November 6, 2017

Via Electronic Mail

Chairman Jay Clayton
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Request for Information on Standards of Conduct for Investment Advisers and Broker-Dealers

Dear Chairman Clayton:

We submit these comments as members of The Open Architecture 2020 Group, a pro bono think tank comprised of financial advisors and industry veterans who believe that best practices for managing the risk of outliving one's savings should not differ due to the business model of the person you happen to meet with. To preserve the integrity of unbiased thinking we have no sales, sponsors, or revenues of any kind. Our intention is to inspire a new definition of objectivity and professionalism for all silos of the investment industry, one that is pragmatic enough to apply to all individuals regardless of net worth. It's hard to dispute that a client is best served when all prudent ideas from academics and institutional thought leaders are inside their adviser's toolbox. But what's rarely acknowledged is that this kind of "open architecture" is not easily found, or that the closest thing we have to a personal pension plan -- annuitization -- is barely on the financial industry's radar screen at all.

We see the retirement income crisis in America as compounded by a lack of objectivity across the financial advice industry. This may continue even with new fiduciary rules from the Department of Labor. The problem stems from biases found not only in the business models of commission-based practitioners but those of many fee-only advisers as well. In short, ignoring prudent ideas that generate lower asset management revenues may result in an adviser failing the duty to place a client's interests first, and may even raise questions of suitability. For example, one of the long term solutions to longevity risk in the institutional pension arena, guaranteed lifetime income annuities, is often missing in our retail client distribution systems and processes. We see this as pervasive, including cases where insurance companies distribute products with higher commissions based on annual profitability and, on the other end of the spectrum, where small "wealth management" firms claim a fiduciary duty while ignoring a deep body of academic literature on the utility of insuring lifetime income in retirement. It's ironic, since many academics have pointed out for years that retirees without pensions may need more in 401(k) rollover savings to achieve the kind of secure lifetime cash flows that annuitization can provide (professors usually focus not on "fixed index" and "variable-deferred"

products with income riders, but instead on the more traditional vehicles used by pension plans which employ "mortality pooling" to enhance cash flow).

The strategy may not be the best fit for everyone -- as with pensions, lifetime income is prioritized over liquidity and leaving wealth to children is not the purpose – but the truth is most people are not wealthy at retirement, and many are not cut out to become successful investors in any of the risk-based capital markets. It's only rational to believe that a one-size-fits-all approach to satisfying a best interest standard is difficult to justify when, in the real world, people have different emotional reactions to bear markets.

Our point is that we need a paradigm shift to redefine the level of "expert" advice for individuals in the post-retirement phase. The risk-return tradeoff could become less about Modern Portfolio Theory and more about addressing different tolerances to longevity risk. Expected variability of income sources could be matched to expected variability of expenses. Then retirement planning could look more like the rigorous funding ratio work done by prudent institutional pension sponsors. Whatever the answer, new ideas should grow out of a historical perspective that understands both the strengths and the weaknesses of the past. With so many baby boomers retiring in the coming decades, it's time to admit that the best practices in place for the accumulation phase do not always translate well for average Americans at their point of retirement. Behavioral finance studies show us this time and again, and so does academic research proving that many pension plan participants prefer the idea of annuitization over lump sum distributions.

Here are five suggested principles proposed as a new foundation for solving the problem:

1) All of the major business channels in the investment industry have conflicts; clients won't fully understand them until advisers (and regulators) first agree on what they are, and also admit to any ideas they are excluding.

2) Disclosure alone is not enough; consumers deserve to fully understand the ramifications of what's being disclosed.

3) Academic thought leadership is well beyond asset allocation theory; best practices should stay current with practical solutions for behavioral finance issues and longevity risk.

4) The industry won't evolve to true open architecture until advisors can justify fees for advice that are separate from portfolio implementation; both advisers and clients need to embrace the value added.

5) Average Americans often name longevity risk as their number-one concern; managing this risk in the institutional arena has evolved to include liability driven investing (LDI).

There are many points of view about how advisers to IRAs should be paid, but Department of Labor rules for retirement accounts are now clear that compensation differentials create the potential for conflicts of interest. However, when Registered Investment Advisers (RIAs) feel they can't justify billing for products in client accounts because they're not managing them, advisory outcomes could be driven as much by exclusion as inclusion. It's a different kind of conflict and is less well defined, but it's there. To say this won't change is to deny history's lesson that evolution takes place over time via the resolution of inherent contradictions.

Large pension plans employ objective consultants who aren't paid commissions by the products they sell, or fees for assets under management. This gives them the professional luxury of considering all available solutions. They are allowed compensation "offsets" from commissions, subject to safeguards against conflicts of interest from proprietary products, and this is a way the plan sponsor can direct revenue from their portfolio to offset their consultant's cost. What if individual retirees were similarly able to have administrators capture and direct commissions and fees generated by their accounts, so that over time their advisers could be compensated in a transparent way? We would argue this could lead to more objectivity.

In a perfect world, today's definition of open architecture would mean that advisers are compensated for a retirement process instead of an investment process. They could tout their liability forecasting skills ahead of their asset management talent. RIAs would consider annuitization even though they're not actively managing that portion of the portfolio, and would bill for their total time spent advising a client minus any fees for AUM. Commission advisers would suggest products with lower sales credits than others and their overall compensation might be calculated according to time spent advising minus any commissions generated. The academics would no longer have to preach to nearly deaf industry ears about the unique benefits derived from mortality pooling. Perhaps the best outcome would be lower stress and increased happiness for many retirees.

How did we get here? The sea change post-ERISA (the Employee Retirement Income Security Act of 1974) included retainer-based consultants who began operating as buffers between pension plans and their money managers. Billing was based on the scope of work performed. Then, in the retail segment, broker-dealers began to blur the lines between the way money managers are paid and the way advisors charge for providing the same consultative buffers the institutions have. The AUM fee "wrap accounts" were born, with compensation from retail clients removed from the products but tied to the platforms. Objectivity was defined as freedom from conflicts of interest. But in truth, the idea of open architecture was compromised as managing the money became scalable via automation (and thus extremely profitable). Investments not on the platform due to custody or other constraints were excluded.

It's also important to note that many independent "wealth managers" left broker-dealers so they could become fee-only RIAs and own their firms. Platform technology at companies like Schwab and Fidelity developed to serve this business segment, at first through mutual funds and individual stocks and bonds, and later through separate accounts and ETFs. Over time, the concept of AUM fee advice in every channel evolved down-market to accommodate smaller asset sizes. But almost always left behind was the evolution of the institutional retainer model. It’s still used by the majority of today’s large pension plans and their consultants, but only a small percentage of private client advisors have adopted it (even fewer retail clients understand the differences between the industry’s many compensation models).

A casualty of the investment industry’s history is the objective process itself, still constrained by implementation conflicts. Most private client advisers, both fee-only and commission, make their wealth management businesses run on revenue from asset management (sometimes it’s the product provider earning the asset management revenues and paying distributors the commission). With the exception of a relatively small number of hourly and retainer-based practitioners, ideas that can’t be managed are not readily found in RIA client portfolios. Among commission advisors, sales of immediate annuities are not nearly as common as the more highly compensating deferred variable products with income riders. Today, annuitized products average less than 10 percent of total annuity sales in the United States (and coincidentally often pay a 3-4% commission as opposed to 5% or more for other types).

A recent example of overcoming inertia in the investment industry is the iShares business, which launched well before Exchange Traded Funds reached their tipping point. Back in 2000, most consultant-advisers at the brokerage firms were against the idea of index funds, as they were taught that their value came from identifying and monitoring active managers. They often articulated an ethical concern for justifying quarterly AUM fees while not even trying to beat a benchmark. Through a grass roots effort, in conjunction with some visionary consultants at key firms like Smith Barney, a small group of pioneers inside the iShares business changed the mindset. By reinforcing a total portfolio process, and addressing the reality of active risk as a behavioral finance issue for individual investors, minds opened to the idea of index funds. Today, passive ETFs are fully embedded in the advisory and consulting platforms at every brokerage.

At a minimum, it seems appropriate that people should be able to at least consider all prudent ideas when they meet with their trusted advisors to discuss options. This is the spirit of open architecture. However, many of today's financial advisers don't embrace the idea of annuitization. Many still confuse the idea with variable deferred and index annuities, frequently criticized as overly complex and too expensive, and this provides an easy out for those who choose not to recommend it. But it's also true that most RIAs are paid more like money

managers than like institutional retirement consultants, commissioned advisers are paid more like salespeople, and incentives have a way of driving outcomes.

Sincerely,
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