MEMORANDUM

To: File Nos. S7-07-18, S7-08-18, S7-09-18  

From: Division of Investment Management, Division of Trading and Markets  

Re: Roundtable on July 25, 2018 Regarding Standards of Conduct for Investment Professionals  

Date: August 10, 2018  

On July 25, 2018, SEC staff and Chairman Clayton held a roundtable at the Denver Regional Office. Approximately 27 individuals attended. The roundtable was intended to gather information from retail investors who will be directly impacted by the Commission’s rulemaking regarding standards of conduct for investment professionals.

Attached is the entire transcript of the Denver roundtable discussions. The discussions at the roundtable were intended to be conversational, and the Chairman and SEC staff provided summary descriptions of the Commission rulemakings. To the extent that any descriptions contained in the transcript deviate from the Commission’s proposed rule text and rulemaking releases, such descriptions do not supersede the proposed rule text and releases. In this regard, see proposed Form CRS Relationship Summary, Regulation Best Interest, and Interpretation.
THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

SEC INVESTMENT ADVISER/BROKER-DEALER ROUNDTABLE

July 25, 2018

10:08 a.m.

Vail Conference Room - 17th Floor
Denver Regional Office, 1961 Stout Street
Denver, Colorado 80294
<table>
<thead>
<tr>
<th>Page 2</th>
<th>Page 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PARTICIPANTS:</strong></td>
<td><strong>CONTENTS</strong></td>
</tr>
<tr>
<td><strong>SEC PARTICIPANTS:</strong></td>
<td><strong>PAGE</strong></td>
</tr>
<tr>
<td>Jay Clayton, Chairman</td>
<td>Welcome and Opening Remarks 5</td>
</tr>
<tr>
<td>Sarah ten Siethoff</td>
<td>Roundtable Discussion 15</td>
</tr>
<tr>
<td>Lourdes Gonzalez</td>
<td>Your relationship with your financial professional and the newly proposed Best Interest Rule</td>
</tr>
<tr>
<td>Julie Lutz</td>
<td>Closing Remarks 83</td>
</tr>
<tr>
<td>Eric Diamond</td>
<td>Adjournment 85</td>
</tr>
<tr>
<td>Parisa Haghshenas</td>
<td></td>
</tr>
<tr>
<td>Geeta Dhingra</td>
<td></td>
</tr>
<tr>
<td>Rick Fleming</td>
<td></td>
</tr>
<tr>
<td>Kurt Gottschall</td>
<td></td>
</tr>
<tr>
<td>INVESTORS:</td>
<td></td>
</tr>
<tr>
<td>Investor 1</td>
<td></td>
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<td>Investor 3</td>
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<td>Investor 4</td>
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<td>Investor 11</td>
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</tr>
<tr>
<td><strong>PARTICIPANTS (CONT.):</strong></td>
<td><strong>PROCEEDINGS</strong></td>
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<tr>
<td><strong>INVESTORS (cont.):</strong></td>
<td><strong>CHAIRMAN CLAYTON:</strong> Welcome. Thank you for coming. This is the sixth one of these we've done, the fourth in which I've had the pleasure of participating in. They've been terrific. What we want to do is hear from you. We'll answer your questions. I have lots of help here today. I'm going to let them introduce themselves in a minute. But what we really want to talk about is your expectations for your relationship with investment professionals. What you expect from that relationship, the terms of that relationship, how you expect an investment professional to conduct themselves. Happy to talk about it in context. What we found in the past is opening up conversation with some experiences for people who have had -- that have been either satisfactory or unsatisfactory is a good way to get the discussion going. Happy to answer questions about the proposal that we put out to bring clarity to this space, to bring some increased protection to the space, but that's really the purpose. And why don't we kick it off by having my colleagues</td>
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</tbody>
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introduce themselves and then we'll just get right into it. So why don't we start down there.

MR. FLEMING: Hi, thank you all for coming this morning. I am Rick Fleming. I am the Investor Advocate at the Securities and Exchange Commission. So my job is basically to try to provide a voice for investors like you in the rulemaking process. So it's important for me to hear sort of what you all think so that I can try to help communicate that to folks in D.C. that are making important decisions that have an impact on you all.

If you would like to know, I actually was raised in Kansas, went to D.C. just a few years ago, so I'm not a Beltway person. I like to think about how D.C. rulemakings will impact the folks like you that are not in Washington or New York.

MS. LUTZ: I'm Julie Lutz, the Regional Director of the Denver Regional Office here. What we do in the Denver Regional Office is an Enforcement program, as well as an examination program. We have about a hundred people here doing both those things continuously, so welcome to our Offices. We're grateful that you've taken the time to come and speak with us today, and we're very anxious to hear from you.

CHAIRMAN CLAYTON: And Julie is retiring after 40 years.

MS. LUTZ: I'm joining AARP.

INVESTOR ONE: Are you using a broker or a fiduciary?

MS. LUTZ: Let me also introduce Kurt Gottschall back there. He's the Associate Regional Director, and he'll be acting until a new Regional Director is appointed.

MS. HAGHSHENAS: My name is Parisa Haghshenas. I work in one of the Divisions at the SEC that is part of the team for this rulemaking. I've been incredibly fortunate to accompany the Chairman and other individuals on this initiative. It's been an incredible ride, and I hope we continue it. It's so nice to hear from the investors.

MS. SIETHOFF: I'm Sarah ten Siethoff. I'm an Associate Director in the Division of Investment Management, so I help lead from the investment adviser side of things this rulemaking. I'm so excited to hear your feedback on this.

MR. DIAMOND: I'm Eric Diamond. I am a Senior Adviser in the Chairman's Office responsible for Investment Management matters and I'll be spending a lot of time focusing on the rules that we're talking about today. So I'm very interested to hear from you all.

MS. GONZALEZ: Hi, I'm Lourdes Gonzalez. I'm Special Counsel in the Division of Trading and Markets, and I work on the broker-dealer side.

CHAIRMAN CLAYTON: All right. Well, thank you all. And I got lots of help. So let's kick it off. Does anybody want to start with what you expect from a financial advisor or broker-dealer, investment professional, or any experiences, or the like? Or I'm happy to kick it off. Go ahead, INVESTOR 1.

INVESTOR ONE: Actually, I've had such an experience. I've been dealing with this for nine years. So if you guys bear with me, I wrote just a three-page brief summary of how my experiences correlate with what the best interest rule is proposing. So kind of, you can put it forth as a what if this rule was enacted prior. Although I have to caveat it with I was a investor in California, which -- my broker therefore was already a fiduciary. So hopefully this rule won't override rules in place in states that already have more significant rules. But if you take my context, and place it for an investor say like in Colorado or another state where they don't have such protections, I think you'll get a good gist of what's going on.

So I'd like to start out by saying, at first I was an example of an American success story. I got a scholarship to Georgetown in D.C. I worked hard, started my own business, sold it and retired with millions at 37. Then my American dream turned into a nightmare, all thanks to REDACTED of REDACTED, formerly of REDACTED, and his co-conspirators, which unfortunately were FINRA, and an accountant named REDACTED.

Just as everyone remembers where they were when the first plane hit the World Trade Tower on September 11th, my financial 9/11
occurred in 2009, when I began to realize that
REDACTED had put nearly 100 percent of my
money into speculative private placements, that
have since then been exposed as fraud. And now
virtually every single one has no value.

But the nightmare didn't end there. In
fact, the nightmare returned, when I realized my
only option was FINRA arbitration, not the
judicial system. The arbitrators, including
REDACTED -- she slept through most of the
arbitration. They ruled, after ten days of
testimony, that my attorneys had failed to prove
the case.

To make this nightmare even worse, the
arbitrators awarded REDACTED, REDACTED, and
REDACTED -- remember that name -- $136,000 in
costs that I had to pay. So this now meant that
not only had I lost everything, I paid over
$200,000 in attorney's fees, which I had to
finance on my credit cards. But now because of
interest, I owe over $200,000 to REDACTED,
the same broker who felt nothing was wrong with
putting me -- nearly 100 percent of my money into
speculative private placements.

To this day, he is still trying to find
me. I cannot register to vote. I cannot even
register my dog. I cannot put anything in my
name, because he's trying to track me down to do
debtors' exams.

He has also put a lien on my house in
California, and everything else I own, so I can't
even live in the house I own. Consequently, I
haven't even made a mortgage payment in four
years, because I can't live there. I have no
money. And if I go back, he has people staked
out at my house, once a week, to find me. So in
reality, I live with the nightmare of FINRA's
actions on a daily basis. And by that, I mean the
arbitrators' ruling he did nothing wrong.

Additionally, I can't even get married,
because then my husband would be liable for the
debt. My credit has been ruined, not because of
just the house payment, but also because I have a
judgment lien against me for $200,000. And I
cannot work, because REDACTED will just attach my
paycheck.

What makes this nightmare a true reality
is that several of the executives, including
REDACTED and REDACTED of REDACTED
were found by FINRA to have not done adequate
suitability reviews of the investment, and
tested that they never did anything to make
sure my account was not over-concentrated in
private placements. Basically, they were proved
guilty by FINRA, and FINRA had the testimony
prior to me even suing.

As a result of this, REDACTED was
fined $5,000 and suspended six months. I, like
many other investors, including my father, who was
typical American who had just a few hundred
thousand in retirement, lost everything. REDACTED
REDACTED is still a practicing broker, with no
disciplinary actions on his record. FINRA did
not even seek disciplinary actions against him.

FINRA was aware of these actions I
have. And I'm going to give you, Mr. Chairman, a
copy of the on the record testimony of REDACTED
where he admits it. But of course he denied
everything in his arbitration. However, FINRA
would not give me the OTR testimony to use in my
arbitration. So he got away with it.

At the same time I was losing
everything, REDACTED was making nearly
$600,000 a year as a broker. To make this
nightmare even worse, if you could think it
wouldn't even get worse, the SEC did their job
and found REDACTED -- same name -- and REDACTED
guilty of defrauding investors, and ordered
140 million plus in restitution.

REDACTED, however, then proceeded to
take a solo voyage on his sailboat to the South
Pacific, where he is alleged to have faked his own
death. You might be thinking, how could this get
even worse? Well, because now I realize I owe
$200,000 to a person who was found to owe the SEC
over 140 million in restitution. You'd think
that the SEC, or FINRA, at some point would step in
and assist -- assist me in making things right,
that they would somehow assist me in paying the
200,000, so my life is no longer held hostage by
this broker, who stole everything.

So what have I been doing for the past
nine years? Well, I have ve been continuing to fight
to get my money back. I have sued multiple
issuers of the Ponzi schemes, and ironically, I
have never lost. But then again, I've never had
to sue them in FINRA arbitration.

I am currently suing the accountant,
REDACTED, whose firm was bought by what is now
REDACTED, one of the largest accounting firms
in California. REDACTED had testified to FINRA in his on the record testimony that REDACTED would work with me as to how much I should invest with REDACTED.

Now, here's a good example of the best interest rule, how it would help. REDACTED and REDACTED failed to mention that they had been friends and business colleagues since the 1970s. If I had known I was not receiving unbiased recommendations, I would have not lost my life savings. And of course, you got to assume, would REDACTED have followed -- would he have followed the rule, or would he have not. But regardless, if the rule was in place, at least it would have been an example of a rule he broke.

Now here's the most ironic part. REDACTED is going to be the main witness in this trial in two months, and if I prove that REDACTED was in collusion with REDACTED, which I've already proven, because unfortunately -- I can't believe I'm saying this, but REDACTED has lost some of his mental capabilities, and he admitted everything in his deposition.

So when I win next month, the first $200,000 I get awarded goes to REDACTED who is the co-conspirator with REDACTED. So basically it is just crazy.

But recently I subpoenaed the OTR testimony of REDACTED from FINRA as evidence in the case against REDACTED in San Diego Superior Court, and this is what I discovered, and I brought a copy of the pertinent testimony.

CHAIRMAN CLAYTON: I'm going to have to ask you to go --

INVESTOR ONE: Yeah.

CHAIRMAN CLAYTON: Because other people have questions, but I do want to respond, so --

INVESTOR ONE: Yeah, I have a question for you. So basically this is how you avoid being responsible or held accountable to the best interest rule or any fiduciary rule; this is all a broker has to do is get around FINRA. All they have to do is say, he said that INVESTOR 1 told me she had over 4 million in assets, so 2.3 million in private placements is okay. Broker just has to say she told me she had more assets. I'm not -- and didn't over concentrate her. Then he said, she demanded I sell them to her. She said if I didn't sell them to her, she was going to go buy them somewhere else. So I was just saving her the hassle.

Then he said that I had extensive mutual fund holdings that I managed myself, so I was diversified in a very sophisticated investor, another lie. Then he also told FINRA I had the highest risk tolerance of any client he had ever seen when in fact that was the complete opposite.

CHAIRMAN CLAYTON: So I --

INVESTOR ONE: Let me give you my question.

CHAIRMAN CLAYTON: Yeah, please.

INVESTOR ONE: So my question is how would this best interest rule have prevented REDACTED from not -- from destroying not just my financial life, but also my personal life? And then the second part is, how would this best interest rule be interpreted and enforced by FINRA to make sure that what REDACTED and REDACTED did to me and to others would result in severe disciplinary action instead of no action?

CHAIRMAN CLAYTON: Right. So let me say this. It's -- it's terrible. Okay.

INVESTOR ONE: Yeah. It is what it is.

CHAIRMAN CLAYTON: No, it is what it is, but we hear -- in these roundtables we've heard bad stories. This is the worst.

INVESTOR ONE: It was on Reuters, it was on everything.

CHAIRMAN CLAYTON: What I'm going to do is, specifically with your story, I'm going to turn to Rick Fleming. I think we can have our ombudsman --

MR. FLEMING: Yeah.

CHAIRMAN CLAYTON: -- look into this.

INVESTOR ONE: I called them several times, but I appreciate that.

CHAIRMAN CLAYTON: You have my word.

INVESTOR ONE: Okay.

CHAIRMAN CLAYTON: You made the effort to get here.

INVESTOR ONE: Witnesses.

CHAIRMAN CLAYTON: Well, the court reporter. We will look into it.

INVESTOR ONE: Okay.

CHAIRMAN CLAYTON: But let me turn to the questions that you posed, which are really -- let me get this. First of all, what are we doing with the standard, okay. The standard is the broker cannot put their interests ahead of the clients' interests.

INVESTOR ONE: Right.
CHAIRMAN CLAYTON: The broker cannot pick investments based on the fact that they’re going to be paid money when that’s putting their interests ahead of the clients, clearly. That’s the standard. In fact, that’s the same standard that applies to investment advisers --

INVESTOR ONE: Right.

CHAIRMAN CLAYTON: -- that you can’t put your interest as an investment professional ahead of the clients. We’re going to put those on parallel. You raise a more sophisticated issue that we haven’t discussed much, which is when something goes wrong, what does the record look like.

What we are doing here in terms of our policies and procedures requirement and our care requirement, which haven’t gotten much press, is addressing that record issue, so that it’s not a he said/she said situation.

INVESTOR ONE: Right.

CHAIRMAN CLAYTON: That when you have a concentration of the type you’re talking about in what I would call low diversification, high fee assets, was there -- is there a clear trail that you -- that an investor made an informed decision, that the conflicts were completely disclosed, and at the end of the day that it was appropriate.

INVESTOR ONE: Right.

CHAIRMAN CLAYTON: I think with our standard and the facts that you articulated, you would not be able to demonstrate that.

INVESTOR ONE: Well, this -- how he did it was he had me sign the last page. The last page was typically just the signature page.

CHAIRMAN CLAYTON: So this is something also important.

INVESTOR ONE: Right.

CHAIRMAN CLAYTON: This is why we said four pages or less --

INVESTOR ONE: Yes.

CHAIRMAN CLAYTON: I want everybody to understand this. We say four pages or less. We’re not prescribing word by word what needs to be in that four pages. We’re not saying you have to use “shall” instead of “may”, or -- but what we are saying is the key terms of the relationship need to be in those four pages.

For the investment professional, how are they getting compensated? All of how they’re getting money back from a provider or not. Right? Is there some relationship that they haven’t told you, that is in their financial or other interest.

INVESTOR ONE: Right.

CHAIRMAN CLAYTON: And all -- and if you can’t put it in the four pages, then it doesn’t count.

INVESTOR ONE: Right.

CHAIRMAN CLAYTON: What happens today is, you sign the last bit or -- so we’re trying to address that.

INVESTOR ONE: And the prior pages are changed.

CHAIRMAN CLAYTON: That can happen.

INVESTOR ONE: Yeah.

CHAIRMAN CLAYTON: And that’s -- so this new four-page requirement for both broker-dealers and investment advisers is a big deal.

INVESTOR ONE: I like it. I like it. I wish it went further, but I understand it’s a political issue, and it’s a very, very good start and very good proposal.

CHAIRMAN CLAYTON: Okay. Well, thank you. And you know what, I want to say thank you for being willing to share what is clearly a tough story.

INVESTOR ONE: Oh, I tell everyone. I’m not embarrassed about being defrauded. I think there’s nothing to be embarrassed about, you know.

CHAIRMAN CLAYTON: Good.

INVESTOR ONE: The word needs to get out.

I know people who are defrauded and they’re embarrassed. People tell them, how did you fall for that, you know.

CHAIRMAN CLAYTON: One of our problems is getting people to come forward. We have a tips, complaints and referral Office.

INVESTOR ONE: Oh, I’ve called them many times. I’ve turned in so many Ponzi schemes. They send me my money back, and I’d sign a document saying I will never turn you in, I will never expose the fraud I know about you, and then I send it to you guys and then I call back and say the blanking goat lady turned you in. Because they think I’m stupid because I have a herd of goats, so they think they can all screw with me, and I just hear them all go, damn, goat lady. And they all know me, and I turn them all in. So -- and I’ll keep doing it. I don’t have nothing to lose.

I don’t have anything at this point, so anything
you want to know.

CHAIRMAN CLAYTON: Thank you. Let me see if there are other people who want to talk about their relationship with investment professionals or anything in this phase. INVESTOR 5?

INVESTOR FIVE: If you pass this fiduciary rule, what are going to be the repercussions if they don't -- what kind of trouble are they going to be in.

INVESTOR ONE: Well, there is no fiduciary rule.

INVESTOR FIVE: That's what he's talking about here.

CHAIRMAN CLAYTON: What we're talking about -- let me be clear on this, because I want people to understand. We're talking about two different types of investment professionals; broker-dealers and investment advisers.

Investment advisers are subject to a fiduciary duty today. Now, that fiduciary duty, I want to be clear, it requires investment advisers not to put their interests ahead of their clients.

But it's not an absolute fiduciary duty. It's a fiduciary duty that can be modified by disclosure and consent. So some investment advisers seek a lot of disclosure and consent.

They say, you know what, I have to put my -- I have to make sure I don't put my interests ahead of yours, but I am allowed to take these fees and I am allowed to do this and you consent to that.

One of the reasons we're requiring this four page or less disclosure is they have to bring that information to your attention, not on page 27. That's very important. On the broker-dealer side, we're saying the same fiduciary -- you can call it fiduciary, you can call it a standard of conduct -- the same obligation not to put your interests ahead of your clients applies, but it is in the broker-dealer model.

Now, the investment adviser model and the broker-dealer model are different. An investment adviser model is a portfolio holistic approach. You go to an investment adviser and the advice you're contracting for is for your portfolio. You say, here are my goals. I want to save for retirement, I want you to be damn sure that I don't run out of money. I have some monthly expenses that I'd like to cover. Help me manage a portfolio like that.

You go to your broker-dealer, and it's a transaction-based approach. I would like to invest in some stocks, I'd like to invest in some mutual funds for the following. Please make some recommendations. It's not a holistic financial planning model. And you pay -- and it's a pay as you go. You pay a commission versus for an investment adviser you pay a monthly fee. Those are the differences.

One of the problems we have had is people don't know which model they're with. And if you don't know which model is which, you can't pick which model is best for you. So let me give you an example of when a broker-dealer model would be best for somebody.

Somebody who knows they want to have a few stocks, they mostly want to be in ETFs, and they're a long-term investor. You go to your broker and you say, I'd like to have some stock, ETFs, maybe 50 percent of my portfolio, I'd like to have 30 percent in fixed income, and then I'm going to buy a few stocks and we can talk about those, and I'm not going to trade much. That person is likely going to pay a lot less for that kind of investment service than they would pay for the same type of investment portfolio with an investment adviser.

Now, somebody who wants regular monitoring of their account and wants people to trade for them and, you know, basically really rely on the person to manage them, they're going to be better off with an investment adviser in most cases. That's the model. We're trying to help investors understand that knowledge.

INVESTOR ONE: And I love that you're going to clear up the fact that brokers can only call themselves certain things. Because my broker on all the paperwork wrote "investment adviser" --

CHAIRMAN CLAYTON: Yeah.

INVESTOR ONE: -- so I love that you're going to clear up that.

CHAIRMAN CLAYTON: What we are hearing -- so a couple things we're hearing loud and clear. We're hearing that loud and clear.

INVESTOR TWO: Protection for other people.

CHAIRMAN CLAYTON: We're also hearing that, the four page or less, tailored to whether it's a broker-dealer or investment adviser and the types of services they provide. Because some broker-dealers provide more services than...
<table>
<thead>
<tr>
<th>Page 26</th>
<th>Page 27</th>
<th>Page 28</th>
<th>Page 29</th>
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<tbody>
<tr>
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<td>out a sample. People say, &quot;It's okay, it's okay.&quot;</td>
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<td>solution for them in terms of a mutual fund.</td>
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<td>INVESTOR ONE: Yeah.</td>
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<td>From our perspective they're a third-party in</td>
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<td>CHAIRMAN CLAYTON: It can get better,</td>
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<td>terms of trying to get to our end adviser.</td>
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<td>is a big step forward.</td>
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<td>educated in their product if we could have more</td>
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<td>INVESTOR ONE: Oh, yeah.</td>
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<td>clarity around rules or guidelines in terms of</td>
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<td>CHAIRMAN CLAYTON: I don't like the</td>
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<td>our ability to actually communicate some of our</td>
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<td>27-page disclosure document.</td>
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<td>best investment thoughts and ideas. Oftentimes</td>
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<td>INVESTOR ONE: Although one thing that</td>
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<td>Last night, for example, I was up late</td>
<td>16</td>
</tr>
<tr>
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<td>17</td>
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<td>17</td>
</tr>
<tr>
<td>goes wrong, you go to FINRA arbitration. If you</td>
<td>18</td>
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<td>18</td>
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<td>20</td>
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<td>21</td>
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<td>pass legal or compliance scrubbing.</td>
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<td>I think, you know, those things -- I</td>
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<td>Again, if -- and especially in light of</td>
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<td>mean, the biggest shock of my life was someone</td>
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<td>the spirit of I think educating retail investors,</td>
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<td>stole my money and I can't even sue, you know.</td>
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<td>giving them the confidence to participate in the</td>
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<td>And no one knows that. Nobody believes me that</td>
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<td>it's true when I tell them.</td>
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<td>CHAIRMAN CLAYTON: One thing that we've</td>
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<td>CHAIRMAN CLAYTON: We the SEC should do</td>
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<td>been told is that the explanation -- this kind of</td>
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<td>a video just like what I said. I mean, I'd like</td>
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<td>discussion that we're having and the explanation</td>
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<td>your reaction, just like what I said, so people</td>
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<td>that I just gave, including your remedies where</td>
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<td>can see a video. Because reading it can be hard,</td>
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<td>you can seek to address, is something we should do</td>
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<td>but seeing a video can be a lot easier. So that's</td>
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<td>what -- I went on a little bit long. Let me take</td>
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<td>INVESTOR TEN: Chairman Clayton and also</td>
<td>33</td>
<td>questions or comments from folks.</td>
<td>33</td>
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<td>the Office, thank you so much for the opportunity to</td>
<td>34</td>
<td>CHAIRMAN CLAYTON: We, the SEC should do</td>
<td>34</td>
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<tr>
<td>speak. My -- I'm a founding partner of a local</td>
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<td>a video just like what I said. I mean, I'd like</td>
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<td>investment adviser. We have hedge funds as well</td>
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<td>your reaction, just like what I said, so people</td>
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<td>as 1940 Act mutual funds, so a lot of my comments</td>
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<td>today are kind of from that perspective as a</td>
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<td>questions or comments from folks.</td>
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<td>also a component of care, where the broker-dealer is</td>
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<td>CHAIRMAN CLAYTON: We have rules that</td>
<td>41</td>
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<td>expected to understand the nature of the</td>
<td>42</td>
<td>are designed to protect investors that don't allow</td>
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<td>power of compounding savings and wealth creation,</td>
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<td>people to what I will say is overly puff their</td>
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<td>I would suggest maybe a constructive step, again,</td>
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<td>investment services. Some people say that those</td>
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<td>if we could get some more rules around what we</td>
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<td>rules actually restrict communications and</td>
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<td>actually can do to try to be helpful, it will be</td>
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<td>investor education. We're going to look at that,</td>
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<td>just more pieces to, again --</td>
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<td>but we're not tackling that as part of this. Just</td>
<td>47</td>
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8 (Pages 26 to 29)
to be very thorough, we want to get through this first
and then we're going -- then we'll go on. But what we are
hearing from these roundtables is that investor
education in the country needs to improve. People
are -- let's face it. We're much more responsible
for saving for our own retirements than we were in
the past.

INVESTOR TWO: That's right.

CHAIRMAN CLAYTON: And if you're going
to do that effectively, you have to educate the
population on starting early, the fact that --
well, turn to my colleagues. Fees, fees, fees,
the most effective way to have a better return is
to manage your fees. Understand that
you shouldn't be paying high fees for low touch
products. That's --

INVESTOR ONE: That's a great statement. I
never heard anybody say it that way.

CHAIRMAN CLAYTON: Look, let me give you
a piece of advice. If you're investing $100 a
month or $200 a month, investing $10,000, a
question that your investment professional should
be able to ask and answer -- and the good ones can
all answer this -- how much of that money is going
to work for me.

MS. SIETHOFF: And if I can just follow
on that. So all of you got this great little
document that we put out, and fees is a key part
of it that we were trying to get basic information
out there about what types of fees you're paying
and how it's going to differ if you hire an
adviser versus broker. And so one thing I'd love
to hear is -- following up on the Chairman's
comment -- when you read this, did that do the
trick for you, or did you read it and I'd be
looking for more, I'd be looking for examples how
this would impact me.

MS. GONZALEZ: And if I could follow up
on what Sarah was saying as well, is if you just
look at the first bullet, which is setting the
table between a broker and adviser, which is what
we've been talking about. If a person just says
if you open a brokerage account, you'll pay
transaction-based fee, or what we're referring to
a commission every time you buy or sell
investment. And versus if you open an adviser
account, you'll pay an ongoing asset-based fee for
services.

What do you think of seeing that as the
first bullet that you see in the brochure?

CHAIRMAN CLAYTON: I think INVESTOR 9 had a
comment. Let's go INVESTOR 9, then INVESTOR 8.

INVESTOR NINE: I think the key here is to
get the individual investor fully educated about
how investing works and so they can ask these
advisers key questions. And believe me, there's
nothing that will snap a guy faster than for the
investor to ask a few questions about what he's
doing and insisting that he explain it.

My only kind of concern about the
things I've read is that it seems like it's
putting the burden of invest -- of investor
education onto the adviser, and there's a world
of really good support organizations out there
that specialize in investor education.

And I'm with Better Investing, which is
a nonprofit organization whose mission is
investor education. And there's the American
Association of Independent Investors out there
that do the same thing. There's online sources
of unbelievable amount of information, like
Morningstar. You can get it free through your
library. There's Value Line. There's all kinds
of resources out there. And I'd like to say see
the SEC mention some of these organizations and

encourage the investors to get an education so
that they can ask those key questions of their
adviser.

MS. SIETHOFF: Yeah, so I think we would
have trouble picking out particular organizations,
but one fact that we did have links to
investor.gov here, where our Office of Investor
Education and Advocacy, which really does focus a
lot on investor education, trying to highlight
that.

INVESTOR NINE: Yeah, I went there, that's
good.

MS. SIETHOFF: Did you think that sort
of thing can be highlighted more?


MS. SIETHOFF: And the questions -- you
said one of the value is the questions.

INVESTOR NINE: It's one of the values is
the --

MS. SIETHOFF: What do you think of the
questions that were in here?

INVESTOR NINE: There were good questions,
but they're depending upon the adviser to be their
teacher and the adviser may have, you know --

CHAIRMAN CLAYTON: That's one thing
we're hearing from the industry is we're putting a
lot of educational burden on them.

INVESTOR NINE: On them.
INVESTOR FIVE: They want the money.
CHAIRMAN CLAYTON: That's the question.
INVESTOR FIVE: So put out the education.
CHAIRMAN CLAYTON: I like your idea. I said
I'd go to INVESTOR 8. We'll go INVESTOR 8. then INVESTOR 2.
INVESTOR EIGHT: So Chairman, we all think
that -- I think the fiduciary statement here is a
good thing. But I think -- I don't know what
you've been encountering in the other roundtables,
but this education thing, I think is so key,
because before you even look at this fiduciary
thing, I think you need to have some kind of basic
understanding of financial investing, the holistic
approach.
And since the burden is being put on us
to the extent, now, especially for some of our
younger investors here, I think -- I don't know
what you heard at the other roundtables, but --
CHAIRMAN CLAYTON: We've heard this loud
and clear.
INVESTOR EIGHT: -- the education is just
a key component before you even get to this. If I'm
fee-based or transaction-based, what does
that mean? Do I need to invest in some mutual
funds, or will stocks get me a better return? Or do
I need bonds? You know, all those things we've
heard. But then --
CHAIRMAN CLAYTON: So we -- I just want
to say, we've heard that everywhere we've gone. I
do some AARP telephone town halls and answer
questions from -- but what I say to the AARP
members at the beginning of that is please tell
your grandchildren about investing. Please get
them started, just to understand that if you start
at age 25, what a difference it makes versus
starting at age 45 versus starting at age 65, but
I'm sorry, INVESTOR 8. I cut you off.
INVESTOR EIGHT: And, you know, based on
my investment history over the last -- since the
mid '80s, I remember the first time I came across
something that I was not aware of was when I read
my tax return and I was buying a house and there
was something about investing $2,000 a year,
getting something back on my income taxes --
CHAIRMAN CLAYTON: A credit.
INVESTOR EIGHT: -- from the IRA. And I'm
going, okay, so if I did that, what do I do with
that $2,000, or where do I put it? And, you know,
this goes way back. And over the years I've dealt
with broker-dealers, but now I'm with an
investment adviser, the more holistic reports, and
I think it is really what most of us need.
But anyway, I had a question. I
wanted to ask this question: I was doing a
little research here, and reading that the Fifth
Circuit Court in March of this year voted two to
one to disband the fiduciary ruling. I'm
confused about that. Could you --
CHAIRMAN CLAYTON: Yeah, let me explain
that.
INVESTOR EIGHT: -- expand on that and
explain to everybody here what I read? It seems
like what you're doing here is counter to what --
CHAIRMAN CLAYTON: Well, no --
INVESTOR EIGHT: I don't understand.
CHAIRMAN CLAYTON: Let me explain. This
space -- you probably know this pretty well. This
space has a lot of regulators, so --
INVESTOR ELEVEN: You got that right.
CHAIRMAN CLAYTON: -- no less than five,
right. So your relationship with your
investment adviser -- like, let's say -- I'm just going to
say -- I don't know if you do or if you don't, but
if you have an annuity in your portfolio -- you
might. So if you have an annuity, you probably
have an insurance regulator, a state insurance
regulator, a state securities regulator, FINRA,
the SEC, and Department of Labor, all have
jurisdiction over that relationship. We haven't
done the best job of coordinating.
INVESTOR EIGHT: Or explaining.
CHAIRMAN CLAYTON: Or explaining. So
what the Department of Labor did was they said,
we're going to apply a new fiduciary standard to
broker-dealers in the retirement space, but not all
of the investment space. I'm not going to go over
the history of why it wasn't done in parallel with the
SEC or why it wasn't -- when I got to the SEC,
I said, look, we need to act as a focal point,
because of all those regulators, we probably touch
the most relationships. There's -- it's our job.
So we started down this road saying,
can we pull together a standard for
broker-dealers and investment advisers that will
act as a focal point and harmonize. And we did
look at what the Department of Labor did. We
were very much informed by that. Well, it turns
out that the Fifth Circuit said what the
Department of Labor did was unconstitutional.
They exceeded their authority. So that rule is
gone. But that didn't stop us. We're just going
to keep going. That's -- that's the story.

INVESTOR EIGHT: Who has the final word
then?

INVESTOR ONE: The Supreme Court maybe.
CHAIRMAN CLAYTON: Well, unless I do
something unconstitutional, we do. But the
idea -- no, the idea is this is a serious -- this
is a serious part of this. The idea is investors
will be better -- if we have a standard that the
other regulators think is the right way to go,
that it fulfills their regulatory needs, and we can
gravitate towards a single standard, that will
save people a lot of money, because compliance
costs will go down. And it will pass on to
investors, and it will reduce confusion.
So that's -- that's another objective
of what we're doing. And we've consulted with the
Department of Labor and state securities
regulators to try and say, you know, is this
something we can all live with as a uniform
approach.

INVESTOR EIGHT: So when I was reading
some background information, I sense just the
sincerity, the passion, to look out for what we
would call a Main Street investor. So that's what
I took from what I read about you, so I'm hoping
that can be accomplished, yeah.

CHAIRMAN CLAYTON: We'll try. We'll
try. Let me go to INVESTOR 2.

INVESTOR TWO: I just wanted to address
some pieces around the importance and balance of
education as well as just about the standards, how
they're enforced as a team. My husband and I
are a couple entering retirement, and I think
we're going to actually be able to retire. And in
the words of somebody, we are Mr. and Mrs. 401(k).
We both spent our lives working; I
always worked in health care nonprofits, my
husband worked in usually small technology firms.
No pensions, no defined benefit pensions. We
knew Social Security wasn't going to be the
answer, so very, very early on we did that.
We've been savers in 401(k)s and 403(b)s, and
we've done a good job of saving.
But now we realize we have to do
something to make sure that our savings is intact

CHAIRMAN CLAYTON: Does someone else
really important. I guess in my field I was
required to be licensed. My title had title
protection. Other professionals who did similar
things as I were not allowed to call themselves
what I call myself, and I wonder if it would help
if there could be some title protection for
investment advisers so that the standards are
very, very clear, and in order to -- to have that
designation, you know, there's very publicly
recognized hoops and things that they go through.
And then the other side of that is what
does the regulatory enforcement look like and
what does the team do in there besides lawsuits. I
guess that's my question. What is title
protection?

CHAIRMAN CLAYTON: Does someone else
want to do titling? I've been talking a lot.

MS. SIETHOFF: I mean, on titling, I
think on your point that only certain people get to
call themselves an adviser. That is part of the
proposal. To call themselves an adviser, investment
adviser or just anything with the word adviser --
so financial advisor, wealth advisor, any flavor
of an adviser -- they need to be registered as an
adviser.
INVESTOR TWO: But are all of those fiduciaries?

MS. SIETHOFF: All investment advisers are fiduciaries.

INVESTOR TWO: Investment advisers?

INVESTOR ONE: Any word adviser, yeah.

INVESTOR TWO: Adviser is fiduciary?

MS. SIETHOFF: And you can't call yourself an adviser unless you're an investment adviser, so that would tie that together.

INVESTOR THIRTEEN: You have to have a 63.

MS. SIETHOFF: And advisers normally are required under state requirements to go through certain testing. That's a state -- normally a state requirement. There are no federal requirements, and brokers have different testing. Series 64, 65 advisers and 67 --

CHAIRMAN CLAYTON: Just to be clear, our proposal is if you're going to use the term "adviser", you have to be registered as a fiduciary.

MS. SIETHOFF: As an investment adviser and all investment advisers --

INVESTOR TWO: Okay. So there is a registration; that is the regulatory part?

MS. SIETHOFF: Yes.

INVESTOR THIRTEEN: That's what I did as a living for 30 years. I was a registered investment adviser. I had series 7, series 6, series 24, 63, 65, 57, bunch of them.

INVESTOR TWO: Good to know, INVESTOR 13.

INVESTOR THIRTEEN: I'm retired. It's all past -- I gave my practice up three years ago, and I'm very glad I did by the way.

What -- I see a paradox here, because I agree with most everything you've said. I think one of the -- one of the most important assets we had in our firm, which is we had a firm here in Denver, we had about 100 good clients. We managed 25 or more million of investments, but one of the assets that we had was the fact that we considered ourselves fiduciaries, and we told everybody that we worked with that that's what we did and that their interest came ahead of ours and we exemplified that.

I see a paradox here, because I see that what -- the rules are fine. I think it's very important that anybody dealing with the public should consider themselves a fiduciary;

they should put the interest of the client ahead of their own. I know there were times that I told a client I would not make that investment for them because I knew it was not in their best interest, and that client walked away to another adviser. That didn't happen very often. I tried not to let that happen.

But -- and the key area that we've been talking about is one of education and that is extremely important, but you cannot put that whole burden on the adviser. We're at a point now when I was finally giving up my practice, I had an adviser that bought my practice that was about twice my size. He would not -- he would not entertain a client that had less than $150,000 to invest.

I can tell you other client -- other colleagues of mine in the Denver area that would not -- would not accept a new client that had less than a quarter of a million dollars, and there's a neighbor of mine who is the adviser in a firm that won't accept clients that have less than 5 million to invest.

And that's the direction that this thing is going. We're seeing ourselves getting to the point where the very best talent out there for advising the public is restricting the number of people they're going to advise, especially since we're going with most of them on a fee-based approach. And if you're on a fee-based approach, you don't want a client that's going to invest $10,000, you don't want a client that's going to put $100 a month; you can't make a living with them. Your acquisition cost will kill you.

CHAIRMAN CLAYTON: This is one of my big concerns is -- and going back to the Department of Labor rule, there were firms -- I want to go back to two things. There were firms implementing the Department of Labor rule, and as a result, they were raising their minimums.

INVESTOR THIRTEEN: Yeah. Oh, boy.

CHAIRMAN CLAYTON: And that's a problem, because you know, the people who often need investment advice most are the people who are starting out and are below --

INVESTOR THIRTEEN: Absolutely.

CHAIRMAN CLAYTON: -- 200,000, much yet 5 million. And so we can't -- to your point, we can't make -- we can't make every investment
professional have to provide a class for every 
client in investing. I'm hoping that what we're 
requiring them to do, which is give them a class 
in how they get compensated and be transparent 
about that, is something that can be done 
relatively inexpensively and have a big benefit. 

It's kind of like starting with you 
have to have -- you have to have this fiduciary 
obligation, and you as my client need to know how 
I'm getting paid and that I've gone through 
procedures to make sure that what I'm 
recommending is appropriate for you. We would 
have thought that was already all there. 

Probably the way you operated, but we need to do 
that. 

I want to go back to something that 
INVESTOR 2 said, which is something we're really 
trying to address. A lot of times you'll have 
your 401(k), your 403(b), and then you come to 
the end of your working life. And in that 401(k) 
or 403(b), there's already a fiduciary there 
who's kind of selecting the portfolio of 
investments that are available, you know, you can 
choose from these. And then you're done and it 
gets into a self-directed IRA.

INVESTOR TWO: Correct. 
CHAIRMAN CLAYTON: And you go, that is a 
point where Secretary Acosta at the Department of 
Labor has said that was key for us at Labor when 
they wrote their rule, and we're looking at it -- 
I don't know if you guys want to comment, but that 
is a point where we see a lot of problems, and we 
want to make sure that that is addressed. So that 
when you roll over your 401(k) and you choose an 
investment adviser or a broker-dealer, that --

INVESTOR TWO: It's like a whole new 
world. 

CHAIRMAN CLAYTON: It's a whole new 
world. 

INVESTOR TWO: Yeah. 

MS. GONZALEZ: And our examiners have 
focused on that, the point of the rollover where 
the conversation is going on. They've spoken 
publicly about it and made it an exam priority in 
the last few years; we've been involved in 
discussions with the examiners about that. So it 
is an important point for us as well as the 
Department of Labor. 
And if I could just make one point. 
We've spoken a little bit about Enforcement.

questions. So just to clarify then, the best 
interest rule would cover the clients' total 
portfolio and all of their different types of 
accounts; that is their personal portfolio, their 
qualified plans such as 401(k), their -- their 
nonqualified retirement assets, right, such as 
IRAs --

CHAIRMAN CLAYTON: If they're at the 
broker-dealer. 

INVESTOR ELEVEN: -- IRA rollovers -- if 
they're at a broker-dealer. Similarly, if they're 
with an investment adviser, it would cover all of 
those same registrations, correct? 

MS. SIETHOFF: Yeah. 

MS. GONZALEZ: The regulation best 
interest is about the broker-dealer account 
relationship that broker-dealer has with a 
retail customer investing -- the way it's been 
proposed is for personal or household purposes, 
and there's a discussion about whether that should 
actually just say retail investor as opposed to a 
qualifier. There's a history to why that 
qualifier is there. It's really about the 
broker-dealer relationship. 
Having said that, my colleagues in IM,
Investment Management, who deal with investment advisers have also proposed -- the Commission has proposed a rule to improve the quality and clarify the quality of advice that investment advisers provide, so the two things will go hand in hand.

MS. SIETHOFF: Yeah, so we proposed -- the fiduciary duty of investment advisers has been around for a long time --

INVESTOR ELEVEN: Right.

MS. SIETHOFF: -- but the Commission has never really set forth one statement of what they believe your fiduciary duty requires, so that was something we put out at the same time. That does things like clarify for rollovers, that of course is covered by your fiduciary duty if you're an adviser advising on that. And it clarifies that diligence you need to do covers holistically what the investment adviser is advising on.

Of course if they manage a certain portion separately -- I think this is true across the board, and I mean, a client can always say I want to do these myself, and I'm not -- and that's outside of where I'm seeking advice, and I want advice from you on all of this. So, you know, it covers what the client agrees it will cover.

CHAIRMAN CLAYTON: But to INVESTOR 11's question, what we want to do is have it cover those accounts at the broker-dealer so that there can be regulatory harmony --

INVESTOR ELEVEN: Yep.

CHAIRMAN CLAYTON: -- and it will -- hopefully the Department of Labor will say, yes, that's -- we're going to follow the SEC's lead.

INVESTOR ELEVEN: Right. And really, you know, unify the experience.

CHAIRMAN CLAYTON: And unify, yeah.

MS. SIETHOFF: Yeah, the heart of the proposal is meant to be at the time advice is given, the standard is the same, whether you're in a brokerage or an advisory account. For a brokerage it's transactional. So once they give the recommendation, it's over until they give another one. Whereas advisory is ongoing, so the duration of that duty, if you will, is longer. But we intend that when they're giving advice, they're held to the exact same best interest standard.

INVESTOR ELEVEN: Now, let's say I'm a registered investment adviser and I'm advising a 401(k) plan sponsor on all the assets in their 401(k) plan. And I'm also advising the plan participants. Do I fall under the best interest rule for --

CHAIRMAN CLAYTON: I think if you're an investment --

MS. SIETHOFF: If you're investment adviser, or if you're a fiduciary --

CHAIRMAN CLAYTON: If you're an investment adviser, you have the same fiduciary duty.

INVESTOR ELEVEN: The same.

CHAIRMAN CLAYTON: Yeah.

INVESTOR ELEVEN: Yeah. Okay.

CHAIRMAN CLAYTON: I think INVESTOR 12 was next and then INVESTOR 6.

INVESTOR TWELVE: Thank you, Mr. Chairman. I wanted to follow up on INVESTOR 9's comments. Those of us here from the Rocky Mountain Chapter of Better Investing, INVESTOR 5 and [Non-speaking investor] and INVESTOR 9 and myself, we're really on the front lines of the education that everybody's talking about.

We have partnered with a local Federal NC3 organization called the Colorado Free University, and we do a series of classes for them in the spring -- well, actually in January and February and also in the fall, repeat the same classes. And the first ones are basically an introduction to investing.

So we see everybody. That's what we're talking about here. We see the people who are rolling over their 401(k)s, or they are looking for understanding of what's going on in all these things. I mean, we have to start with what is a stock? I mean, that's how basic we're talking about the education having to be.

So, you know, I don't know how we integrate or partner with the SEC on this, but I mean, it's not just, you know, one of these pieces of paper, somebody comes in and says, okay, we are held to a fiduciary standard. Well, what is that? I mean, there's -- and I have specific comments on a lot of this stuff that I'm happy to go through with you, whoever, but, you know, it's really much more basic than I think we're addressing here is the problem.

And then shifting over then from my educational role to my lawyer hat, I'm an SEC alum, so years ago I spent some -- I spent about five years in the brokerage business as a general
Page 54

counsel and I practiced securities law and about
20 years ago, I guess, I started specializing in
investment fraud. So I hear a lot of stories and
have represented a lot of people and have a
pretty good track record on all that, but I have
two concerns.

First of all, you know, how many of us
when we go on to a website and there's a privacy
disclosure and you have to check the box that I
agree to all these conditions; how many people
read that? Nobody, right?

CHAIRMAN CLAYTON: Nobody.

INVESTOR TWELVE: Right. So why do you think
that this is going to be any different?

CHAIRMAN CLAYTON: Well, let me say
this. I hope it's a step in the right direction.

INVESTOR TWELVE: Agreed. But I just don't
know, you know, unless there's something --

CHAIRMAN CLAYTON: Right now it's -- I
mean, you go online and you look at -- I've done
this. I've looked at the various agreements you
enter with, and they go on forever. You know. And
what we're trying to do is enforce it so -- I mean,
on this, you know, the key stuff -- is right up
front. How are you getting paid?

Page 55

And the fact that you guys go
through -- I always say 27 pages, because that's
kind of on all the forms -- the fact that you have
to go through 27 pages to find out how somebody's
getting paid, that we can fix. And I want to fix
that.

INVESTOR TWELVE: Yeah. No, I agree. I think
it's a good start. Again, I do have specific
comments on it. But just putting -- again, putting
on my hat as an investment fraud lawyer, if I'm
representing a client who signed one of these
tings, I'm concerned that this is going to be a
defense document.

INVESTOR THIRTEEN: What did she say?

CHAIRMAN CLAYTON: She's concerned this
is a defense document.

INVESTOR TWELVE: In other words, if the client has signed it, saying "I didn't know all this
stuff" --

CHAIRMAN CLAYTON: INVESTOR I was talking
about the defense documents we have today. I can
tell you that we sat with Enforcement, and we sat
with Inspections, and what we want this to be is a
clarity of relationship document, not a -- not a,
you know, caveat document.

Page 56

I mean, let's be clear. What we want
is if you're -- if you don't tell us how you're
getting paid in this document and you're getting
paid some other way, that's a problem. That's
not a defense document; that is an offense
document, right? Right here you said I'm getting
a commission and I'm not getting paid any other
way and somebody's kicking money back to you, I
think that -- I think that is pretty powerful
evidence.

INVESTOR TWELVE: You know, on cases I've
handled, that's not really been the problem. I
mean, I think that back in the '80s that when
there were sponsors or the stock of the day that
were being pushed by brokers, that was a problem.
But today, that's not necessarily the problems
that we're seeing.

But, you know, the other thing I have
to say is if you're going to have a dishonest
broker or a dishonest adviser, in my experience
there's not a lot you can do about it.

MS. SIETHOFF: And INVESTOR 12, if I can add
one thing, though, I think there is a point about
your -- they're going to point to this and say I
disclosed it, that we are trying to address

through this rulemaking. So both on the
regulation best interest where that care
obligation, that is there regardless of what they
disclose. They have to act in the best interest, and
disclosure's not a defense.

INVESTOR TWELVE: Right.

MS. SIETHOFF: And similarly on the
adviser side, I know we've definitely heard over
the years, I disclosed it, and you can disclose
away your fiduciary duty, and that's one of the
things we tried to clarify in the fiduciary
interpretation we put out is again, you have a
separate obligation to act in the best interest.
You do have to disclose your conflicts, but that
is not a cure. They can't point and say I
disclosed on page 57 I had this conflict and so
you can't bring a case. That's meant to clarify
you have a flat obligation.

INVESTOR TWELVE: No, I understand. It's just
that if somebody is going to say, well, I wasn't
told this or I didn't understand it, then I think
it's a difficult -- it makes it harder to
overcome.

CHAIRMAN CLAYTON: One of the reasons
for the page limit, though, is it's hard to bury

15 (Pages 54 to 57)
you know, where you talk about the term "fiduciary" and then you're talking about "best interest," and we're using two different terms for what I'm hearing you guys say is very similar, if not identical concepts.

And so it's kind of a two-fold question. First is what is the difference, if there is, and second is, why use two different terms?

Because I find this industry is just bombarded with these terms, and I think that's part of the problem with investors is if there was just one terminology that people can just rely on and this is it, it would make things a lot simpler versus, you know, having to be a compliance expert or a regulator or -- and I hate to say even people in the industry don't even know the terms.

And that sort of leads to my observation about education. So I'm in compliance.

I'm part of the mass unloved. And I -- I find that even in conversing with people in the industry who are investment advisers -- I spoke to an individual just the other day who has over a million followers, he's very well-known, has his own TV show, and I was helping him sort of find a compliance consultant. And he made an observation to me that I felt very -- I thought was very odd. I had said, so would you ever want to start a private fund? And he goes no, no, we wouldn't do that, we're a fee-only adviser. And I said -- exactly. That's the face I made on the other end of the phone call. And I think that's the problem, right? The -- there's so much in the investing space --

CHAIRMAN CLAYTON: Well, this is what's happened. People have confused the model, the relationship model with the term, and what we're trying to do is clarify that there is a different type of relationship with a financial advisor and a broker-dealer, and one of our clear objectives is to make sure people understand that distinction, that they're compensated differently and that the role is different.

And that's why -- that's why we could have called this a fiduciary duty for broker-dealer. We could have called it broker-dealer fiduciary duty and said it's the
**Page 62**

same as investment adviser fiduciary duty, because it's the same words. But as Sarah said, it's not the same relationship, so it doesn't have the same effect. And we -- and we need to make that clear. It has not been clear.

And to add to that, all these other regulators with their own views, that's -- but we need to make that -- and that's what we're trying to do. We're going to make a video. We're going to have a disclosure. We're going to pick terms for it. You're not going to be able to call yourself an adviser if you're a broker-dealer, unless you're acting as an adviser. You know, we're going to make it clear. We're going to try to bring clarity to this, because it's -- obviously it needs it.

**INVESTOR SIX:** Yeah, and I guess like, to my observation point about the education, I didn't get to touch on it, but I think the story that I told about the investment adviser who thought having a private fund would somehow make him no longer a fiduciary, I think that when you push education onto the investment adviser, you risk -- especially when I think about the way as an investment relationship develops is you go, in

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**Page 63**

right, and you say, hey, tell me more about your firm. And they sit down and they might talk you through some of their Investment Management agreements, they might even talk you through the CRS Form, but I know like when I even sign my mortgage, the guy was so unprofessional. He just kind of skated through the terms, and when I asked him to identify, he told me completely incorrect things.

And it was only because I knew better that I knew it was incorrect, but these are people who know nothing, and they don't understand. And if the first line of defense is merely a document or relying on someone to, you know, to do right, I think --

**CHAIRMAN CLAYTON:** So another general theme that people should understand is if you're not dealing with a registered broker-dealer or a registered investment adviser, the likelihood that you are at risk goes up astronomically. Another general theme that we are trying to get out there.

The cases -- we do over 500 cases a year, you know, of bad actors. The likelihood that somebody is a bad actor when they're not registered just goes way up and the behavior is bad. But also going to remedies. You know, what good -- to INVESTOR 12's point, what good is a standard if somebody's just going to rip you off.

One of the things that we're asking about is how much capital do people have. If you do get ripped off, are there any assets there to go after. It's an -- it should be an important consideration for somebody in selecting an investment adviser.

**INVESTOR ONE:** That's huge. REDACTED had like 300,000, and they only had enough insurance to pay their defense costs. And they do that on purpose, because if you have high -- you know, so then most of the contingency attorneys wouldn't take the cases, because there's no insurance to pay.

**CHAIRMAN CLAYTON:** Yeah. INVESTOR 3, I know you wanted to go.

**INVESTOR THREE:** Yeah, thank you. I feel like I'm speaking as a sandwich person, even though I'm in my late 60s. My older sister who -- I'm the only one in my family who went to college and that doesn't qualify me for financial investment. I

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**Page 64**

was in biomedical sciences, so -- and -- and my sister's still working, she's pushing 70. She's been a hairdresser, it's been hard to save, she didn't really have any retirement savings until my dad died and we sold the farm and she was able to have some money.

And the reason she's still working is because she can put away part of her Social Security now to add to her financial -- meager financial security.

My daughter works in the National Park Service, at least for now, until we destroy our parks, but she's pushing 40. She has money to invest, but to INVESTOR 13's earlier point, it's really hard to find anyone, other than maybe a brokerage, that would take her money, and she doesn't want to do that. She doesn't trust them.

My experience over some 40 years has been that I had two firms that were good and it turns out I learned too late in life that they were advisory firms, and three that absolutely weren't.

So my impression of a fiduciary relationship is number one, the definition's fuzzy.
Number two, firms will go to the bare minimum to meet that relationship. So if you come in and say, I'm saving up this money for my retirement, well, they'll say to you, is it sufficient to you to earn 5 percent a year or 6 percent a year or just trending with the market, and if you say yes, that's all they're going to give you, if you're lucky.

The last firm I fired it was because I had supposedly a vanilla account that would get me that 5 percent, and it kept losing it as the market was coming back up. And when I finally confronted them, it's like, well, we're not paid to manage your account. Sell your house and go back to work; you'll be fine. So of course I changed firms.

But you shouldn't have to have that experience as a senior, you know, number one, and so, you know, the educational folks that are here today, I never heard of them before. As a retiree, I'd have time to come learn from you, but I was working 80 to 100 hours a week when I was working, and there is no time to go to a class.

And my daughter isn't going to have time to come to a class.

So please put something on social media. If they can find on YouTube, they will look.

And right now, I mean, you know, she's trying to hold onto that money, but where is she going to invest it to INVESTOR 13's point. You know, we've tried to pass Colorado Secure Savings here. She has a lot more than that minimum and can't put it in.

But I guess as a question to you, what are you going to do to really describe this fiduciary relationship and keep it out of the basement possibility. I look at a holistic approach as it includes your healthcare costs, it includes long-term care savings. Those may be what you're paying for out of your investments. I've had one adviser in over 40 years talk to me about that, and it's because I brought it up.

And right now even with all I've done, given the money I lost at brokerage firms is I only have $100,000 to meet medical costs in the future. So if they take away my Medicare and they cut my Social Security, I'm homeless, I'm done. And what am I going to do with all that savings.

So please protect it. I thank you for holding these types of meetings so that we can, you know, ask our questions and --

CHAIRMAN CLAYTON: No, and look, I am going to put out a summary of the -- of these meetings, and it's not going to include -- it's going to include more than just this rule. It's going to include things like education, things like the importance of a baseline of Medicare and Social Security, that this is what we think.

INVESTOR THREE: And just one question to clarify, my daughter being a U.S. government service employee. I know she has a 401(k) through her agency.

Are they going to be held to the same standards you're talking about in this proposal, the advisers that are within the government agencies?

CHAIRMAN CLAYTON: I'm going to -- my lawyers can correct me here if I'm wrong, but they are already held to the investment advisers' standard and are as part of the 401(k). That's why --

INVESTOR THREE: Okay. That would be good for her to know.
CHAIRMAN CLAYTON: Well, I'm -- I'm that are qualified, they've done what we just that's my own view. Different people have type of person, I don't believe all my money should be indexed, all my investments. But I do believe that indexing is appropriate for a fair amount of people's investments, generally. But it's -- I think it's most appropriate for people getting started.

And my -- my advice to young people is to pick a few funds, put money away monthly, don't look at it, don't borrow against it. Just keep putting it away to get started so that you can get to a level of investment where you can start to think about other things. That's my -- that's my own view. Different people have different views, but the earlier you start -- and the reason I say that is it's relatively easy and inexpensive to do that.

INVESTOR THIRTEEN: I don't know how you're going to do it, but I think the answer is that we've got to expand the number of advisers. There's got to be some inducement to bring a lot more people into this industry and bring qualified people into this industry. And I'm not sure exactly what the motivation will be to bring them in, but that's what you need to do. Because -- because right now the ones that are good, ones that are qualified, they've done what we just talked about. They've limited the number of clients they're going to have.

If you're going to be a good, solid financial planner and registered investment adviser, you're not just looking at their investments, you're looking at their kids' educational needs, you're looking at their long-term care. You're looking at so many other things.

You're looking at whether they have a will, whether they have a buy-sell agreement on their business. You're looking at the whole financial picture of that individual.

And if you're doing that, how many clients can you do that for? You've got to have more people doing that. And I'm not exactly sure what the inducement will be to bring those people into the industry, but that's where -- that's one of the solutions, I think.

CHAIRMAN CLAYTON: Yeah, INVESTOR 4?

INVESTOR FOUR: So I'm an individual investor with several different brokerage accounts, all self-directed because of some stories that -- I had some things happen to me back in the '80s you've heard about around the table. So I kind of, I guess all of that doesn't add up to the point we've heard from many here to really qualify to be of interest to some of these investment advisers. So I'm kind of focusing on the broker-dealer category here.

And I look at, when I see, our obligations to you, we must act in your best interest, what does that mean? What is the definition of that?

CHAIRMAN CLAYTON: Yeah, let me say the definition of that encompasses what I talked about. It's the fiduciary obligation not to put your interests ahead of the clients', and it's the care obligation to have a series of policies and procedures such that you are exercising care in the recommendations you're making. You know the product -- you know the product you're recommending, you know its attributes, and you've made an assessment about whether it is appropriate for INVESTOR 4. That's what it means.

MS. SIETHOFF: OK. I didn't see that in here.

MS. SIETHOFF: And if I can add a little bit on that. I think some of this is, it's going to be defined the way the advisers act in your best interest over time, which is -- it's a principal standard. That gets developed through individual cases, looking over time, of "That was not acting in that person's best interest."

And that -- there was no definition up front, and I actually wouldn't want one on the advisers fiduciary duty, because you would end up with people trying to line up just outside of that line. I think it's a good obligation that they have to act in the best interest. At least on the advisers who are fiduciaries, we've found that that's held people, in all sorts of cases, to a lot of high standards, over time. So I think our hope is that happens on the brokers' side as well.

INVESTOR FOUR: So the best interest standard will evolve?

MS. SIETHOFF: It's got to. It's got to be applied to facts and circumstances. You can't anticipate --

INVESTOR FOUR: So it doesn't really exist.
now, but it will evolve over time?

MS. SIETHOFF: It will evolve over time.

That's why --

CHAIRMAN CLAYTON: No, but it hasn't --

INVESTOR FOUR: That's a little different than what I just heard.

MS. SIETHOFF: No, it's evolving over time from a high standard, right. It's not been articulated in the past that they have to act in the best interest.

MS. GONZALEZ: We don't have a rule in our rulebook that said the broker-dealer must act in the customer's best interest, so there will be a rule if this is adopted by the Commission that says that.

And there's three components to that rule -- we talked about that; one of them is you have to give competent advice, what is the care obligation.

The other thing that's really important is the broker is going to have to manage, mitigate its conflicts, so that recommendation is not tainted by the broker's financial incentive. Because everybody gets paid for advice.

Broker or adviser, they're getting paid one way or another. The key is that that payment should not taint the advice that has been given to you or anybody else around you. We've heard how those payments have tainted that advice, so that's a key component that we think would really be a big step forward in improving the quality of the relationship and the quality of advice that you get from a broker-dealer. And we do want to maintain the broker-dealer model because it's often cheapest for a lot of people.

The broker-dealer numbers have shrunk. In the time I've been working on these issues, they've shrunk dramatically. Competition, having more numbers, having more competition, that's actually good.

INVESTOR THIRTEEN: You bet.

INVESTOR FOUR: So I just want to follow up on that. When you say the broker-dealer numbers have shrunk, the numbers of the actual brokers or the ratio, the percentage of broker-dealer.

MS. GONZALEZ: The numbers of actual broker-dealers.

When I started working, there was a key step that we took in 2011. There were around 5500 broker-dealers at that point. Right now I think the numbers are under 3300 or so. So they're shrinking.

They're going away with the dodo bird, but we want to maintain that competition, and we want people who need, you know, smaller savers that we've talked about here, we want them to be able to receive advice. They need to be able to receive advice, as well as others who have more money.

MS. SIETHOFF: We want them to get advice, but we want it to be high quality advice.

If that's the best way, shrink the transactions, but raise the standard.

CHAIRMAN CLAYTON: Let me see where we are here. Now, we're at the -- at the end of our time, but is there anybody who wanted to say something and didn't get the opportunity to say it?

INVESTOR FOURTEEN: As an observer?

CHAIRMAN CLAYTON: Sure.

INVESTOR FOURTEEN: You asked the question about the word in the beginning, transaction-based fee versus asset-based fee. I think it's misleading on the investment adviser side saying asset-based fee, because not all RIAs are asset-based.

They could be hourly, they could be retainer, they could be flat fixed, so I think that's misleading.

CHAIRMAN CLAYTON: Let me respond. I -- there's a misconception that this form is the form. This is a sample.

INVESTOR FOURTEEN: Yes.

CHAIRMAN CLAYTON: So if you're an RIA that's hourly based, it would say I get paid by the hour.

INVESTOR FOURTEEN: I see what you mean. Very good.

Back to that then for clarification -- I appreciate that -- you want to talk about costs right up front.

I think the word asset-based is misleading, and that could be different depending on the adviser.

But the fact that the industry historically has used fee only, fee-based, how do you bridge the gap of the dually registered adviser that distinguishes them from the broker relationship that they have to the investment adviser relationship that they have?
CHAIRMAN CLAYTON: So the reason this is
a template and example is because there are these
different types of relationships. And so if you
have somebody that has -- is a dual-hatted person
and dual-hatted means they're an investment adviser
and broker-dealer. They're going to have to say,
you know, my investment advisory services are
based on the assets you have, and it's a percentage of those paid, whether it's monthly or quarterly.
In addition, when I provide brokerage
services to you, you will pay a commission, or
you won't because it's a wrap fee account. But
they have to make it clear when they're getting paid.
INVESTOR ELEVEN: And then can those hybrid
advisers retain the title "adviser"?
CHAIRMAN CLAYTON: That -- they're going
to have to disclose when I'm acting as your
investment adviser, you know, it's here and if
I'm acting as your broker-dealer, I'm going to tell you.

MS. SIETHOFF: So they can still call
themselves an adviser, but for example, there's a lot of firms that are dually registered. That
doesn't mean the person providing you advice is
dually registered.

So if that person is only

registered as broker, that person can't call
themselves an adviser.
INVESTOR ELEVEN: Right.

MS. SIETHOFF: So it does go down to
that level. And then part of regulation best
interest also requires that when there is that
dual capacity, they have to be clear with you the
capacity that they're acting when they make those
recommendations, so you -- that should help
alleviate that confusion, I have both types of
accounts, how am I supposed to know. They would
have to disclose that.

INVESTOR FOURTEEN: Thank you.

INVESTOR ONE: You know, have you guys ever
thought of trying to make this subject more fun?
I mean, if you think about it, if the SEC did
something like the difference between investment
adviser and a broker is a one-night stand or a
girlfriend, or an unlicensed broker is the same as
an unlicensed contractor. And then what if you
guys did something like Doritos does, where they
have a Super Bowl contest for the best commercial
and everybody around the country could submit
commercials on the best between an investment
adviser or broker, everybody would have fun doing

Page 79

Page 80

it, and then -- this chart is great, but I look at
it and my eyes glaze over, and I've been screwed
out of two and a half million.

What if you did like a flowchart and
you started, instead of how are they getting
paid, what do you want? Like, when you buy a
car, what options do you want? And you follow
the flowchart, if you want these options --

CHAIRMAN CLAYTON: How do you choose?
How do you choose, correct?

INVESTOR ONE: Well, you say, do you want
someone to hold your hand, do you want to be able
to call this person anytime and ask questions, do
you want this -- and then you follow it down.
Well, then yes, the best person for you is an
investment adviser.

This is how they get paid.
If you're not comfortable, go back to step 3.
And then you could say if you're
completely lost, call Better Investing or -- you
know, but it seems like the subject is so dull
and so -- it has so much potential to be fun,
because it's the most important thing besides
family in people's lives, and it's just -- you
know, if you had one department and just -- you

Page 78

Page 81

know, and to INVESTOR 13's point about not enough
advisers, it seems to me that every time the
markets are scared about anything, some
entrepreneurial company steps in and picks up
that void and takes care of the problem. I mean,
that's what this whole country is about.
And so as far as poor people not being
able to get advice, you know, there's already
some technology firms who are stepping in and
trying to solve that problem, and they're not the
best, and they're not the greatest, but they're
perfecting it. And I think if more people knew
about that -- and they offer online classes for
free. There's one specific just for women. You
know, it -- I think we just got to bring it up to date.

CHAIRMAN CLAYTON: You -- we do not want
to get in the way of innovations --

INVESTOR ONE: Yeah.

CHAIRMAN CLAYTON: -- because, you know,
the people who we want to start investing are in
their 20s and 30s and --

INVESTOR ONE: And that's the people it
will help, because they're all on their tablets.

CHAIRMAN CLAYTON: And they're in an
online world.
INVESTOR THREE: Speaking of online, do you have a place if we want to make any further comments or submit questions on this?

MS. SIETHOFF: So that's a perfect entree. All of you have in front of you called a feedback flyer, a little one-pager. So this is to get feedback on that whole relationship summary that we've been talking about, ideas like this is boring can be something you can put, and we've got lots of comments --

INVESTOR ONE: It just seems there's so much potential to make it fun at no cost.

MS. SIETHOFF: We understand. This is what happens when lawyers create things.

INVESTOR ONE: Exactly.

MS. SIETHOFF: We would love to have something there, so suggestions on that are welcome. There are multiple ways you can fill it out; hand it to someone, you can go to the website, fill it out electronically, click the submit button, it goes right in. We would love to get your feedback on that. You also will be getting a separate little one-page feedback flyer for our investment experience disclosure in here. We're trying to relook at the disclosures you get for funds and also make those, which some would say are boring as well, a little more investor friendly.

Again, this is what a lot of retail investors invest in, mutual funds, ETFs, how can we make that more investment friendly disclosures. So please, we encourage you to take the time to fill out each of those.

INVESTOR EIGHT: So at the bottom of this it is www.sec.gov/tellus, that's where we --

MS. SIETHOFF: Yes, that is a separate website we set up. It has links to both of those feedback flyers; you can fill it out online, click a button, and you're done. And you can use -- there's a little QR code if you want to do it on your phone, go for it.

INVESTOR ONE: And which one of your departments does it go to?

MS. SIETHOFF: It goes to each of Investment Management and Trading and Markets.

MS. GONZALEZ: We'll read what you submit. Everything gets read.

CHAIRMAN CLAYTON: Yeah, I just want to say thanks again. Remember the key question, how much of my money is going to work for me.