure that they have the processes in place to make sure to be audited regarding the standards they adhere to.
4) For example
    a. If an advisor provides commission based services, they must explain why and how this is not a conflict- and be subject to being audited. (No conflict standard)
    b. All advisors (and Robo in particular) need to be able to demonstrate how the advice is not generic and takes into consideration a 360 view of their client’s financial situation, goals, and obligations- not just age and income (Tailored)
    c. Human advisors should be able to show how they are providing unbiased advice (Unbiased)
    d. Robo advisors should be able to demonstrate that they are acting as fiduciary if they claim to be.

e. Anyone providing investment services to a retail investor, other than receiving an order for execution, should be held to fiduciary standards. (Fiduciary)

QUESTION 10

Should the Commission consider acting incrementally, taking into account the effects of its initial action before considering further proposed actions? What are the benefits and costs of such an approach?

1) With a principles-based approach, there is no need to be incremental. Establish the simple framework for standards and required behaviors and hold all firms accountable.
2) Keep the same standards for human advisors as for Robo / AI and technology based advisors.

Incremental moves, just delay the inevitable and lead to more intermediate confusion for consumers. However it is appropriate to give the industry a six month or 9 month implementation gap to ensure that the transition is smooth

QUESTION 11

To what extent, if any, can changes in technology enhance the effectiveness and efficiency of regulatory action?

1) Technology is key, both in the ability to deliver fiduciary investment advice, but also to be able to audit appropriately that delivery
2) The primary challenge for the Commission is to be as well versed in the technology being used as the companies using it, to be able to accurately audit. If the standards were higher, Financial Services firms would themselves use technology to make sure their advisors are abiding by the standards they adhere to.
3) Technology can help standardize practices of communication and advice for human advisors. It can also appropriately document where nonstandard advice is given and the merits / advantages for the client and for the advisor. Such documentation makes it easy for Management of a Financial Advisory Firm to ensure that the services they provide are fiduciary.

QUESTION 12

For purposes of Commission action in this area, if any, who should be considered to be "retail investors"?

We do not propose any change to this definition.

QUESTION 13

For purposes of Commission action in this area, if any, how should "investment advice" be defined? Should certain activities be expressly excluded from the definition of "investment advice"?

Anything with the word Advice should mean the standard is Fiduciary. It is inappropriate as an advisor to say, "I am giving you advice, but this may not be in your best interests"

1) Investment advice should be any proactive suggestion of how, when or in what securities instrument a retail investor should invest. It is essential that institutions providing advice cannot disclaim their fiduciary requirement.
2) Investment Advice should be the act purchasing securities in an investment account when provided discretionary authority by a client. Any other terms of providing financial advice, such as explaining to a client how much they need to save, even if for compensation, should not be a regulated process.

QUESTION 14

What are the expected benefits, costs, or other economic effects, whether direct or indirect, of the potential approaches that the Commission could consider in this area, on retail investors, market participants, and on the market for investment advice more generally? To what extent, if any, would the investment opportunities and choices available to retail investors be affected?

1) Sophisticated, self-directed investments will be unaffected by any changes to the regulatory framework of fiduciary advice.
2) A rules-based approach would likely encumber small advisors to the point of negatively impacting their ability to deliver services, hence we advocate a principles based approach with clear tests that each institution has to provide and penalties for failure
3) The strong benefit of a principles based approach that focuses on the delivery of unbiased, tailored, fiduciary advice to retail investors, and in particular recognizing the scalability that technology can afford in the delivery of those services at a fraction of the cost, would be beneficial in having a higher quality of service to the retail investment community.
4) Defining standards, that institutions and advisors need to adhere to are important – without these standards, everyone is left to their interpretation of the definition and the Consumer has recourse only in cases of egregious misconduct.
5) In general, the retail opportunities which pass the standards will not be affected, in fact it will be easier for investors to get access to the right products which should be in their best interests, while the products that don't pass muster and do not meet fiduciary standards will not be offered. In the intermediary stage, it is possible that clients are recommended passive portfolio, which historically have outperformed

active portfolios 99% of the time. It is our opinion, that this is a good thing, and financial advisors should be required to really adhere to their fiduciary duty.

QUESTION 15

Where does the U.S. stand in this area relative to other jurisdictions and should the approaches of other jurisdictions inform our analysis? Have any regulatory developments occurred in non-U.S. jurisdictions over the past years that you believe have impacted the market for retail investment advice in those jurisdictions in a manner that would be instructive to our consideration? Are there any related studies or analyses that demonstrate the impact of these reforms on the market for retail investment advice?

In an increasingly technologically driven world, there is an unfair standard on ownership of electronic data surrounding the financial services received by the consumer. It is important for consumers that the SEC opine on ownership, accuracy standards and transferability of this data.

1) A critical piece in getting the best advice comes from the electronic information surrounding an individual's financial life. In the ideal world, that information should be owned by the individual- not by the financial institution. A financial institution is just a repository of their current and historical data.
2) The SEC and other regulators should ensure that an individual should be freely and accurately able to share the electronic information with any third party or investment advisor at no cost to them. This should be the responsibility of the financial institution who keeps this data.
3) Just like the FCC has made phone number portability easy and simple to enable phone consumers to easily switch between providers, the SEC should ensure that consumers should be able to transfer their accounts, investments or data at different service providers at no cost to the consumer or receiving account holder. All such account transfers should have the entire history of the transactions in the account alongside it. Providing client choice like this is key to lowering consumer costs and enabling open competition in the market for financial advice.
4) The SEC Should help establish standards for this, in conjunction with the CFPB, OCC, Fed and Insurance regulators. In order to be Fiduciary, this would be a constructive effort. For example,
5) The advent of PSD2 in Europe (https://www.evry.com/en/news/articles/psd2-the-directive-that-will-change-banking-as-we-know-it/) is an important step in putting the power in the hands of the retail consumer. A similar ruling in the US would be helpful- to make sure that retail consumers own their own data, in what is an increasingly data driven world. Currently, there is an information asymmetry in the US that is putting the retail customer at a disadvantage. This is being rectified in Europe and should be in the US as well.

QUESTION 16

As described above, the Commission in 2013 issued a comprehensive solicitation of data and other information, including about the then-current market for personalized investment advice, and about the potential effects of a Commission-mandated single standard of conduct for investment advisers and broker-dealers (e.g., following Section 913 of the Dodd-Frank Act).[8] In that release, the Commission used a series of assumptions that, while not indicating a chosen direction with respect to key issues, was intended to narrow and focus comment. For example, the Commission's assumptions included that broker-dealers could continue to receive commissions and engage in principal trades with their customers; that any conduct standard would apply at the point of sale and not impose a continuing duty; and that prior guidance and precedent applicable to investment advisers would be tailored to broker-dealers in a manner that reflects the difference in their engagement with customers. The Commission also sought information about private claims against investment advisers and broker-dealers by retail investors. Are there any material changes to the assumptions that the Commission laid out in that request for comment, the requested data and other information, or any other developments that you believe the Commission should consider in its continued review and analysis of these issues?

The Commission should go to each firm that is registered as an Investment Advisor and ask the following questions:

a. What do they do to ensure that their clients receive Fiduciary Advice, and how have they defined Fiduciary?
b. What are the standards by which they judge and enforce that their clients receive Fiduciary advice?
c. Is the advice always holistic in nature?
d. Do they back test over time or audit whether the advice they give is Fiduciary?
e. How much less fees or revenue would you make if the advice you provide is not-Fiduciary?