



Wells Fargo & Company
420 Montgomery Street
San Francisco, California
wellsfargo.com

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Via e-mail: rule-comments@sec.gov

Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Comments on Standards of Conduct for
Investment Advisers and Broker-Dealers
File Numbers S7-07-18, S7-08-18 and S7-09-18**

Dear Mr. Fields:

Wells Fargo & Co. (“Wells Fargo”) commends the Securities and Exchange Commission (“SEC” or “Commission”) for proposing a package of rule proposals concerning standards of conduct applicable to the provision of personalized investment advice to retail investors (individually “Proposal” and collectively the “Proposals”). We have long argued the SEC is in the best position to establish advice quality standards for retail investors and believe these Proposals are important and positive steps towards ensuring people who turn to financial professionals for investment advice have their interests placed first. We hope our comments assist the Commission in developing a workable standard that provides meaningful protections for retail investors.

Who We Are and Whom We Serve

Wells Fargo serves 70 million customers or one in every three American households. Wells Fargo works closely with individuals and families of varying means – from those just beginning their investing journey to those living in retirement – to understand their financial needs and help them develop plans to realize their financial goals, whether it be sending a child to college, buying a house or preparing for retirement.

Moreover, Wells Fargo’s position as a leading provider of investment solutions to millions of retail investors places us in a unique position to provide insight into how financial regulation may impact the ability of ordinary Americans to save and invest. We intend to bring this perspective to our comments and act as a collaborative partner with the Commission on this important initiative.

We Continue to Support a Best Interest Standard of Conduct for Retail Investors

Retail investors deserve a best interest standard of conduct when receiving personalized investment advice. We have been consistent on this point in our comments to the SEC¹ and the Department of Labor (“DOL”), concerning its definition of the term “fiduciary” and related exemptions (collectively, the “Fiduciary Rule”), since 2010.²

In fact, we recommended in our last correspondence that the SEC formulate a best interest standard of conduct applicable to broker-dealers based on the Fiduciary Rule's Impartial Conduct Standards.³ This approach gives retail investors the "clarity and consistency" the Commission seeks to provide investors.⁴ We are heartened to see the SEC's Proposals include many of the essential disclosure and risk mitigation elements of the Fiduciary Rule's Impartial Conduct Standards while being more specifically tailored to the broker-dealer business model.

The SEC is Best Positioned to Promulgate a Strong and Workable Best Interest Standard of Conduct for Retail Investors

We have also consistently maintained that the SEC is best positioned to formulate a best interest standard of conduct.⁵ This is due to the breadth of the SEC's experience in protecting retail investors and maintaining fair, orderly, and efficient markets, as well as its responsibility for overseeing both broker-dealers and registered investment advisers together with its regulatory supervision of the Financial Industry Regulatory Authority ("FINRA"). Moreover, the SEC has jurisdiction over both retail investor retirement and non-retirement accounts, placing it in the best position of any regulator to promulgate best interest standards that can be uniformly applied across entire client relationships. Congress was aware of the SEC's unique role when it asked the SEC to study and consider rulemaking regarding the obligations of broker-dealers and registered investment advisers in Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁶

It is more important than ever that the SEC move forward to establish a best interest standard that ensures retail investors' interests are always put first, while also preserving access to the financial information and advice retail investors need to achieve their financial goals. Recent experience with the Fiduciary Rule shows that when financial services providers are faced with unclear rules with the potential for severe consequences, they will mitigate their risks by limiting retail investors' access to products and advice or otherwise altering their business models.

Unfortunately, the consequence of such a response is that it harms retail investors who may no longer have access to a financial professional. Studies show that Americans working with an investment professional generally save more,⁷ enjoy greater investment returns,⁸ and have greater wealth at retirement than those who do not.⁹ Investment professionals add significant value in helping clients understand their goals, develop financial strategies to achieve those goals and, importantly, to adhere to those strategies during times of uncertainty.¹⁰

Consequently, it is imperative the Commission continue to assert its leadership in establishing standards of conduct for all investment professionals and to move forward in carefully crafting regulations that not only improve advice quality but also retain access to advice or service models that have historically benefited retail investors.

The SEC's Proposals Are a Positive Step Forward but Additional Work is Needed

The SEC's proposal for a principles-based best interest standard of care that preserves access and choice for investors is an important and positive milestone for establishing enhanced

investor protections for retail investors. Furthermore, it is generally consistent with both the Fiduciary Rule principles and our previous recommendations regarding the appropriate standards of conduct for broker-dealers. However, we believe certain modifications and improvements to the best interest framework set forth in the Proposals are necessary. Most significantly, we think retail investors would be well served by the SEC going further in providing clarity around the meaning of the proposed standard.

We have set forth our specific recommendations for improving the Proposals, as follows:

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SPECIFIC RECOMMENDATIONS

I. Proposed Regulation Best Interest Needs Greater Clarity To Ensure Retail Investors Receive Intended Protections

It has long been our position that financial professionals, whether working in a broker-dealer or investment adviser capacity, should be required to act in their client's best interest. We commend the SEC for publishing Regulation Best Interest that, if adopted, would establish a principles-based best interest standard of care for broker-dealers when making investment recommendations to retail investors. However, the corollary to a principles-based standard of conduct regulation is providing sufficient regulatory guidance to ensure retail investors consistently receive the intended investor protection benefits. Moreover, this will permit broker-dealers and investment advisers to structure their services based on SEC guidance instead of being determined by litigation or arbitration or the fear of such actions. Consequently, our comments below focus on those areas of Regulation Best Interest that would benefit from greater clarity and regulatory guidance.

a. We Recommend Best Interest Be Defined Consistent With The Department Of Labor's Impartial Conduct Standards.

In Regulation Best Interest, what constitutes acting in a retail investor's best interest when making investment recommendations is not specifically defined but determined by the application of a principles-based facts and circumstances evaluation. While Regulation Best Interest does state the best interest obligation is satisfied by meeting the enumerated disclosure obligation, ("Disclosure Obligation"),¹¹ care obligation ("Care Obligation"),¹² and conflict of interest obligations ("Conflict of Interest Obligations"),¹³ we believe each such obligation contains ambiguities that will permit widely-varying interpretations of what constitutes acting in a client's best interest. We therefore recommend the SEC provide additional clarity in determining whether an investment recommendation is in a retail investor's best interest.

We would start by amending the definition of "best interest" in a manner similar to the DOL's Impartial Conduct Standards. Specifically, as follows:

Proposed Best Interest Standard: Investment recommendations must be in the best interest of the retail customer without placing the financial or other interests of the broker-dealer or the associated person ahead of those of the client. When making a recommendation in the best interest of the retail customer a broker-dealer must consider the investor's investment profile as well as product- or strategy-related factors in addition to cost. Product- or strategy-related factors include the product or strategy's investment objectives, characteristics (including any special or unusual features), liquidity, risks and potential benefits, volatility and likely performance in a variety of market and economic conditions.

Defining the term "best interest" in this manner provides a clear professional and objective standard to evaluate whether investment recommendations to retail investors are in the best interest of the retail investor. It also begins to provide additional clarity for firms to develop

their service models, policies and procedures. Furthermore, the above language integrates DOL guidance for acting in a client's best interest in two respects. First, that "[a] responsible plan fiduciary should not consider any one factor, including the fees or compensation to be paid to the service provider, to the exclusion of other factors"¹⁴ when making an investment recommendation. Secondly, that a best interest standard "does not impose an unattainable obligation to somehow identify the single "best" investment."¹⁵ This is a point the SEC alludes to when it states in the Proposal's preamble that "a broker-dealer would not be required to analyze all possible securities, other products or investment strategies to find the single "best" security or investment strategy for the retail customer."¹⁶ However, it is important that the SEC is clear there is no single "best" investment recommendation for a particular customer. Rather the broker-dealer's obligation is to adhere to a professional standard of conduct when formulating investment recommendations. This greater clarity coupled with our recommendations below should result in a more consistent understanding and application of best interest principles to retail investor transactions.

b. We Recommend The SEC Reconsider Or Provide Additional Guidance on How To Determine Whether A Recommendation Violates The Standard Of Care.

The SEC states that "a broker-dealer would violate proposed Regulation Best Interest's Care Obligation and Conflict of Interest Obligations, if any recommendation was *predominantly motivated* by the broker-dealer's self-interest (e.g., self-enrichment, self-dealing, or self-promotion), and not the customer's best interest."¹⁷ (emphasis added).

However, focusing on the broker-dealer's intent or weighing the broker-dealers and the client's interests to determine if a recommendation is in the client's best interest is an unworkable standard. At a certain level, a broker-dealer's self-interest is implicated by simply being a paid intermediary. Therefore, we recommend that adherence to an objective professional best interest standard, as set forth above, should be used to evaluate whether a broker-dealer is acting in the client's best interest at the time of the recommendation. This standard requires broker-dealers to diligently investigate and evaluate investments and use sound judgment in making investment recommendations, based on the information available at that time, that are consistent with the investor's investment profile. The question should be whether, at the time of the recommendation, the broker-dealer met their professional obligation to act in the best interest of the client, regardless of motivation. The attempt to discern motivating factors unnecessarily complicates the analysis needed to determine whether a broker-dealer adhered to the best interest standard when making a recommendation. Consequently, we recommend the SEC remove the "predominately motivated" discussion from any final rule release.

Secondly, it is difficult to determine how a broker-dealer must weigh financial factors when applying the Care Obligation, especially since disclosure alone may not discharge the obligation. The SEC stated in the preamble to Regulation Best Interest that "by treating cost associated with a recommendation as an important factor in this analysis, the Care Obligation would enhance a broker-dealer's existing suitability obligations under the federal securities laws."¹⁸ Consequently, the SEC needs to provide greater guidance on how cost and other factors are to be considered in light of this statement.

For example, FINRA Regulatory Notice (Notice 12-25)¹⁹ provides guidance as to the appropriate factors in making a recommendation in the best interests of a client under FINRA's Suitability Rule. Notice 12-25 clarifies certain aspects with respect to product or strategy costs and how they are one of many factors to be considered in evaluating the appropriateness of an investment recommendation.²⁰ Specifically, Notice 12-25 states:

The requirement that a broker's recommendation must be consistent with the customer's best interests does not obligate a broker to recommend the "least expensive" security or investment strategy...as long as the recommendation is suitable and the broker is not placing his or her interests ahead of the customer's interests. ... *The cost associated with a recommendation...ordinarily is only one of many important factors to consider when determining whether the subject security or investment strategy involving a security or securities is suitable. (emphasis added).*

The customer's investment profile, for example, is critical to the assessment, as are a host of product- or strategy-related factors in addition to cost, such as the product's or strategy's investment objectives, characteristics (including any special or unusual features), liquidity, risks and potential benefits, volatility and likely performance in a variety of market and economic conditions. These are all important considerations in analyzing the suitability of a particular recommendation, which is why the suitability rule and the concept that a broker's recommendation must be consistent with the customer's best interests are inextricably intertwined.

Notice 12-25's list of appropriate factors in evaluating the appropriateness of a particular recommendation is similar to the SEC's description of what should be considered in determining whether an investment recommendation meets Regulation Best Interest's care obligations. Thus, the SEC should provide guidance on whether it believes those factors are weighted differently under Regulation Best Interest as opposed to FINRA's Suitability Rule and if so, how. Without such guidance there will likely be widely varying interpretations on how to weigh such factors which will lead to inconsistent application of the best interest standard of care to investment recommendations.

c. We Recommend The SEC Provide Additional Guidance Regarding Appropriate Documentation Of Reasonable Alternatives Considered.

The SEC leaves the term "prudence" undefined in Regulation Best Interest, but believes that it "conveys the fundamental importance of conducting a proper evaluation of any securities recommendation in accordance with an objective standard of care and a broker-dealer must consider reasonable alternatives that it offers when determining whether it has a reasonable basis for making a recommendation."²¹ We believe it is important the SEC clarify what if any additional documentation the Commission would expect a broker-dealer to retain to demonstrate reasonable alternatives were considered and the basis of its best interest determination for investment recommendations. Additionally, it is important the Commission clarify what documentation it expects a broker-dealer to retain to evidence that a recommendation is in the best interest of at least some retail customers.

*d. We Recommend The SEC Provide Greater Clarity
Regarding Conflict Of Interest Obligations To Ensure
Retail Investors Retain Access To Product And Service Options.*

SEC Chair Jay Clayton described the Regulation Best Interest Conflict of Interest Obligations as “perhaps the most critical enhancement over existing standards” in the Proposal.²² In fact, it is this criticality that makes it imperative there is a clear understanding of the meaning, scope and contours of the Conflict of Interest Obligation. Otherwise, some broker-dealers may mitigate risk by limiting the very access and choice for retail investors the Commission seeks to maintain while others may not treat the obligations with a sufficient amount of respect, effectively negating the Proposals effectiveness. Consequently, we set forth specific recommendations below to ensure Conflict of Interest Obligations are clear and consistent.

*1. Provide Greater Clarity Regarding
What Constitutes A Conflict of Interest.*

Regulation Best Interest provides a broad definition of what constitutes a material conflict of interest and requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed for the (1) identification and at a minimum *disclosure, or elimination, of all material conflicts of interest* that are associated with investment recommendations; and (2) identification and *disclosure and mitigation, or elimination, of material conflicts of interest arising from financial incentives* associated with investment recommendations.²³

The first step then is defining what constitutes a material conflict of interest. Regulation Best Interest includes the following interpretation of material conflicts of interest, “a conflict of interest that a reasonable person would expect might incline a broker-dealer – consciously or unconsciously – to make a recommendation that is not disinterested.”²⁴

We believe this broad definition, particularly the terms “might incline” and “unconsciously” in the standard, would result in precisely the type of “lengthy disclosures that do not meaningfully convey the material facts and material conflicts of interest and may undermine the Commission’s goal of facilitating disclosure to assist retail customers in making informed investment decisions.”²⁵ Moreover, the inclusion of these terms effectively eliminates the materiality of a conflict and turns all conflicts of interest into “material” conflicts of interest because firms will not know how to evaluate the risks of being second-guessed on what “might incline”, particularly “unconsciously,” a financial advisor or firm to take an action. The result of this lack of clarity will likely be a reduction in product selection to mitigate risk as occurred under the Fiduciary Rule. Consequently, we recommend the SEC use the well-established definition of “materiality” standard set by the Supreme Court in *TSC Industries, Inc. v. Northway, Inc.*,²⁶ rather than adopting a new definition that is inconsistent with the Securities Exchange Act of 1934. When viewed in this light, the potential scope of conflicts of interest for which disclosure is required might be more appropriately tailored to a broker-dealer’s business.²⁷

2. *Focus On Conflicts Impacting An Investment Recommendation.*

We believe the receipt of fees and other revenue by a firm that doesn't otherwise result in a direct financial incentive at the registered representative level should be disclosed but should not trigger an obligation to mitigate. This aligns more directly with the Fiduciary Rule's Impartial Conduct Standards and focuses any mitigation analysis squarely on material conflicts of interest that impact an investment recommendation.

3. *Provide Greater Clarity Regarding The Viability Of Certain Activities.*

In the preamble to Regulation Best Interest, the SEC provides commentary that broker-dealers are provided flexibility in designing appropriate policies and procedures to identify, mitigate or eliminate material conflicts of interest. The SEC then further provides a list of rather common broker-dealer activities and states Regulation Best Interest would not *per se* prohibit a broker-dealer from engaging in these activities, such as:

- Charging commissions or other transaction-based fees
- Receiving or providing differential compensation based on the product sold
- Receiving third-party compensation
- Recommending proprietary products, products of affiliates, or a limited range of products
- Recommending a security underwritten by the broker-dealer or a broker-dealer affiliate, including initial public offerings (IPOs)
- Recommending a transaction to be executed in a principal capacity
- Recommending complex products
- Allocating trades and research, including allocating investment opportunities (e.g., IPO allocations or proprietary research or advice) among different types of customers and between retail customers and the broker-dealer's own account
- Considering cost to the broker-dealer of effecting the transaction on behalf of the customer (for example, the effort or cost of buying or selling an illiquid security)
- Accepting a retail customer's order that is contrary to the broker-dealer's recommendations²⁸

However, the Commission then caveats its statement by also stating it is not saying that these practices are "*per se* consistent with Regulation Best Interest."²⁹ This is the type of ambiguity regarding conflict of interest management that, similar to what occurred under the Fiduciary Rule, may lead to less choice for investors as financial service providers mitigate risk by pruning their product and service offerings.

Furthermore, while the SEC's goal of giving broker-dealers flexibility in designing appropriate policies and procedures tailored to their business is commendable, given the broad interpretation of a "material conflict of interest," it is not clear how a broker-dealer would be able to rely on a "risk-based compliance and supervisory system" instead of a detailed review of

each recommendation of a securities transaction or security-related investment strategy to a retail investor.

We believe the SEC, after redefining the conflict of interest standard as suggested above, should provide examples where disclosure is sufficient to satisfy a broker-dealer's obligation and of other appropriate risk mitigation measures for conflicts. The question is not whether conflicts exist but whether, after mitigation, the firm and the registered representative are acting in the best interest of the client.

Finally, given the strong criticism of certain types of financial incentives, it is not clear how related conflicts could ever be managed to the SEC's satisfaction without eliminating them altogether. Financial incentives specifically identified in the Proposal as difficult to mitigate include "sales contests, trips, prizes, and other similar bonuses that are based on sales of certain securities or accumulation of assets under management."³⁰ Rather than leaving broker-dealers vulnerable to second-guessing, the SEC should either provide more guidance on how such conflicts may be mitigated or simply identify a set of financial incentives that are prohibited.

II. Form CRS Is A Crucial Centerpiece Of The Proposals

We agree that effective disclosures to retail investors are a critical component of a well-designed best interest standard of conduct. Retail investors and financial professionals both benefit when at the outset of a relationship there is a clear understanding of, among other things, the type of relationship or scope of services offered, associated fees and material conflicts of interest. Consequently, we believe a properly designed Form CRS can serve an important and beneficial role in helping retail investors understand their relationship with their investment professional. It is in everyone's best interest when investors receive concise, relevant information that will allow them to make informed decisions that work best for their individual situations.

Our own client research has found, consistent with the SEC's findings that retail investors prefer to digest concise, easy-to-read summary information accompanied by directions on how to access more detailed topical information. Moreover, our research also supports the notion that standardized information and graphical formats permitting side-by-side comparisons enable retail investors to more readily assess relevant features. Consequently, the basic premise that a brief overview document designed to provide a high-level understanding of important information to clients (with directions to more detailed information) that can be used to prompt more detailed conversations with financial professionals is a good one.

We believe the recommendations below will make the disclosures of the Proposal more effective in helping investors make informed decisions. To help illustrate our recommendations, we have produced our own version of Form CRS and have included it as an attachment titled "An Overview of How Wells Fargo Advisors Can Serve Your Investing Needs."

a. We Recommend A Concise Form CRS Written In Plain English.

We believe that Form CRS can be a highly effective summary document that informs retail customers of important factors they need to consider when managing their investments and

satisfies the requirement that firms act in the customer's best interest. There are several principles that, if followed, can achieve these goals: 1) provide the document to retail investors who will benefit; 2) allow for electronic design/delivery of the Form that gets information to a customer quickly; 3) allow firms the flexibility (charts, graphs, etc.) to deliver the required information so long as it is limited to what is prescribed by the Rule; 4) avoid including information that could confuse investors, lacks objectivity or can be more effectively delivered by different processes; and, 5) consider the costs and implementation challenges to firms in providing these disclosures.

One of the stated goals is "that firms use 'plain language' principles for the organization, wording, and design of the entire relationship summary, taking into consideration retail investors' level of financial sophistication."³¹ This will only be achieved if Form CRS is: 1) short in length; 2) highlights those factors that are important (including characteristics of the particular firm and the services it offers); 3) easily understood; 4) presented in a fair and objective manner; and, 5) helpful to investors making decisions. The Proposals should discourage burdening the customer with excessive disclosures that are overwhelming and could cause them to ignore important information.

b. We Recommend The Definition Of "Retail Investor" Be Modified.

Part and parcel of effective disclosure is appropriately targeting the disclosure to those who benefit from the disclosure information. Proposed Form CRS' definition of "retail investor," in its current form, is inconsistent with and broader than related definitions for purposes of Exchange Act Rule 17a-3(a)(17), proposed Regulation Best Interest, and FINRA rules. We believe FINRA's Rule 2210(a)(6) has effectively defined those retail investors who benefit most from this Proposal's investor protections.

Alternatively, the definition of "retail customer" could be revised so that it is appropriately tailored to those persons who are actually retail customers, i.e.: (a) natural persons or trusts or other entities established by natural persons for the purpose of investing in securities, with total assets of less than \$50 million; and (b) legal representatives of such persons who are not professional fiduciaries. With respect to (a), this language will provide greater clarity and precision for firms regarding the meaning of "retail customer" and would be consistent with the SEC's objectives of (i) capturing certain non-natural persons that represent the assets of a natural person, such as trusts, and would benefit from the protections of the rule, and (ii) at the same time, avoiding a definition that includes institutional accounts that generally should not be in-scope. With respect to (b), this limitation will more appropriately address the types of persons who need the protections provided by Form CRS and Regulation Best Interest. It is also more consistent with FINRA's rules, which exclude investment advisers and other professional fiduciaries from the definition of "retail investor."

Furthermore, we recommend that Form CRS only be required to be sent by broker-dealers and investment advisers dealing directly with the retail investor. Certain firms have limited interactions with retail investors and requiring that they provide investors with a Form CRS could create confusion. We believe custodial and clearing broker-dealers, limited purpose broker-dealers and investment adviser firms participating in wrap-fee programs (as opposed to

wrap fee sponsors) either do not have a direct relationship with the retail investor or would provide duplicative information. Consequently, these entities would provide no investor protections to retail investors by providing a Form CRS.

c. We Recommend Modifications To The Relationships And Services Section Of Form CRS.

In the Relationships and Services Section, there is a proposed requirement that broker-dealers must state whether they offer additional services (including developing an investment strategy and monitoring the account performance). For some firms, listing all of the services they offer could take substantial space. We believe this is unnecessary and adds little, if any value for the investor and therefore recommend its elimination.

Additionally, broker-dealers are required to state whether they offer a limited selection of investments and that other firms could offer a wider range of choices that might have lower costs.³² This requirement appears to be overly broad as no firm can offer all investments and we therefore recommend that this be limited to those broker-dealers that only offer one type of product. We think Form CRS should focus on the two primary types of accounts – brokerage and investment advisory – and then highlight substantial limitations in product offerings (i.e. mutual fund only, annuities only, etc.). Firms can decide whether one Form CRS can suffice or whether different versions are required.

d. We Recommend Modifications And Clarity Of The Summary Of Fees And Costs Section Of Form CRS.

1. Keep It Concise.

While we commend the Commission on attempting to keep this subject at a high level and utilize other disclosure documents as necessary to provide details, there is still a risk that this could become an exhaustive section. Our recommendation is to reduce the amount of prescriptive wording and allow firms to create their own summaries so long as they conform to the principles of conveying basic information about fees and costs. For example, the Proposal includes a requirement that firms disclose commissions and certain third-party fees related to mutual funds. We would hope that disclosing the existence of such an arrangement while linking or providing access to additional descriptions would satisfy the requirement.

A similar challenge exists with the requirement to disclose that some investments impose additional fees that may or will reduce the value of the investment over time (12b-1 fees, transfer agency fees, etc.). We are concerned that such a broad statement may unintentionally discourage customers from considering such an investment. Given the fact that these fees are generally quite small relative to the principal amount, and since they are already disclosed in other documents (e.g. prospectuses); we believe this disclosure is unnecessary. Additionally, firms may be reluctant to provide information that could be seen as replacing or supplementing prospectus information. As such, the Commission should grant relief or guidance on how to make such disclosures.

Finally, the requirement to discuss key factors in determining whether certain fees could be reduced (account fees, transaction fees, inactivity fees, maintenance fees, custodian fees, etc.) could lead to increased length without enhancing an investor's understanding or, the requirement may actually lead to investor confusion. We recommend eliminating the requirement.

2. *Avoid Requiring Unnecessary Information.*

Some of the requirements in the Fees and Costs Section are simply unnecessary. For example, the Proposal requires that broker-dealers include the statement that "the more transactions in your account, the more fees we charge you. We therefore have an incentive to encourage you to engage in transactions."³³ While this is technically a true statement, we don't believe it benefits the customer as the statements are pretty obvious. Furthermore, it seems to suggest that recommendations to trade would be counter to the client's best interests and solely done for the purpose of increasing fees.

There is no mention of the broker-dealer's responsibility under the Proposal to act in the best interests of the customer. We make the same observation for the requirement that investment advisers state "the more assets you have in the advisory account, including cash, the more you will pay us. We therefore have an incentive to increase the assets in your account in order to increase our fees."³⁴ In addition to putting doubts in the clients mind about the intentions of the investment adviser, it also overlooks the fact that the fee (as a percent of assets) may actually decrease as the size of the account increases. We recommend that both of these currently required statements be eliminated since they don't add value and detract from the readability and length of Form CRS. These details can be provided in alternative and more detailed ways as discussed elsewhere in this comment letter.

3. *Avoid Requiring Misleading Statements.*

Some requirements of the Proposal run the risk of being inaccurate or misleading. For example, investment advisers who offer wrap fee programs are required to state "paying for a wrap fee program could cost more than separately paying for advice and for transactions if there are infrequent trades in your account."³⁵ This statement doesn't consider that the fee paid by clients is primarily for the advice being received and that the cost of transactions may be incidental. Also, it suggests that a program exists to pay only for advice, which at many firms is not the case.

e. *We Recommend Modifications To The Conflicts Of Interest Section Of Form CRS.*

In the Conflicts of Interest Section, while we agree that conflicts of interest are important for the client to understand, we are concerned that it could lead to an exhaustive discussion. While the Commission is not proposing to require Form CRS include specific information about all of the conflicts of interests that are or could be present, further guidance is necessary. The Proposal requires that specific examples about conflicts of interest related to financial incentives for recommending or selling proprietary products or products offered by third parties, and from revenue sharing arrangements be provided.³⁶ It further requires disclosures about conflicts relating to principal transactions. As mentioned earlier in our letter, the inclination of many

firms will be to provide exhaustive information about conflicts that they determine is necessary to comply with the Proposal's requirements. We recommend the Commission either modify the Proposal to exclude the need for specific examples of each conflict of interest and/or consider some short (prescriptive) language that they find acceptable with a requirement that firms provide cross-reference documents with more specific details.

f. We Recommend Modifications To The Additional Information Section Of Form CRS.

In the section entitled "Additional Information," broker-dealers are required to state that "we have legal and disciplinary events" in a large number of situations that relate to both the organization and its financial professionals.³⁷ As proposed, we believe that most firms, certainly large ones, will have to include this statement. We agree that customers should be made aware of legal and disciplinary events of a firm and its financial professionals. However, such a broad statement will add no value and lead clients to draw unfair conclusions about both the firm and its financial professionals. Because firms can't customize the disclosure for each of its professionals (which are both cost and operationally prohibitive), this statement also unfairly impugns the reputation of high-quality professionals who have no history of any wrong doing and an outstanding history of working with investors. A better approach is to advise clients to visit Investor.gov and BrokerCheck to access any disciplinary history. We also don't agree that Form CRS needs to get into details on how an investor can report a problem. Such a disclosure is outside of the overall purpose of the summary and will detract from both the readability and length of the document.

g. We Recommend Notice And Access Principles Be Applied Broadly.

The SEC has long recognized that modernization of disclosure delivery methods can benefit retail investors. The Commission recently reiterated "disclosure is the backbone of the federal securities laws" but also cautioned that current disclosure requirements were developed "at a time when investors received information primarily on paper."³⁸ We believe the SEC has an opportunity to leverage and build upon efforts already underway to examine disclosure design and delivery methods to retail investors.

For example, last year, SEC Director of Investment Management Dalia Blass publicly discussed the SEC's "Investor Experience" initiative and called for disclosure changes to more accurately reflect how people now consume information.³⁹ Additionally, the Commission recently approved "notice and access" options for delivery of mutual fund shareholder reports and requested comment on additional modernization of fund disclosures. Under the new rule, a fund may deliver its shareholder reports by making them publicly accessible on a website, free of charge, and sending investors a paper notice of each report's availability by mail. Investors who prefer to receive the full reports in paper may—at any time—choose that option free of charge.⁴⁰

Ironically, it is the very proliferation of important documentary disclosures, notices and agreements designed to inform investors that may now serve as a barrier to educating retail investors through additional documentary disclosure. Indeed, the SEC has identified dated and voluminous disclosure practices as an important investor issue and is therefore modernizing

certain disclosures on an individual basis through its “Investor Experience” initiative and “Disclosure Effectiveness” project to address this concern.

The Commission has also endorsed website disclosure (together with periodic paper reminders about where to find the website disclosure) in a number of contexts going back to the early part of this century. For example, the SEC approved requiring that mutual funds make a quarterly website disclosure of their portfolios in 2004. The SEC also approved requiring website disclosure of mutual funds’ proxy voting records, and month-end performance information in 2003. Similarly, in the brokerage firm context, the Commission required that its order execution quality disclosures be made on a website rather than mailed to each client in 2000. The Commission approved research analyst reforms to allow brokerage firms to make website disclosure about potential conflicts of interest, price charts, and the performance of the firm’s research recommendations in 2004. The Commission also required issuers to make information available by website in 2003. We applaud the Commission’s endorsement of timely and effective technology-based disclosure solutions and strongly encourage the SEC to follow these precedents here.

h. We Recommend Regulation Best Interest Disclosures Be Incorporated Into Form CRS.

Form CRS disclosures are just one part of the package of new disclosures being proposed by the SEC. Specifically, Regulation Best Interest’s disclosure obligation is designed to build upon the Form CRS relationship summary by providing retail investors with “more specific and additional, detailed layers of disclosure” of, among other things material conflicts of interest.⁴¹ The SEC proposes these additional disclosures be added to the current “layered” disclosure arrangement where retail investors already receive extensive disclosure documentation both periodic and point in time, pertaining to fee, conflict and product related issues throughout a brokerage relationship.⁴²

We believe the same concerns raised in this letter regarding the utilization and readership of Form CRS are equally applicable to Regulation Best Interest disclosures. To address these concerns, we recommend that links to more detailed digital Regulation Best Interest disclosures be incorporated into Form CRS, or Regulation Best Interest disclosures be provided in summary form at account inception with links to more detailed digital information. Furthermore, digital disclosures would be required to be refreshed and remain current. Finally, clients would also be provided periodic reminders of where and how to obtain detailed Regulation Best Interest disclosure materials.

**III. Investment Adviser Interpretive Guidance –
The SEC Should Clarify That An Investment Adviser’s
Required Standard Of Conduct Depends On The Type Of Relationship**

The Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation⁴³ (the “Interpretation”) reinforces the general notion that an investment adviser’s obligations will vary among clients based on the terms of the specific relationship. However, the Commission should

more clearly recognize that certain advisory relationships may differ in key respects from the retail advisory relationships focused on by the SEC in the Interpretation and that the scope of an adviser's fiduciary duty is relationship dependent and defined by agreement between the parties. While the Commission noted that the Interpretation is not intended to be the exclusive resource for understanding the principles relevant to an investment adviser's fiduciary duty under all circumstances,⁴⁴ we are concerned that it will be viewed as such. Absent clarification, we believe there will be unnecessary uncertainty and an increased risk of litigation for investment advisers, particularly for those advisers that serve institutional clients, including mutual funds, and those that provide their advisory services to, or in conjunction with, other investment professionals (e.g., investment sub-advisers and managed account program investment advisers).

For example, institutional client advisory relationships involve negotiated contracts between sophisticated parties. Clients are often represented by consultants or other financial professionals. Those contracts include provisions that define the scope of the relationship, including the adviser's obligations. Further, such contracts are often accompanied by detailed investment policy guidelines that further define the obligations of the investment adviser. These types of relationships are qualitatively different than the types of relationships that are focused on in the Interpretation. We are concerned that certain statements in the Interpretation may be misapplied to particular advisory relationships⁴⁵ and respectfully request that the Commission clarify its views in this area.

IV. Conclusion

We thank the SEC for this opportunity to respond to the Proposals. We restate our desire to stay engaged with the Commission on this important topic and stand ready to work with the SEC to achieve a workable outcome for retail investors. If you would like to further discuss any of Wells Fargo's comments, please contact Robert J. McCarthy, Director of Regulatory Policy for Wells Fargo Advisors, at [REDACTED] or [REDACTED].

Sincerely,



David Kowach
Head of Wells Fargo Advisors
Wells Fargo & Company

¹ See Correspondence from Robert J. McCarthy, Director of Regulatory Policy at Wells Fargo Advisors, LLC, to Elizabeth M. Murphy, Secretary of SEC, *regarding* File No. 4-606; Release No. 34-69013; IA-3558; Duties of Brokers, Dealers and Investment Advisers (July 5, 2013) (“Wells Fargo to SEC 2013 Letter”), at 2-7, *available at*: <https://www.sec.gov/comments/4-606/4606-3127.pdf>.

² See, e.g., Correspondence from Joseph Ready, Executive Vice President of Wells Fargo Institutional Retirement and Trust to the Office of Regulations and Interpretations (“ORI”), Employee Benefits Securities Admin. (“EBSA”), Dep’t of Labor (“DOL”), *regarding* RIN 1210-AB32, Definition of Fiduciary Proposed Rule (Feb. 3, 2011); Correspondence from Robert J. McCarthy, Director of Regulatory Policy at Wells Fargo Advisors, LLC, to Elizabeth M. Murphy, Secretary of SEC, *regarding* File No. 4-606; Release No. 34-69013; IA-3558; Duties of Brokers, Dealers and Investment Advisers (July 5, 2013), at 2-7, *available at*: <https://www.sec.gov/comments/4-606/4606-3127.pdf>; Correspondence from David M. Carroll, Senior Executive Vice President, Wealth, Brokerage & Retirement, Wells Fargo, to John J. Canary, Director, ORI and Office of Exemption Determinations (“OED”), EBSA, DOL, *regarding* Comments on Proposed Conflict of Interest Rule and Related Proposals [RIN: 1210-AB32 and ZRIN: 1210-ZA25] (July 21, 2015) (“Wells Fargo to DOL July 2015 Letter”), at 2-3, *available at*: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00647.pdf>; Correspondence from David M. Carroll, Senior Executive Vice President, Wealth, Brokerage & Retirement, Wells Fargo, to John J. Canary, Director, ORI and OED, EBSA, DOL, *regarding* Comments on Proposed Conflict of Interest Rule and Related Proposals [RIN: 1210-AB32 and ZRIN: 1210-ZA25] (Sept. 24, 2015), at 2-3, *available at*: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03063.pdf>; and Correspondence from David M. Carroll, Head of Wealth and Investment Management, Wells Fargo, to ORI, EBSA, DOL, *regarding* Reexamination of Definition of the Term “Fiduciary” and Related Exemptions (RIN 1210-AB79) (April 17, 2017) (“Wells Fargo to DOL Apr. 2017 Letter”), at 1-2 and 6-7, *available at*: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01378.pdf>; Correspondence from David Kowach, Head of Wells Fargo Advisors, Wells Fargo, to OED, EBSA, DOL, *regarding* Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions – Questions 2 through 18 (RIN 1210-AB82) (Aug. 7, 2017) (“Wells Fargo to DOL Aug. 2017 Letter”), *available at*: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00525.pdf>.

³ See Correspondence from David Kowach, Head of Wells Fargo Advisors, to Jay Clayton Chairperson of SEC, *regarding* “Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers,” *available at*: <https://www.sec.gov/comments/ia-bd-conduct-standards/c114-2585455-161087.pdf>. We also reiterate our recommendation that the SEC closely coordinate with the DOL so that compliance with an SEC promulgated best-interest standard of conduct for brokerage accounts is recognized by the DOL, through the creation of a prohibited transaction exemption, as compliance with ERISA and DOL regulations governing the provision of investment advice to retirement investors. The SEC should also coordinate with state regulators through the North American Securities Administrators Association in accordance with Section 19(d) of the Securities Act of 1933. This coordination could achieve the Section 19(d)(2)(B) policy aim of “maximum uniformity in Federal and State regulatory standards,” which should include a harmonized standard of conduct for broker-dealers across states.

⁴ Chair Jay Clayton, “Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers,” Public Statement (June 1, 2017), *available at*: <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>.

⁵ See, e.g., Correspondence from David Kowach, Head of Wells Fargo Advisors, to Jay Clayton, Chairman of the SEC, *regarding* Comments on Standards of Conduct for Investment Advisers and Broker-Dealers (September 20, 2017), at 2-6, *available at*: <https://www.sec.gov/comments/ia-bd-conduct-standards/c114-2585455-161087.pdf>.

⁶ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §913, 124 Stat. 1376, 1824 (2010).

⁷ See, e.g., Claude Montmarquette and Nathalie Viennot-Briot, *Econometric Models on the Value of Advice of a Financial Advisor*, Centre for Interuniversity Research and Analysis on Organizations (CIRANO) (July 2012), at 9, 15-35, 56, *available at*: <http://www.cirano.qc.ca/pdf/publication/2012RP-17.pdf> (“[O]n average, participants retaining the service of a financial advisor for more than 15 years have about 173% more financial assets (in other words, 2.73x the level of assets) than non-advised respondents.”).

⁸ See, e.g., David Blanchett and Paul Kaplan, *Alpha, Beta, and Now... Gamma*, Morningstar Investment Management (Aug. 28, 2013), at 16, *available at*: <https://corporate1.morningstar.com/uploadedFiles/>

US/AlphaBetaandNowGamma.pdf (“[W]e estimate a retiree can be expected to generate 22.6% more certainty-equivalent income utilizing” more intelligent financial planning decisions.).

⁹ See, e.g., Oliver Wyman, *The Role of Financial Advisors in the US Retirement Market* (June 18, 2015) (“Oliver Wyman 2015 Study”), at 16, available at: <http://fsroundtable.org/wp-content/uploads/2015/07/The-role-of-financial-advisors-in-the-US-retirement-market-Oliver-Wyman.pdf> (advised individuals have a minimum of 25% more assets than non-advised individuals).

¹⁰ See, e.g., *id.*, at 16-34. As a recent Vanguard study found, an advisor’s added value “is more aptly demonstrated by the ability to effectively act as wealth manager, financial planner, and behavioral coach – providing discipline and reason to clients who are often undisciplined and emotional – than efforts to beat the market.” Donald G. Bennyhoff and Francis M. Kinniry Jr., “Advisor’s Alpha,” Vanguard Research (Apr. 2013), at 3, available at: <https://advisors.vanguard.com/iwe/pdf/ICRAA.pdf?cbdfForceDomain=true>. In other words, people facing difficult, and critical, financial choices benefit when working with an investment professional – and not just from technical advice on particular investments.

¹¹ See Regulation Best Interest, 83 Fed. Reg. 21574, 21585 (proposed May 9, 2018).

¹² See *id.*

¹³ See *id.*

¹⁴ See, e.g., DOL, EBSA, *Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure*, 72 Fed. Reg. 70,988, at 70,993 Dec. 13, 2007).

¹⁵ See, e.g., DOL, *Best Interest Contract Exemption*, 81 Fed. Reg. 21002 at 21029.

¹⁶ See Regulation Best Interest, 83 Fed. Reg. 21574, at 21587 (proposed May 9, 2018).

¹⁷ *Id.* at 21588.

¹⁸ *Id.*

¹⁹ See *Regulatory Notice* 12-25, at 4.

²⁰ See *id.*

²¹ Regulation Best Interest, 83 Fed. Reg. 21574, at 21609 (proposed May 9, 2018).

²² Jay Clayton, Overview of the Standards of Conduct for Investment Professionals Rulemaking Package (Apr. 18, 2018). Indeed, this part of the proposed rule is the key expansion from the existing framework for regulating broker-dealers, going beyond existing disclosure duties and requiring broker-dealers to mitigate certain conflicts.

²³ See Regulation Best Interest, 83 Fed. Reg. at 21603.

²⁴ *Id.* at 21602.

²⁵ See *id.* at 21604.

²⁶ 426 U.S. 438 (1976).

²⁷ See *S.E.C. v. Steadman*, 967 F.2d 636, 643 (D.C. Cir. 1992). Cf. *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988); *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 445, 449 (1976).

²⁸ Regulation Best Interest, 83 Fed. Reg. at 21587

²⁹ See *id.*

³⁰ See *id.*

³¹ Form CRS Relationship Summary, 83 Fed. Reg. 21416, 21420 (proposed May 9, 2018).

³² See *id.* at 21426.

³³ See *id.*

³⁴ *Id.* at 21435

³⁵ See *id.* at 21431.

³⁶ See *id.* at 21443.

³⁷ *Id.* at 21447.

³⁸ Request for Comment on Fund Retail Investor Experience and Disclosure, 83 Fed. Reg. 26891, 26892 (proposed on June 11, 2018).

³⁹ See Dalia Blass, Keynote Address at the ICI Securities Law Developments Conference (Dec. 7, 2017) (transcript available at <https://www.sec.gov/news/speech/bllass-keynote-ici-securities-law-developments-conference-2017>).

⁴⁰ See Form CRS Relationship Summary 83 Fed. Reg. at 21499.

⁴¹ Regulation Best Interest, 83 Fed. Reg. at 21600.

⁴² See *id.*

⁴³ 83 Fed. Reg. 21203 (May 9, 2018).

⁴⁴ Interpretation at 21204, footnote 7.

⁴⁵ *See, e.g., Id.* at 21207-08 (“An investment adviser’s duty of care also encompasses the duty to provide advice and monitoring over the course of a relationship with a client. An adviser is required to provide advice and services to a client over the course of the relationship at a frequency that is both in the best interest of the client and consistent with the scope of advisory services agreed upon between the investment adviser and the client. . . . An adviser’s duty to monitor extends to all personalized advice it provides the client, including an evaluation of whether a client’s account or program type (for example, a wrap account) continues to be in the client’s best interest.” [internal citations omitted])

How Wells Fargo Advisors Can Serve Your Investing Needs

This overview is intended to help you make decisions about which types of accounts and services are right for you.

<p>Do I have a choice in the type of account I open?</p>  <p>Brokerage Investment Advisory</p>	<p>Yes, Wells Fargo Advisors offers two different account types that you can consider based on your preferences and investing needs:</p> <ul style="list-style-type: none"> • A brokerage account charges you a transaction-based fee (or “commission”) for each trade you make. This fee structure applies whether you select your own investments or elect for us to make recommendations that, based on your investment profile and investing goals, we believe are in your best interest. Either way, you will make the ultimate investment decision. • An investment advisory account charges an annual asset-based fee for investment advice and other services provided, based on the value of your account. Unlike a brokerage account, we have the duty to monitor your account holdings and will offer advice and recommendations when we feel changes should be considered. Investment advisory accounts are available where you elect to make all final decisions or choose to give our firm the discretion to act on your behalf. <p style="text-align: right;">hyperlink here</p>
<p>As a broker-dealer, what are your legal obligations to me in terms of investment advice?</p> 	<ul style="list-style-type: none"> • In a brokerage account, we must act in your best interest and not place our interests ahead of yours when we recommend an investment or investment strategy involving securities. • In an advisory account, we are held to a fiduciary standard that covers our entire investment advisory relationship with you. • Wells Fargo Advisors is regulated by a number of federal, state, and self-regulatory agencies, including but not limited to the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), Federal Reserve Bank (FRB), Office of the Comptroller of the Currency (OCC), and State Securities Divisions. <p style="text-align: right;">hyperlink here</p>
<p>What fees and costs associated with an account should I expect?</p> 	<ul style="list-style-type: none"> • In both brokerage and advisory accounts, we charge an annual account fee in addition to the costs listed above. These fees can be waived based on several factors, most prominently the size and extent of your relationship with us. • In brokerage accounts, there is a transaction fee in addition to the “commission” noted above. • Some investments, such as mutual funds and annuities, charge additional fees. • These additional fees may reduce the value of your investments over time. <p style="text-align: right;">hyperlink here</p>
<p>How do I understand the conflicts of interest that may exist?</p> 	<ul style="list-style-type: none"> • Our interests can conflict with your interests. We must eliminate these conflicts or tell you about them so that you can decide whether or not to agree to them. • Wells Fargo Advisors and its affiliates make more money if you purchase a Wells Fargo-affiliated mutual fund or other product as opposed to one that is managed by another company. • Some third parties will compensate Wells Fargo Advisors if we sell products managed by them. • We may sometimes offer to buy or sell products from our own account (i.e., principal trading). <p style="text-align: right;">hyperlink here</p>
<p>How can I learn more about your company and any of its financial professionals?</p> 	<ul style="list-style-type: none"> • Visit investor.gov for a free and simple search tool to research our firm and our financial professionals. • Additional information about our individual financial professionals can be obtained on BrokerCheck https://brokercheck.finra.org or https://adviserinfo.sec.gov.