CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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[redacted]

December 13, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chairman Clayton:

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions. The Chamber appreciates this opportunity to provide comments regarding standards of conduct for investment advisers and broker-dealers,[1] and welcomes the leadership role taken by the Securities and Exchange Commission ("SEC") to foster a regulatory system that best serves the interests of retail investors.

As the SEC reviews the comments that you have received, and as the agency determines what actions to take, we believe there are four criteria that should act as guideposts for policy development:

1. **The SEC Should Properly Account for Existing Standards of Conduct to Ensure a Sound Cost-Benefit Analysis;**

2. **The SEC Should Protect Investor Choice and Not Favor One Business Model over Another;**

3. **The SEC Should Utilize Effective Disclosure to Promote the Best Interests of Diverse Investors; and**

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[1] *See* Chairman Jay Clayton, U.S. Securities & Exchange Commission, "Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers" (June 1, 2017), *available at* https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

4. The SEC Should Specifically Identify the Particular Activities that Trigger a Particular Standard of Conduct.

The Chamber supports continuously enhancing investor protection and has long been concerned about the impact the Department of Labor's ("DOL") fiduciary rule would have on the ability of American households to receive investment advice and save for retirement. Several surveys conducted in the wake of the DOL rule's partial implementation earlier this year show that many of our concerns are coming true, as investors are now experiencing fewer choices, rising costs, and limited access to sound advice.

We believe these real-world impacts are largely a result of a missed opportunity to build upon the strong existing regulatory oversight of investment advisers and broker-dealers, as well as a lack of coordination among the DOL, the SEC, and state regulators. Given the SEC's established history and expertise in overseeing investment advisers and broker-dealers, we believe the SEC is in the best position to build upon the current regulatory regimes in a manner that protects investors from misconduct and preserves investor choice.

The Chamber also understands that the diversity and competition that exists within the investment advice market does not lend itself to easy regulatory solutions. We therefore appreciate the thoughtful questions and topics posed in Chairman Clayton's request for comment, and look forward to engaging constructively as the SEC moves forward on this important initiative.

Discussion

The Chamber agrees with Chairman Clayton that the elements of "clarity," "consistency," and "coordination" should inform the SEC in examining the standards of conduct that are applicable to investment advisers and broker-dealers when providing investment advice to retail investors.

- "Clarity" addresses a central concern of the SEC that investors can be confused about the standard of conduct they are owed. Clarity also remedies the regulatory uncertainty that can frustrate good faith compliance efforts and increase the cost of providing financial services at the expense of investors' best interests. To achieve clarity, the SEC must ensure that any rule implementing a standard of conduct is not overly complex and can be readily understood. An overly complex rule that has too many blurry lines is hard for investors to understand and for financial firms and professionals to reasonably comply with.

- "Consistency" means that individual retirement and non-retirement accounts generally should be treated the same from a standard-of-conduct perspective. If the required standard of conduct differs based on the type of account, we will introduce a new dimension of investor confusion, worsening the very problem the SEC has sought to fix. Under the DOL's approach, one can imagine a scenario where an investor receives advice on a non-retirement account, but then is told that he cannot receive the same type of advice on a retirement account. Such an outcome only serves to create more confusion and does nothing to further the long-term interests of retail investors.

- "Coordination" between the SEC and the DOL, as well as with the states, helps ensure the kind of effective oversight and regulation that offers a sustainable solution instead of an entanglement of regulation that fails to meet the objective. A lack of coordination is bound to create regulatory uncertainty and duplication that harms retail investors by engendering unnecessary regulatory risk and needless investor confusion.

Clarity, consistency, and coordination are not ends in-and-of themselves. Rather, they are means to achieve an overarching goal that the Chamber shares– namely, the goal of helping retail investors save for today and for their futures. To achieve this goal, we need a system of regulation that accommodates the diverse needs and preferences of investors so as to successfully vindicate the range of investor interests and objectives that make up the marketplace. As a country, we are all better off when people are financially secure, having the resources they need not only to make ends meet, but also to pay for the big-ticket events of life that we all face at one point or another.

As to the question of whether or not investment advisers and broker-dealers should act in the best interests of the retail investors they advise, the answer is "yes." But that does not end the analysis. Rather, it presents the following question, which is the one confronting the SEC and that Chairman Clayton's request for comment drives toward answering: What precisely should any rule articulating a standard of conduct and related regulatory obligations require? As the SEC itself has recognized, there is more than one way to shape a best interest standard.[2] It should also be recognized that the "best interest" of an investor can depend on the particular circumstances of that investor, including overall investment objectives and risk tolerance. A one-size-fits-all standard may not truly reflect the diverse objectives and interests of millions of retail investors.

In other words, the details of any rulemaking matter. The DOL fiduciary rule bears out that if a rule is not properly calibrated, the risk is unacceptable that the rule will harm retail investors. The on-the-ground consequences once a rule goes into effect will frustrate a regulator's best intentions if the rule's benefits are overstated and its costs are underappreciated. The antidote is to root any rulemaking in careful economic analysis and to rely thoughtfully on available data to inform policy judgments. For example, a regulator must take seriously the risk that investors will lose access to beneficial advice if the regulator imposes on investment advisers and broker-dealers unwarranted regulatory expectations and burdens.

Only when regulators root their rulemakings in rigorous cost-benefit analysis can we be confident that the regulator will have reached a reasoned decision that should achieve more good than harm, offering a long-lasting solution.

Chairman Clayton's request for comment is a valuable step in this direction. The request's numerous questions implicitly acknowledge that, even though the SEC has considered standards of conduct for years, more analysis of the details is needed to ensure that the SEC appropriately shapes any action it takes. Investors must be safeguarded from misconduct, but they also must not be denied access to helpful options when it comes to products, services, advice, and fees. Indeed, affording investors choice is one way of protecting them.

Recommendations for the SEC to Consider

As the SEC moves forward, the Chamber recommends using the following four touchstones to guide the development of any rule.

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[2] *See, e.g.*, Request for Data and Other Information, *Duties of Brokers, Dealers, and Investment Advisers*, Rel. No. 34-69013 (Mar. 1, 2013), *available at* https://www.sec.gov/rules/other/2013/34-69013.pdf.

1. The SEC Should Properly Account for Existing Standards of Conduct to Ensure a Sound Cost-Benefit Analysis

To be effective, any regulation needs to be appropriately framed and justified by law, economics, and data. This starts with a granular and balanced assessment of the existing regulatory regimes that govern investment advisers on the one hand and broker-dealers on the other. This test is not met if the analysis centers too much on identifying that investment advisers are subject to a fiduciary duty while broker-dealers are subject to suitability. Such a limited comparison of the regulatory regimes is incomplete at best and can create misimpressions about how each regime actually protects retail investors. It also misses one of the fundamental concerns with the DOL fiduciary rule, which is that the DOL rule creates separate rules for retirement versus non-retirement products and services within brokerage and advisory accounts.

For example, investment advisers often avail themselves of disclosure as a well-established and accepted way of managing conflicts of interest that advisers may be subject to.[3] On the broker-dealer side of things, suitability is just *one* component of a broker-dealer's regulatory obligations.[4] More to the point, suitability has been interpreted to subject broker-dealers to a *de facto* best interest duty, thus underscoring that the practical difference between suitability for a broker-dealer and an adviser's fiduciary standard is not as great as some suggest.[5]

A critical takeaway is that any cost-benefit analysis will be skewed if key features of the existing regulatory regimes are not properly accounted for when examining standards of conduct. Whether or not broker-dealers are, strictly speaking, fiduciaries should not alone be the barometer of what, if any, additional regulation might be warranted. This is especially so if, as many have reasoned, the broker-dealer regime, when considered in its entirety, compares well to the investment adviser regime in terms of protecting investors, including by affording investors meaningful choice.

One of the many flaws underlying the DOL rule is that it failed to consider or appreciate the existing regulatory regime that applies to broker-dealer activities. For

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[3] *See generally SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963) (recognizing the value of disclosure).
[4] *See* Staff of the U.S. Securities & Exchange Commission, STUDY ON INVESTMENT ADVISERS AND BROKER DEALERS (Jan. 2011), *available at* https://www.sec.gov/news/studies/2011/913studyfinal.pdf.
[5] *See, e.g.*, FINRA Rule 2111 (Suitability) FAQ, at A7.1, *available at* http://www.finra.org/industry/faq-finra-rule-2111-suitability-faq.

example, the DOL's final rule is inherently biased against commissions, despite the preference that many investors have for paying commissions instead of an asset-based fee. Not surprisingly, recent evidence shows that the DOL rule has sharply limited the ability of investors to receive advice in brokerage accounts[6] and that investor access to certain investment and income-oriented products (e.g., mutual funds and variable annuities) has been curtailed as a result of the rule.[7]

The SEC's examination of standards of conduct should address the following question: what is the marginal benefit of imposing on broker-dealers an explicit best interest obligation that is no less stringent than the investment adviser fiduciary duty, taking into account the totality of the regulatory regime that presently governs broker-dealers?[8] The marginal benefit of a fiduciary standard as compared to suitability standing in isolation is one thing; the marginal benefit of adding a fiduciary standard to the whole of the current broker-dealer regulatory regime is something else. If the effectiveness of the broker-dealer regulatory regime is underappreciated, then the expected benefits of subjecting broker-dealers to a new best interest requirement will likely be overstated, thus upsetting any cost-benefit analysis.

Relatedly, the SEC seemingly would have to show three things: first, that the advice received from broker-dealers systematically disadvantages investors as compared to the advice investors receive from investment advisers; second, that the systematic disadvantage, if any, that investors experience is caused by differences in the regulatory regimes and not other factors; and third, that imposing on broker-dealers a new duty would change broker-dealer behavior (e.g., that a broker-dealer that provides conflicted advice under the current regime would not do so as a result of a new best interest obligation).[9] If this cannot be shown, then it is an open

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[6] *See, e.g.,* Deloitte, "The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors" (Aug. 9, 2017), *available at* https://www.sifma.org/wp-content/uploads/2017/08/Deloitte-White-Paper-on-the-DOL-Fiduciary-Rule-August-2017.pdf (53% of survey respondents have limited or eliminated access to brokerage advice services).

[7] *See* U.S. Chamber of Commerce, FIDUCIARY RULE: INITIAL IMPACT ANALYSIS (Sept. 7, 2017), *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2017/07/Fiduciary-Rule-Initial-Impact-Analysis.pdf?x48633 (survey performed by FTI Consulting) [hereinafter FIDUCIARY RULE STUDY].

[8] *See, e.g.*, Section 913(g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

[9] *See* Craig M. Lewis, "The Flawed Cost-Benefit Analysis Underlying the Department of Labor's Fiduciary Rule" (Aug. 2017), *available at* https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2268185-160965.pdf (explaining that the DOL, in promulgating its fiduciary rule, "fail[ed] to demonstrate the extent to which brokers actually provide advice that deviates from their

question as to whether imposing an explicit fiduciary or similar duty on broker-dealers would achieve the goal of helping investors better achieve financial security.

Complementary to the standard of conduct, the Chamber strongly supports the SEC in being aggressive in detecting fraud and holding those who commit fraud accountable. The federal securities laws include provisions that protect investors from fraudulent activity of both investment advisers and broker-dealers. Importantly, the SEC has increasingly used data analytics and other quantitative methods to ferret out wrongdoing that in the past might have gone unrecognized, and the regulator is exploring how to leverage machine learning and artificial intelligence. Stressing the priority of protecting retail investors, the SEC, under Chairman Clayton's leadership, recently announced the Retail Strategy Task Force, a new enforcement initiative focused on identifying misconduct impacting retail investors.[10]

2. The SEC Should Protect Investor Choice and Not Favor One Business Model over Another

In contrast to what the DOL did, the SEC should not effectively pick "winners and losers" among business models, the consequence of which is to deny investors valuable choices. Section 913 of Dodd-Frank, which authorizes the SEC to adopt a new standard of conduct for broker-dealers, recognizes this. Section 913 provides that the receipt of commissions by a broker-dealer should not, in and of itself, violate any such best interest duty that a broker-dealer may have; that a broker-dealer's best interest standard of conduct does not have to be a continuing duty; and that a broker-dealer's sale of proprietary or another limited set of products would not, in and of itself, run afoul of the standard of conduct.[11] The purpose of these provisions is to benefit investors by maintaining the viability of the activities that broker-dealers engage in. Multiple business models lead to diverse fee structures, products, services, and activities. This can benefit investors by affording investors more choice.

It is impossible for the SEC to determine what each investor will need and prefer regarding fees, products, services, and activities. Different investors will have different needs and preferences, and a particular investor's needs and preferences will likely change over time with changing life circumstances. For this reason, expanding investor choice to valuable advice and investment opportunities–and certainly not

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clients' best interests. As a result, the existence of a significant market failure is largely based on anecdotal or relatively indirect evidence.").

[10] *SEC Announces Enforcement Initiatives to Combat Cyber-Based Threats and Protect Retail Investors*, Press Rel. No. 2017-176 (Sept. 25, 2017), *available at* https://www.sec.gov/news/press-release/2017-176.

[11] *See* Dodd-Frank Section 913(g).

burdening broker-dealers or investment advisors with regulatory requirements that will result in less investor choice[12]–should be a priority for the SEC.[13]

The concern that investors will lack appropriate choice is even more acute if the standard of conduct leaves certain retail investors without any access to professional advice or having to pay considerably more for the same advice they used to receive at a lower cost–the very effects we have seen as a result of the DOL's fiduciary rule, especially for the most vulnerable retail investors who have less savings.

Attached as an Appendix to this letter is a recent survey of firms that are responsible for nearly $10 trillion in assets under management with nearly 26 million investment accounts.[14] The research confirms the anecdotal evidence: as a result of the DOL's rule, investors will not have access to adequate investment advice, will have fewer investment options, and will have to pay much more. This runs counter to protecting investors.

One way for the SEC to guard against regrettable outcomes like this is to avoid one-size-fits-all regulation. As Chairman Clayton has explained regarding regulation, "when we have one-size-fits-all regulation, we end up with just one size."[15] The harm is that investors are denied access to a more diverse marketplace that better matches the diversity of investor interests. Accordingly, if the SEC ultimately decides to impose on broker-dealers a new standard of conduct, the new regulatory requirements must be appropriately tailored to the activities of broker-dealers' so that the regulation does not jeopardize these activities' viability or otherwise result in a deterioration of valuable investor choice.

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[12] Regulatory burdens that create barriers to entry are an aspect of this. Barriers to entry that keep new entrants from entering the market or that cause smaller firms to exit the market result in fewer choices for investors, as well as less competition and innovation.

[13] Here is one clear example of the cost investors incur when they have fewer choices. To the extent, as has occurred in the aftermath of the DOL fiduciary rule, commissions fall out of favor as a form of compensation, then investors will increasingly be restricted to fee-based accounts. To be sure, fee-based accounts can be beneficial for investors, but they are not preferable for all investors under all circumstances. Regarding fees, an investor who trades infrequently, if at all, may be better served paying commissions than an annual fee that is a percentage of assets under management. The SEC acknowledges this. *See, e.g.*, Office of Compliance Inspections & Examinations, U.S. Securities & Exchange Commission, EXAMINATION PRIORITIES FOR 2016, *available at* https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf (identifying fee selection and reverse churning as national examination priorities).

[14] *See* FIDUCIARY RULE STUDY, *supra* note 7.

[15] Chairman Jay Clayton, U.S. Securities & Exchange Commission, Testimony Before House Financial Services Committee (Oct. 4, 2017).

3. The SEC Should Utilize Effective Disclosure to Promote the Best Interests of Diverse Investors

A signature feature of investor protection under the federal securities laws is to empower investors to protect themselves. This respects investors' ability to determine what will be in their own best interests.

This does not argue for a passive role for the SEC; rather, it recommends the power and efficacy of disclosure regulation. In other words, it argues for leaving decisions in the hands of investors – consistent with the call above for maintaining investor choice – and assisting investors so that they can make more informed and thus better decisions. This is the philosophical foundation that supports the mandatory disclosure system at the core of the federal securities laws.

Accordingly, disclosure should be a prominent part of any SEC rulemaking establishing a new standard of conduct. As a regulatory mechanism, disclosure allows the SEC to calibrate a regulatory regime that promotes investor protection without compromising investor choice and investors' access to helpful advice at an acceptable cost. Disclosure permits parties to tailor their relationships, arrangements, and dealings to correspond to their varied interests.[16] If investors are displeased with what they are told, they have the option to seek advice elsewhere, again returning to the theme of investor choice.

This construct is not academic, but has been put into practice for decades. For example, as already noted, even as fiduciaries, investment advisers are permitted to manage conflicts through adequate disclosure so that investors have the information they need in assessing whether to engage and work with a particular adviser in light of any conflicts the adviser may have.

The disclosure, of course, should be effective disclosure. In shaping any standard of conduct, the SEC should emphasize improving the disclosures that are made to investors as an alternative to imposing more regulatory mandates that will ill-fit the interests of many, if not most, investors. In particular, required disclosures should be streamlined, and the SEC should avoid the problem of information

[16] Take principal trading. The risk with principal trading is that it could lead to self-dealing. On the other hand, principal trading can lead to more investment opportunities and lower trading costs for investors. A standard of conduct that does not permit broker-dealers to be on the opposite side of a trade from an investor-customer will disadvantage those investors who benefit from principal trading. Disclosure and investor consent would be one way of configuring a standard of conduct to fit circumstances like this where broker-dealers and their investor-customers are counterparties.

overload. If investors are overwhelmed with voluminous and complicated disclosures, they may not read them and, if they do, they may not be able to understand the information. Clear disclosure is warranted regarding fees and compensation, the nature of the duty the investor is owed, when the duty is triggered, the duration of the duty, and any material conflicts. Furthermore, a financial professional should not be able to use a title that conveys a standard of conduct to which the professional is not in fact held under the law.[17] It is axiomatic that effective disclosure depends on meaningful antifraud enforcement by the SEC.

Along with more effective disclosure, the SEC should bolster its investor education efforts with innovative new initiatives that help investors evaluate the information they are provided.

The combination of more effective disclosure and improved investor education is directly responsive to concerns over investor confusion and mitigates the risk that undue and inflexible regulatory mandates, particularly when coupled with regulatory uncertainty, will ultimately inure to investors' detriment.

4. The SEC Should Specifically Identify the Particular Activities that Trigger a Particular Standard of Conduct

Integral to examining a standard of conduct is considering when it is triggered. A given standard of conduct can give rise to different costs and benefits depending on what activities trigger it.

This creates another opportunity for the SEC to tailor any new broker-dealer best interest obligation to fit broker-dealer activities. Many have reasoned that if two financial professionals do the "same thing," then they should be subject to the same standard of conduct. This stance is understandable. However, it begs the question of how to define "same" for these purposes.

Salient differences exist between the activities of investment advisers and the activities of broker-dealers.[18] For example, exercising discretion over an investor's

[17] This is something that Commissioner Piwowar has emphasized.
[18] *See, e.g.*, Commissioner Michael S. Piwowar, U.S. Securities & Exchange Commission, "Comment Letter in Response to the Department of Labor's 'Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemption'" (July 25, 2017), *available at* https://www.sec.gov/news/public-statement/piwowar-comment-dol-fiduciary-rule-prohibited-transaction-exemptions (distinguishing "selling" activities by a broker-dealer from "advice" activities by an investment adviser).

portfolio, as an investment adviser might do, is qualitatively different from a broker-dealer's making a periodic recommendation. When an investment adviser has discretionary authority, the adviser has the power to act on the investor's behalf. When a broker-dealer makes a recommendation, the investor makes the ultimate investment decision, possessing the ability to accept or reject the recommendation. How one conceives of what the appropriate standard of conduct should be should turn, at least in part, on the degree of investment control the investor retains.[19]

The SEC should be more granular in how it describes the activities that trigger a particular standard of conduct. A singular expansive definition of "advice" that subjects every activity that meets the definition to the same standard of conduct is likely to result in less investor choice, less investor access to valuable services and products, and higher fees to investors because of the one-size-fits-all problem. A more refined approach to which activities trigger which regulatory requirements is consistent with ensuring that the "same" activities are subject to the "same" standard of conduct regardless of who provides them. It is also consistent with the goal of tailoring the regulatory regime so that it accommodates the diversity of the marketplace and the diversity of investor interests.

There is widespread agreement on the goal of protecting investors and advancing their best interests, although there are different views on how best to achieve that goal. Over the years, commenters, including the Chamber, have continued to share their thoughts for how the SEC (and the DOL) should proceed. What would help significantly is for interested parties to have insight into the SEC's views under the agency's existing leadership.

Such regulatory transparency will help soundly ground any standard-of-conduct rulemaking by promoting the constructive public engagement that underpins robust cost-benefit analysis.

The SEC should share with the public the results of its examination of standards of conduct once the agency has carefully considered the responses to Chairman Clayton's request for comment but before launching any rulemaking. More specifically, the Chamber requests that the SEC publicly present a pre-rule proposal assessment offering the SEC's up-to-date analysis, realizing that any rulemaking that follows would have to comply with the Administrative Procedure Act's notice-and-

[19] Keeping with the example, even if a recommendation is treated as "advice," a recommendation should not necessarily trigger a standard of conduct that is in all respects identical to the standard of conduct that an investment adviser's discretionary authority triggers.

comment requirements. Among other things, the SEC could both detail and substantiate what exactly it is looking to solve for; the retail investor benefits that the SEC is attempting to achieve and why it believes certain regulatory actions would produce them; the costs that the agency is particularly mindful of minimizing and preliminary plans for doing so; and the agency's assessment of the data it considered and its economic analysis.

Once a rule goes into effect, its actual impacts will be felt. Therefore, if the SEC does propose and ultimately adopt a final rule providing for a new standard of conduct, the SEC should commit to conducting a retrospective review of the rule's actual effects after a reasonable period of time. The SEC should stand ready to recalibrate the regulatory regime if warranted given the rule's real-world costs and benefits.

Conclusion

The Chamber looks forward to working with the SEC and all other interested parties as the SEC continues its examination of standards of conduct to ensure that the best interests of investors are served.

Sincerely,

Tom Quaadman

Appendix

Fiduciary Rule: Initial Impact Analysis

Fiduciary Rule: Initial Impact Analysis

September 7, 2017

Presented To:

Study Objectives and Methodology

Ongoing Monitoring of Fiduciary Rule

The U.S. Chamber of Commerce has committed to monitoring the Department of Labor's Fiduciary Rule and its impact on investors. As part of this ongoing effort, the initial research included outreach to **14 financial advisory companies**–insurance companies, financial product manufacturers, and broker-dealers. Collectively, these companies represent a significant portion of the retirement savings and financial advisory market in the U.S. They are responsible for nearly $10 trillion in assets under management (AUM) out of $16.9 trillion in the market, and they guide the financial future of nearly 26 million investment accounts.

Data illustrating the concrete steps taken by these firms in implementing the Rule were gathered through a collection of methods, including an online survey and one-on-one interviews conducted in July 2017.

The results highlighted in this report represent not only the actions taken by the industry in the implementation of the rule, but also the practical, real-life consequences being felt by retirement savings investors.

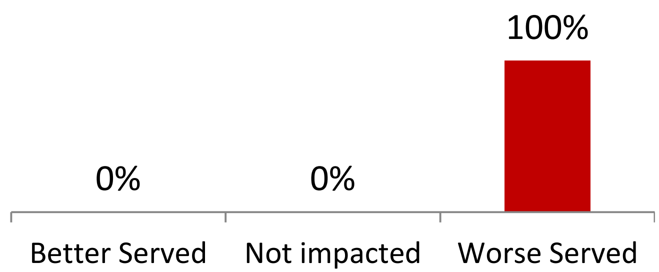
Executive Summary

Implementation of the Fiduciary Duty Rule has led to unintended consequences that significantly impact investors

Investors Will Be Worse Served	The unanimous view from the financial advisory companies participating in the research is that investors will be worse served by the full implementation of the Rule and that small investors will not have the same access to advice as other investors. Industry experts predict the greatest long-term implication of the Rule is that investors will put off saving for retirement.
The Elimination of Products	13.4 million accounts will lose access to products. Companies are taking a range of actions in response to the Fiduciary Rule. While some companies are operating in a holding period leading up to the currently scheduled January 1, 2018, implementation date, most companies participating in the research have already eliminated products during the transition period.
Restrictions on Providing Advice to Investors	There is a high level of uncertainty over what constitutes new advice for investors under the grandfather provision. This has, in turn, created a point of confusion for advisors and by extension the clients they service as the industry makes sense of what the new environment will look like depending on the outcome of the Rule.
A Change in Fee Structures	The Fiduciary Rule has forced financial advisory companies to shift from a transactional-based model (or commission-based model) to a fee-based model. This transition impacts investors who work with advisors who no longer believe they can adequately provide services to accounts under this model. This structural change has also led to an increase in fees for certain clients, particularly low-balance investors.

Impact of the Fiduciary Rule on Investors

Survey participants believe investors will be worse served with the full implementation of the Fiduciary Rule



Financial advisory companies responsible for managing **nearly $10 trillion in assets under management (AUM)** and **nearly 26 million investor accounts** believe when the Fiduciary Rule is fully implemented, small retirement savings investors will be **worse served.**

Eliminating Products	Increasing Fees	Setting Account Minimums	Switching to a Fee-Based Model
"What we've seen on the retail side as a distributor is that we've had to **restrict product offerings on our shelf**."	"Firms have had to basically levelize the commissions regardless of the underlying type of asset, equity, or fixed-income product. Investors who are in fixed-income **products actually could see their costs go up**."	"Traditionally, we didn't have account minimums on the brokerage side of our business. Today, we've had to **put in place account minimums.**"	"I think it will ultimately result in people moving away from a commission-based model. I think that advisors are just going to gravitate toward fee-based. And I think **fee-based isn't always the best for the client**."

Total AUM Data: $9.9 trillion AUM represented in this response
Total Accounts Data: 26 million accounts represented in this response
Worse Served=significantly worse + somewhat worse served/Better Served=significantly better + somewhat better served

Participants believe smaller investors will be most harmed by the Fiduciary Rule

Advisors will be unwilling to take on risk	Advisors will no longer service certain accounts	This will push small investors to accounts with no advice	Thereby, investors will not receive adequate retirement advice
"Advisors aren't going to want to take the risk of serving a small account based on the additional paperwork and time involved given the extra steps under the best interest conduct standard."	"We have seen an increasing number of what the industry calls resignations from accounts that historically have been serviced by broker-dealer firms. But due to any number of factors, generally for smaller accounts, they've made a decision to resign from those accounts."	"The small retirement investor is going to get hurt with full implementation of the Rule. In order to be able to service clients who have small account balances and to supervise and implement the full fiduciary standard with private right of action, I think it's going to push a lot of clients out of full-service broker-dealer firms. Those clients are going to find themselves in self-directed situations or without access to advice because of the cost of doing business to the advisor."	"Many firms, including us, are sending them to self-directed, right? So they will no longer get advice. They will be on their own to save for retirement. The [DOL] intended for small clients to get better advice. And unfortunately the cost to provide advice doesn't allow many firms to give it."

Investors will now face less access and fewer choices in financial products

13.4 million accounts

have lost access to financial products

Financial advisory companies responsible for managing nearly $4 trillion in AUM and 13.4 million investors have eliminated certain products as a result of the Fiduciary Rule

"I think the firms are paring back their investment services, what products they're able to offer their clients. So, it's just another way that this is narrowing the range of options and choices available to clients."

"To date, we've largely eliminated products that were expressly prohibited by the principal trade exemption."

"The variable annuity industry has been declining. I think that's a shame because these are products that America needs and we're making it harder for consumers to buy them."

AUM Data: $8.9 Trillion AUM represented in this response
Accounts Data: 15.1 million accounts represented in this response

A range of products are being eliminated by firms, primarily mutual funds and variable annuities

Mutual Funds

"We had more than 120 mutual fund/direct mutual fund providers. But I think we dropped 70 initially because it just didn't make sense. It really wasn't in the best interest."

"We are in the process of dropping down to 20 direct mutual fund providers."

Variable Annuities

"We've closed, for example, many share classes in our variable annuity line. We've closed some share classes in our mutual fund line. So, they're just not available any longer."

"We've had approximately 150 asset management companies represented, 170-plus, in our retirement space before the DOL [Rule]. We now have approximately 20. We have a much wider universe in the non-qualified space where clients and advisors have access to many more funds and fund companies. We've narrowed our annuity universe from 17 annuity manufacturers to six in the variable annuity space."

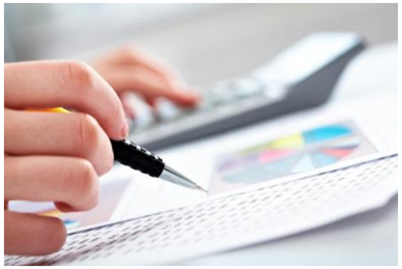
Fixed Annuities

"Fixed index annuity: I think that they're going to go down because that's a product that's largely been sold outside of the broker-dealer community."

Exchange Trade Funds/ETFs

"We no longer allow IRA clients to buy individual stocks, including individual ETFs, inside of a brokerage account."

With changes in fee structures, retirement services will be more expensive for low-balance investors



6 Million

Investor client accounts work with companies that are increasing their fees in response to the Fiduciary Rule

"I would say that, for the industry as a whole, since many people are shifting toward a fee-based model, that's going to have an adverse impact on low-balance investors. This is because it's uneconomic to serve those customers, so they will either have to **pay a higher fixed fee or a higher percentage than they are paying today**."

"There will be advisors who move to fees and may not deliver the full service model on a fee-based platform. **And the client is paying more for, in effect, the same level of service** that he/she got in commissions, which is not really in their best interest."

"Generally, you see tiered advisory fees by account size. The highest advisory fees are generally found at the lower account sizes. That just continues to drain their account value more than higher account sizes given smaller advisory fees. So, we feel like even if an advisor takes on a small account, it is **most likely that the annual advisory fee is going to be higher just based on the industry standards.** That's going to further negatively impact the client's account over time. "

AUM Data: $1.5 Trillion AUM represented in this response
Accounts Data: 9.4 million accounts represented in this response

The DOL's grandfather provision* creates confusion for both advisory firms and investors

4.4 million accounts have had to be moved into a different service not requested by the investor

"What becomes very confusing for a client is to call his agent or broker, one of these grandfathered clients, and say, hey, what do you think? Should I take my money out of the markets? Now they're no longer asking for advice. If the Rule were in effect, it would no longer be grandfathered, if you will. Now they have to fall under that advice law."

"If we could continue and say that all accounts are grandfathered, we could help–as long as they were issued prior to the Rule, we grandfather them, they're not affected by the Rule. Whatever you do with respect to that contract will not make you a fiduciary because we don't have a whole system complying with BICE and because we got rid of that whole book of business. Complying with that exemption is very burdensome, very expensive, and there's no reason for us to do it."

"The grandfathering provision allows us to do certain things up until the point where new advice is provided. But once new advice is provided, we would lose the grandfathering. And we'd have to be in full compliance. And for certain product types we're just not able to do that."

*The grandfather provision under the DOL Rule allows for the continued receipt of existing commissions and trails and the ability to provide limited advice relative to the investment positions that are in place prior to the June 9, 2017, Applicability Date without compliance with the full provisions of the BICE.

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