Allianz Life Insurance Company of North America
5701 Golden Hills Drive
Golden Valley, MN 55416-1297

Mr. Jay Clayton
Chairman, United States Securities and Exchange Commission — VIA Email
100 F Street, NE
Washington, DC 20549
rule-comments@sec.gov

October 13, 2017

Re: Comments Regarding Uniform Standard of Conduct for Broker-Dealers and Investment Advisers (Conduct Standard)

Dear Chairman Clayton:

This letter is provided to you on behalf of Allianz Life Insurance Company of North America (Allianz Life) and its subsidiaries (together, the Allianz Life Group)[1]. It is being provided in response to your request for comment, dated June 12, 2017, on the topic of a possible uniform conduct standard for broker-dealers and investment advisers.

As you are aware, the Department of Labor (DOL) has adopted a rule pertaining to conduct standards for financial professionals and their firms who provide investment and advisory services in the "tax qualified" market, i.e., the IRA and 401(k), market (the DOL Fiduciary Rule). The DOL Fiduciary Rule applies to both broker-dealers and investment advisers when these firms provide their services in the tax-qualified market.

As set out in this letter, we believe that:

- The DOL Fiduciary Rule is fundamentally flawed, and should be substantially revised or repealed.
- The DOL was not the proper regulatory authority to promulgate a fiduciary rule that would be applicable to financial professionals and firms providing financial advisory services to retail investors. The DOL's enforcement jurisdiction is limited to the "qualified" plan market, and it lacks the experience and expertise to adopt a rule with the broad sweep of the DOL Fiduciary Rule.
- The DOL Fiduciary Rule would "regulate" investment recommendations primarily by establishing a mechanism for, and then encouraging, private litigation between customers and salespersons. We believe that litigation is almost never in the best interest of consumers, because of cost, delay, and uncertainty—and that there are substantially better ways to achieve regulatory objectives, including disclosure, clear conduct standards, and supervision and oversight.

[1] The companies in the Allianz Life Group are subsidiaries of Allianz SE, a financial services holding company based in Munich, Germany.

- In accordance with Congress' instructions in the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act), any uniform conduct standard for services to retail investors should be adopted in the first instance by the U.S. Securities and Exchange Commission (Commission or SEC). The Commission has more than 80 years of experience in regulating financial professionals who provide financial and investment services to retail investors, and is the most qualified agency to develop a uniform conduct standard. With regard to insurance products, the Commission should collaborate with the National Association of Insurance Commissioners (NAIC).
- The Commission should promulgate a uniform "best interest" conduct standard applicable to both broker-dealers and investment advisers when these firms provide services to retail investors. Further, we believe that this standard should apply in both the qualified and the non-qualified market. The term "best interest" should be defined in the first instance by the Commission. The best interest conduct standard should require financial firms to put the clients' interests first, but should not require them to do so to the total disregard of their own legitimate business interests. In other words, the best interest conduct standard should not be interpreted as a "sole interest" standard.
- The conduct standard established by the Commission should be a "best interest" standard, rather than a "fiduciary" standard. The fiduciary standard is an ancient concept, and it is subject to the vagaries of case law. A complex standard such as the proposed uniform standard of conduct should be clearly defined de novo by statute or rule and consistently applied.
- The new "best interest" conduct standard should be promulgated in a manner that does not reduce the availability of financial advice and products to retail investors.
- Any new conduct standard should not simply be "additive", and layered on top of the numerous other, already existing broker-dealer and investment adviser regulations. Rather, any new regulation that is adopted should consider not just the narrow issue of what sort of "conduct standard" should apply, but also the interaction of that new conduct standard with the wide variety of retail investor protections that are already reflected in the Securities Exchange Act of 1934 (the Exchange Act), Financial Industry Regulatory Authority (FINRA) rules, and the Investment Advisers Act of 1940 (the Advisers Act). As part of this analysis, the Commission should determine whether, if a new conduct standard is adopted, there are other, currently effective regulations that should be modified, simplified, or rescinded.
- As part of any rulemaking, the Commission should strive for consistency of regulation, including specifically by rationalizing and harmonizing requirements under the Exchange Act and the Advisers Act.
- Finally, we believe that prior to adopting any new conduct standard, thorough consideration and review should be given by the Commission to the unique regulatory structure already applicable to insurance/securities products. In this regard, we strongly recommend that the Commission establish an "outreach" program to the NAIC and the North American Securities Administrators Association (NASAA) to facilitate inter-agency communication and consistent regulation across the full spectrum of financial products issued to consumers.

We appreciate this opportunity to provide you with our attached comments.

Very truly yours,

Gretchen Cepek,
Senior Vice President and General Counsel

Stewart D. Gregg,
Senior Counsel

Comments of the Allianz Life Group

Regarding Uniform Standard of Conduct for Registered Broker-Dealers and Investment Advisers

October 13, 2017

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BACKGROUND OF THE ALLIANZ LIFE GROUP

Allianz Life is a Minnesota domiciled stock life insurance company. It has been in business since 1896. Its principal business is the issuance and administration of annuities and life insurance. Allianz Life currently issues:

- fixed (non-SEC registered) index annuities,
- SEC-registered variable annuities,
- SEC-registered index variable annuities, and
- fixed (non-SEC registered) index life insurance.

Allianz Life was one of the earliest entrants to the fixed index annuity industry, where it began issuing these contracts in the mid-1990s. It was also one of the earlier entrants to the variable annuity industry, where it began issuing contracts in the mid to late 1980s. It has had variable contracts in continuous registration for over 25 years.

Allianz Life (together with its subsidiaries) issues insurance contracts and securities products, and provides securities brokerage and investment advice and related services on a 50-state basis. At December 31, 2016, it was the top writer of fixed index annuities in the United States, and the 14th largest writer of variable annuities, with a total of $12.3 billion in annuity premiums received in 2016.

Allianz Life's SEC-registered variable annuities and index variable annuities are sold to retail investors through affiliated and unaffiliated broker-dealers, some of which are dually registered as, or are associated with, registered investment advisers. Allianz Life's other, non-registered annuity and life insurance products are sold to retail investors through broker-dealers, investment advisers, and other intermediaries such as licensed insurance producers.

Allianz Life is the parent company of an array of securities-related businesses, including:

- Questar Capital Corporation, a retail broker-dealer operating in all 50 states,
- Allianz Life Financial Services, LLC, an institutional broker-dealer operating in all 50 states that acts as distributor of Allianz Life variable insurance products,
- Questar Asset Management, an SEC-registered retail investment adviser operating in all 50 states, and
- Allianz Investment Management LLC, an SEC-registered institutional investment adviser which acts as an adviser to the Allianz Life mutual funds. The Allianz Life mutual funds serve as funding vehicles for Allianz Life variable insurance products. As of December 31, 2016, the Allianz Life mutual funds had assets of $18 billion.

Allianz Life is very familiar with the retirement planning market, as an issuer of both qualified individual retirement annuities (IRAs) and non-qualified retirement annuities.[2] Annuities are ideally designed for retirement funding because they offer various types of payout benefits that guarantee payments for the life of the annuitant. As of December 31, 2016, Allianz Life held and administered $66.169 billion in IRA assets

[2] The Allianz Life Group is not currently active in the 401(k) market.

for investors. In the five years from January 1, 2012, through December 31, 2016, Allianz Life paid out $5.674 billion in benefits to IRA owners and beneficiaries.

Allianz Life places a high priority on maintaining financial strength, meeting its financial commitments, and providing products and services that help its customers achieve their retirement goals. In support of its obligations, as of December 31, 2016, Allianz Life had total assets of approximately $128 billion and capital of $6.79 billion.

ALLIANZ LIFE GROUP COMMENTS ON THE SEC's PROPOSED UNIFORM CONDUCT STANDARD

The Allianz Life Group is in favor of a uniform "best interest" conduct standard across the financial services industry. Such a rule has the potential to play an important part in both the long-term financial planning of millions of Americans, and the overall economic health of the United States.

We believe that this new conduct standard should be framed as a "best interest" conduct standard, rather than as a "fiduciary" standard. The reason for this is that the term "fiduciary" is an ancient legal concept, used in numerous different contexts, and it comes weighted down by substantial historical baggage. The Commission should adopt a new best interest conduct standard, and then define that standard de novo.

The Commission's new best interest conduct standard should apply to both broker-dealers and investment advisers when these firms are providing services to retail investors. In addition, the best interest conduct standard should apply to both non-qualified accounts and to qualified accounts such as IRAs.

While we believe that the new best interest conduct standard should require the financial professional to put the retail investor's interests before his/her own interests, the new standard should also explicitly recognize that this does not require them to do so to the total disregard of his/her own legitimate business interests. In other words, the best interest conduct standard should not be interpreted as a "sole interest" standard, and it should clearly allow reasonable compensation.

In establishing a new best interest conduct standard, the Commission should avoid favoring or disfavoring one type of sales compensation over another. Both commission-based compensation and fee-based compensation should be permitted, subject to the financial professional's best interest obligation. Similarly, the new best interest conduct standard should not restrict a financial professional from offering proprietary investments or products, or from being able to offer both proprietary and non-proprietary investments or products.

The new best interest conduct standard should be promulgated in a manner that does not reduce the availability of financial advice and products to retail consumers. A best interest conduct standard that increases complexity and regulatory burdens and costs could be expected to reduce the number of financial professionals offering services to less affluent consumers, cause financial professionals to raise their minimum account limits, and drive some of those consumers out of the market.

The new best interest conduct standard should address what we and many industry participants believe are the most important financial planning issues over the next several decades, namely, planning to make sure that a retail investor's investments will provide reliable income during the entirety of their retirement. This critical component is missing from both the DOL Fiduciary Rule and the securities laws generally.

The Allianz Life Group has repeatedly taken the position in comment letters filed with the DOL that it believes the SEC is the proper regulatory authority to design and promulgate a uniform best interest conduct standard for broker-dealers and investment advisers. As the SEC is aware, the DOL has promulgated the DOL Fiduciary Rule, which defines the term "fiduciary" to include broker-dealers and insurance agents and then applies enhanced conduct standards to those fiduciaries when they provide advice to tax-qualified plans such as IRAs. The DOL Fiduciary Rule does not apply to non-qualified accounts, such as traditional brokerage accounts and traditional mutual fund accounts. The reason for this divergence of treatment is that the DOL does not have jurisdiction over non-tax qualified accounts.

While the DOL has expertise in certain aspects of financial and investment management for employer-sponsored plans, we believe that the application of the DOL Fiduciary Rule to retail investors is well beyond the expertise and experience of the DOL. In contrast, the SEC has more than 80 years of experience in regulating financial professionals providing financial and investment services to retail investors. Perhaps more important, the SEC also has approximately 80 years of experience regulating persons who provide investment advice.

The DOL Fiduciary Rule is fundamentally flawed, and should be substantially revised or rescinded and replaced. As set out in a number of "comment letters" that Allianz Life has sent to the DOL over the last two years, Allianz Life believes the DOL Fiduciary Rule is fundamentally flawed, and should be substantially re-written or rescinded and replaced. The reasons for this are:

- The DOL did not consult adequately with other expertised federal and state regulators, including the SEC, FINRA, the NASAA or the NAIC before adopting the DOL Fiduciary Rule;
- As noted above, Allianz Life believes that the DOL is the wrong regulatory authority to adopt a fiduciary rule that would apply to broker-dealers and investment advisers providing services to retail investors. The DOL has minimal experience and expertise with retail investors or with the wide variety of companies and industries that provide services to those retail investors. We believe that any uniform conduct standard applicable to broker-dealers and investment advisers should be adopted by the SEC as a rule. As the SEC is aware, this approach is sanctioned by the Dodd Frank Act; and
- The DOL Fiduciary Rule takes a "one size fits all" approach to a uniform conduct standard across the entire financial services sector, which leads to dysfunctional results for several industries within that sector, particularly the insurance industry. We believe that the unique structure of the insurance industry and its long-standing regulatory regime were largely overlooked by the DOL.

To sum up, we believe that the existing DOL Fiduciary Rule will cause substantial market disruption, increase costs both to retail investors and to financial professionals and their firms, reduce retail investor choice, and ultimately result in harm to the very persons it is intended to help.

Pre-emption of conflicting laws and regulations. If the SEC moves forward with a uniform conduct standard rule, the SEC should work with Congress to assure uniformity and avoid overlapping and inconsistent regulation by other regulators, such as encouraging the adoption of legislation similar to the National Securities Markets Improvement Act of 1996 (NSMIA), to pre-empt Federal laws and regulations and state securities laws and regulations that are inconsistent with the new SEC best interest conduct standard rule(s).

The current discussion of a "best interest" or "fiduciary" conduct standard for broker-dealers appears to be based in part upon a belief that, because the law applicable to investment advisers applies a "fiduciary" standard, it is a superior form of regulation. We believe this is overly simplistic. A thorough analysis of both broker-dealer and investment adviser regulation indicates that broker-dealer regulation may contain retail investor protections that are comparable, or in some instances more expansive, than the retail investor protections that are found in investment adviser regulation. Charts comparing investment adviser regulation and broker-dealer regulation are found in Attachments A and B to this letter starting at page 15.

Further, it should be noted that contrary to popular perception, the Investment Advisers Act and attendant rules do not actually impose a fiduciary standard. Rather, the fiduciary standard for investment advisers has been established as a matter of case law construing the scope of Section 206 of the Advisers Act. Section 206 of the Advisers Act is a general antifraud provision that makes it unlawful for an investment adviser to engage in fraudulent, deceptive or manipulative conduct. The Supreme Court's decision in *SEC v. Capital Gains Research Bureau, Inc.,*[3] has been viewed to hold that Section 206 imposes a fiduciary duty on investment advisers, by operation of law. Pursuant to this duty, an investment adviser must at all times act in its clients' best interest, and its conduct will be measured against a higher standard of conduct than that used for mere commercial transactions.[4] In short, the "fiduciary" standard applicable to investment advisers has evolved as a matter of fact-specific case law, rather than being explicitly and clearly set forth in a statute or rule.

A "best interest" conduct standard that would apply to investment advisers should be set forth in a rule promulgated under the Advisers Act. Given that a "best interest" conduct standard, if established for broker-dealers, would likely be promulgated as a rule under the Exchange Act or by FINRA, it would seem that a comparable "best interest" statute or rule would need to be promulgated for investment advisers pursuant to the Advisers Act. Among other things, it would appear to be highly advisable to promulgate any best interest conduct standard for advisers as part of a specific statute or rule, rather than to continue to rely on case law. Further, it should be noted that the problems associated with substantial duties being outlined in case law rather than a rule are exacerbated in the context of investment adviser regulation under the Advisers Act, because, unlike many other federal statutes, there is an almost complete lack of legislative history to the original Advisers Act.

While the current discussion of a uniform conduct standard for broker-dealers and investment advisers is focused primarily on the "fiduciary/best interest" issue, there are in fact a very large number of other differences between broker-dealer regulation and investment adviser regulation that should be considered as part of developing a uniform conduct standard. For example, while investment advisers (but not broker-dealers) are subject to a fiduciary standard under case law, broker-dealers (but not investment advisers) are subject to a requirement under FINRA rules that recommendations be suitable, and that all transactions be reviewed by a qualified "registered securities principal." A question could be raised as to whether the existing principal review function mandated for broker-dealers might be viewed as an alternative means of ensuring that recommended transactions meet a best interest conduct standard.

We note that your request for comment is addressed primarily to broker-dealer regulation. Before adopting a new best interest conduct standard for broker-dealers, we recommend that the SEC analyze whether there is already a provision or provisions in the broker-dealer regulatory structure that substantially accomplishes the same aim as a best interest conduct standard. In addition, we recommend that the SEC

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[3] 375 U.S. 180, 84 S. Ct. 275, 11 L. Ed. 2d 237 (1963)

[4] See, e.g., *Constellation Financial Mgmt. LLC* (Jan. 9, 2003) citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 84 S. Ct. 275, 11 L. Ed. 2d 237 (1963); *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 190-92, 84 S. Ct. 275, 11 L. Ed. 2d 237 (1963)

determine whether a new conduct standard applicable to broker-dealers would obviate the need for any other currently effective broker-dealer regulations that then should be rescinded or curtailed.

Any new best interest conduct standard should not simply be "additive" to the existing voluminous regulations currently applicable to broker-dealers and investment advisers. Any new conduct standard should not simply be "additive", and layered on top of the numerous other, already existing broker-dealer and investment adviser regulations. Rather, any new regulation that is adopted should consider not just the narrow issue of what sort of "conduct standard" should apply, but also the interaction of that new standard with the wide variety of retail investor protections that are already reflected in the Exchange Act, FINRA rules, and the Advisers Act. As part of this analysis, the Commission should determine whether, if a new conduct standard is adopted, there are other, currently effective regulations that should be modified, simplified, or rescinded.

As part of the rulemaking process, regulatory structures for broker-dealers and investment advisers should be made consistent, better coordinated, and rationalized. Broker-dealers and investment advisers are in certain respects very similar entities when providing services to retail investors. As the SEC is aware, these two types of entities are so similar that for many years the Form ADV registration form for registration of investment advisers was patterned almost verbatim after the Form BD for registration of broker-dealers. However, these two types of entities are subject to very different, and in some respects, inconsistent regulatory requirements. This is, of course, the sort of thing that leads to "regulatory arbitrage" – an unintended consequence that should be avoided to the extent possible. We encourage the Commission to rationalize broker-dealer and investment adviser regulation, so that financial professionals providing advice to retail investors are subject to consistent regulation.

In promulgating a new best interest conduct rule, the Commission should be guided by a principle that any new rule(s) should be drafted in a manner that avoids "regulatory arbitrage." As the Commission is aware, different types of regulation can significantly affect firm business, revenues, costs, and profitability. Any differences in regulation between broker-dealers and investment advisers could cause a financial professional to join one type of firm rather than another simply to obtain the benefit of what is perceived to be more lenient regulation, or to avoid processes that are designed to meet more time-consuming regulatory requirements. It is not appropriate for a firm's success vis-a-vis other firms to be driven by the level of regulation applicable to one type of entity. Instead, decisions should be made based on the needs of and benefits to consumers.

If the Commission does establish a new "best interest" conduct standard for broker-dealers and/or investment advisers, contemporaneously with the promulgation of this standard, the SEC and/or Congress should take action to discontinue use of both the fiduciary standard currently applicable to investment advisers, and the suitability standard currently applicable to broker-dealers. This would likely mean amendments to FINRA rules, the Exchange Act, Exchange Act rules, the Advisers Act and possibly the addition of an Advisers Act rule. These changes should be made in coordination with state securities and insurance regulators to assure uniformity and consistency of regulation.

The Commission should develop a simplified retail investor disclosure. In connection with the adoption of a new uniform best interest conduct standard, the SEC should design a simplified disclosure to be used by broker-dealer and investment adviser financial professionals with retail investors. This disclosure would explain to retail investors what capacity (adviser or broker-dealer) the financial professional is acting in, how he/she is compensated, and what sorts of potential conflicts the financial professional is subject to. This disclosure might be based upon Form ADV, Part II, but in a highly simplified, streamlined format suitable for retail investors.

In advance of any rulemaking, the Commission should conduct a special review of existing insurance industry regulations. Before the SEC takes any action to apply new or amended conduct standards to broker-dealers and investment advisers offering insurance products issued by insurance companies, we believe that the Commission should first devote substantial attention to fully comprehending how insurance companies and insurance products are regulated. We believe that such a review would identify those ways in which insurance regulation may be superior to historical securities regulation as it relates to the protection of retail investors.

Since 1933, insurance companies and securities firms have very intentionally been placed on two different regulatory tracks. When the Securities Act of 1933 (the Securities Act) was enacted, Congress faced a fundamental decision. Should securities be subject to a "disclosure", or to a "merit" regime. For all practical purposes, with limited exceptions, Congress decided to subject securities to a disclosure regime.

Insurance products have been subject to a different regime. Insurance regulation is, to a significant extent, a merit regime. This is especially true in the case of state regulation of the terms and features of insurance contracts, which must be reviewed and approved by state insurance regulators before policies can be issued to retail investors. As explained by the NAIC, "[s]tate regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected." (See "State Insurance Regulation" posted on the NAIC website.)

Beginning in 1934, broker-dealer firms, and in 1940, investment advisers, were made subject to Federal regulation. In contrast, insurance companies remained subject to state regulation.

We do not believe it is possible to compare a disclosure regime and a merit regime or to determine which one is "better." The Commission's review of insurance regulation must appreciate the merit-based approach underlying the insurance regulatory structure. Any additional regulation, such as a new uniform best interest conduct standard, needs to take into account how a standard likely to be designed to fit within an overall disclosure regulatory approach could best be adapted to fit within a merit-based regulatory structure.

In analyzing insurance company regulation, it is important to note that, in certain critical respects, insurance companies are, like banks, "safety and soundness" organizations. As only one example of this, as noted above, as of December 31, 2016, Allianz Life maintained $6.79 billion of capital. In analyzing a proposed new best interest conduct standard for financial services companies, we do not believe it is appropriate to "lump together" all types of financial and investment products for retirement funding and assume that they present the same retail investor protection issues. There is a huge difference between insurance products guaranteeing retirement income that are issued by highly capitalized, highly regulated insurance companies and other securities investments that offer no guarantees at all and may lose money for the investors who purchase them from small, much more thinly capitalized firms.

The evolution of conduct standards in the financial services industry has been at best disjointed, uncoordinated, and inconsistent. This is particularly the case for the insurance industry, which has been subject to inconsistent regulatory initiatives from multiple regulators outside the insurance industry for nearly a decade. The overall effect, if not the goal of these regulatory initiatives, was, to extend to annuity sales a regulatory approach that was originally designed for a disclosure-based regulatory regime. Commencing seven to eight years ago, insurers came under increased criticism from Federal regulators, who believed that the absence of any "suitability" regulations in state insurance laws was a deficiency. Federal regulators appear to have come to this conclusion with little comprehension of how state insurance laws actually work, or of the ways in which state insurance laws, which reflect merit-based regulation, may actually provide better retail investor protection than other types of laws and regulations.

Following years of work by the NAIC and insurance industry participants, the NAIC adopted a model regulation on suitability for annuity product sales. This model regulation has been adopted in substantially all states. The cost and resource drain of this sort of multi-state adoption was very substantial. However, shortly after the promulgation and rollout of the annuity suitability rule, the DOL began its attempt to adopt the new DOL Fiduciary Rule that is applicable to, among other entities, insurance companies and persons selling insurance contracts to retirement plans and IRAs. As noted above, this DOL Fiduciary Rule is now effective, and insurance companies and their intermediaries are subject to certain of its provisions.

Now, of course, as evidenced by your request, there appears to be interest in moving the financial services industry – including the insurance industry – toward an SEC-generated uniform best interest conduct standard to the extent its products are subject to SEC regulation (e.g., variable contracts). This will mean that, over about ten years, the insurance industry has expanded from "merit" and "safety and soundness" standards, to a "suitability" standard, and then to a "fiduciary" standard, and now to a new "best interest conduct" standard, with all of the attendant substantial cost of these successive, significant, regulatory changes. This regulatory progression was not planned or coordinated among regulators in any way. Further, a significant portion of these costs were borne paid by consumers through increased product costs or reduced benefits.

As stated above, to assure regulatory consistency and to adopt regulations that are as "workable" as possible across industries outside the scope of the SEC's jurisdiction, we recommend that the SEC establish an outreach program to the NAIC to assist the NAIC in assessing whether a best interest conduct rule for the sale of annuities and life insurance to retail investors is advisable.

The following Attachments A and B to this letter compare and contrast the requirements of broker-dealer regulation and investment adviser regulation.

Attachment A

Scenarios in Which Broker-Dealer Regulation May be More Protective of Retail Investors than Investment Adviser Regulation

	Broker-Dealer Regulation	**Investment Adviser Regulation**
Oversight of firm by a Federal self-regulatory agency with rulemaking authority	Broker-dealers are overseen, regulated, and examined by FINRA, which is a Federally approved self-regulatory organization (SRO) with rulemaking authority.	There is no Federally approved SRO for investment advisers.
Special licensing of **supervisory/compliance personnel**	Supervisory personnel of broker-dealers must take a supervisory examination and obtain a specialized "registered supervisory principal" license.	The concept of "registered principal" does not exist in the Investment Adviser industry.
Review and approval of transactions	FINRA Rule 3110.a requires that all transactions must be subject to review and approval by a registered principal in a second-tier review.	Second-tier review and approval of advice and transactions is not required by regulation in the investment adviser industry.
Continuing education requirements	Broker-dealer registered representatives are required to fulfill certain continuing education requirements under FINRA Rule 1250.	Investment adviser representatives are not subject to Federal continuing education requirements.
Periodic compliance training	Broker-dealer registered representatives are required to attend periodic compliance meetings under FINRA Rule 3110.	Investment adviser representatives are not subject to Federal periodic compliance meeting requirements.
Fidelity bonding	FINRA Rule 4360 requires that broker-dealers must maintain fidelity bonds.	There is no fidelity bonding requirement for investment advisers, except in limited situations involving specific types of advisers, such as advisers to mutual funds, see Investment Company Act Rule 17g-1.
Principal review of retail investor facing advertising materials	All retail investor facing advertisements must be reviewed and approved by a registered principal (FINRA Rule 2210(b)(1)(A)).	Investment advisers are not subject to principal review requirements for advertisements.
Regulatory review of retail investor facing advertising materials	Most retail investor facing advertising materials for investments marketed to clients are reviewed by FINRA (Rule 2210, 2211, 2212 and 2214).	There is no Federal regulator or SRO that routinely reviews investment adviser advertisements.
Regulatory examinations	Broker-dealers are regularly examined by FINRA and, in some instances, by the SEC.	There is no SRO that conducts examinations of investment advisers. The SEC periodically examines advisers, but historically this oversight has been limited other than in the mutual fund industry.
SIPC insurance	Many broker-dealer clients are protected by SIPC and by SIPC insurance.	The investment adviser industry has no protection similar to SIPC insurance.
Performance Projections	Broker-dealers are generally prohibited from predicting or projecting performance in retail investor communications.	Investment adviser communications may use performance projections provided they comply with anti-fraud standards.

Scenarios in Which Broker-Dealer Regulation May be More Protective of Retail Investors than Investment Adviser Regulation

	Broker-Dealer Regulation	Investment Adviser Regulation
Discretionary authority	Broker-dealer discretionary trading accounts are highly regulated and are subject to specialized client agreements and separate approval and authorization requirements.	Investment advisers are routinely given powers of attorney by their clients to manage their accounts on a discretionary basis. These POAs are not subject to comprehensive regulation at the Federal level.
Private right of action	There is a private right of action for violation of critical provisions of the Exchange Act, e.g., Section 10(b) and Rule 10b-5.	There is no general private right of action for violation of the Advisers Act. A limited right of action is found in Section 215 of the Advisers Act. Note that the DOL Fiduciary Rule provides for a private right of action in the case of advice to IRA owners provided under a BIC agreement. This means that, among the Exchange Act, the Advisers Act, and the DOL Fiduciary Rule, there are three different and inconsistent private rights of action.

Attachment B

Scenarios in Which Investment Adviser Regulation May be More Protective of Retail Investors than Broker-Dealer Regulation		
	Investment Adviser Regulation	**Broker-Dealer Regulation**
Fiduciary standard of conduct	Federal case law applies a fiduciary duty from an investment adviser to a client. There is, however, no express fiduciary duty contained in the Advisers Act or rules.	Securities registered representatives are not subject to a fiduciary standard. However, these representatives are subject to a "suitability" standard when making any recommendation. Transactions are also subjected to a second tier review by a registered principal.
Disclosures to clients	Investment advisers must provide a copy of Form ADV, Part II or a similar disclosure document to clients to disclose services, fees, expenses, and potential conflicts.	There is no disclosure document similar to Form ADV, Part II that is applicable to broker-dealers.
Disclosure of business and education background	Certain supervised persons of investment advisers must provide a personal disclosure brochure to their clients that disclose their education and business background.	Registered representatives are not required to provide similar information to their clients, but their clients can obtain this information from Brokercheck.