



August 7, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Rule-comments@sec.gov

RE: File No. S7-07-18; File Number S7-08-18

Dear Mr. Fields:

The American Securities Association (ASA)¹ welcomes the opportunity to comment on the Securities Exchange Commission's (SEC or Commission) proposals regarding the standards of conduct and disclosure requirements for broker-dealers and investment advisers when providing investment recommendations and advice to retail investors.² The ASA's comments are derived from the diversity of our membership, the different business models of our membership, and the vast experience our members have providing every type of wealth management service to our customers across America.

We support the Commission's efforts to enhance these standards, to aid investors in better understanding their financial services options, and to clarify and harmonize the standards of care that apply to broker-dealers and investment advisers, while preserving choice and access to the full array of investment products and advice models; including the brokerage advice model.

We are convinced that a simple solution, founded on our shared goals, is the best solution. We urge the Commission to finalize the proposals as expeditiously as possible while being mindful that the complete set of rules are workable and preserve both the brokerage and advisory models.

Our largest concern with Regulation Best Interest is the preamble. The preamble language plainly rejects the principles-based approach set forth in the proposed rule text and adopts a prescriptive approach that was based on the Department of Labor (DOL) "fiduciary" rule which

¹ The ASA is a trade association that represents the retail and institutional equity capital markets interests of middle market financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors and support efficient and competitively balanced equity capital markets that advance financial independence, stimulate job creation, and increase prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States. www.americansecurities.org

² Regulation Best Interest, Exchange Act Release No. 83062, 90 Fed. Reg. 21574 (Apr. 18, 2018); Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles, Exchange Act Release No. 83063, 90 Fed. Reg. 21416, 21429-30 (Apr. 18, 2018); Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, Advisers Act Release No. 4889, 90 Fed. Reg. 21203 (Apr. 18, 2018).

has since been overturned. Adopting a principles-based approach is the best course of action and we think that is what the Commission intended to achieve based on the proposed rule text.

We strongly support a principles-based final rule that does not include complicating preamble language. Adopting the approach that we outline in this letter would simplify and clarify the proposals to better accomplish the Commission's goals of enhancing and improving investor protection, harmonizing applicable standards, and preserving the brokerage model. Following our approach would also have the benefit of making certain that the core of the regulation is clearly set forth in the rule text and ***not*** in the preamble. We believe that preamble language should not confuse the public by adding additional conditions or obligations, and unfortunately, that is what the proposal does.

We believe the SEC can and should finalize Regulation Best Interest ***without re-proposing*** the rule. Our suggested path for the Commission to finalize a rule is as follows:

- ***Disclosures should be short, direct, and focused on the specific services offered, the compensation received, and the pertinent conflicts relevant to the investor's decisions.*** We support the SEC's concept of "layered disclosure" and believe reframing the disclosure regimes that apply to investment advisers and broker-dealers will have a meaningful impact on how investors receive and process information. This is important so that investors can make informed choices about their personal financial goals and the solutions best suited to their personal situation. We believe Form CRS is an important step in the right direction. But, as the first layer of disclosure, we believe it should be fully standardized and focused on educating investors *about the marketplace for financial services models*, rather than the options available at any particular firm. Subsequent layers of disclosure can then be customized by particular firms and subject to general disclosure obligations under the Investment Advisers Act of 1940 (for investment advisers) and Regulation Best Interest (for broker-dealers). The SEC's disclosure regime should focus on *improving the disclosures investors receive so that they can make well informed decisions about investment products, advice models, and compensation structures.*
- ***The Commission should reaffirm with plain language that both broker-dealers and investment advisers can address conflicts of interest by disclosing them and obtaining informed consent.*** Consistent with the layered disclosure approach, we further believe that the SEC can meaningfully address broker-dealers' (including their associated persons) conflicts of interest by requiring them to fully and fairly disclose them, similar to the requirements for registered investment advisers, without the need to specifically mandate that certain conflicts be mitigated or eliminated. We believe this change is critical to preserving choice and to avoid importing the fatal flaws in the DOL fiduciary rule.

- ***The SEC’s Care Obligation for broker-dealers should apply to investment advisers.*** Regardless of whether advice is episodic (as in brokerage) or ongoing (as in advisory), the SEC should be able to enforce and define an appropriate standard of care (i.e. the Care Obligation). It should require that recommendations and investment advice be based on the exercise of reasonable diligence, care, and skill to determine that the recommendation or advice is appropriate for the investor. The Care Obligation should also be no higher for broker-dealers than it is for investment advisers. To do otherwise, would prejudice the industry against the brokerage model, which is a cost-effective means of delivering investment advice for many investors.
- ***The SEC should direct FINRA to adopt whatever rule it finalizes in this area.*** We strongly suggest that FINRA and the SEC have the same standards governing broker-dealer conduct. We believe this is necessary to avoid creating a new source of confusion for investors and the industry.

The remainder of this letter sets forth and explains why we think our proposed approach is the right answer and it also outlines some of the concerns we have with the proposals.

I. A Simple Solution.

As the SEC considers this rule set, we would like to propose a more simplified solution. This solution is based on the same approach we suggested to you in our September 8, 2017 letter regarding Uniform Standards for Retirement and Non-Retirement Accounts, but it reflects the changes to the regulatory landscape that have happened since the rule’s proposal; in particular, the Fifth Circuit’s decision to vacate the DOL’s fiduciary rule in total.

The solution set forth below embraces a principles-based approach grounded in current concepts under the securities laws. We believe it helps to harmonize the standards that apply to broker-dealers and investment advisers, and does not include needless complications, investor confusion, and expense. The approach below will better preserve choice and access, while still accomplishing the SEC’s goals. We strongly urge the Commission to adopt the changes discussed below in any final rule.

A. *Form CRS Should Be Revised to Better Implement the SEC’s Layered Disclosure Approach.*

It has long been a challenge for financial institutions to disclose enough detailed information about their services, compensation, and conflicts to give investors the tools they need to make informed decisions, without overloading them with so much information that key points are obscured, or worse—the investor decides not to read the disclosures. We agree with many who have suggested that more disclosure—for the sake of disclosure—is not the answer to this problem. But, we also agree with the Commission that a reconsideration of the effectiveness of

the current disclosure regime for broker-dealers and investment advisers is warranted. We strongly believe that “layered disclosures” are a more effective way to communicate with retail investors about financial services, products, and compensation arrangements.

Form CRS is a step towards improving the structure and content of disclosures in the financial services industry and, in concept, we agree that a concise up-front disclosure of the key characteristics of the brokerage and advisory models will help investors make better informed decisions about the types of services they want to help them manage their personal assets. However, we are concerned that the proposal’s three separate Form CRS’s and mix of prescribed and customized language will only create more confusion and complexity, as well as legal risk for financial institutions.³

We believe a better approach would be for the SEC to require firms to first deliver a single, fully standardized, generic disclosure document that is focused on effectively educating investors about the (1) different business models (advisory, brokerage, and dual registrant), and (2) conflicts inherent in each model through which they can access advice and recommendations on their investments.

Investors must understand that different account types exist and then decide which one is best for them. Ideally, this basic decision would be made before they choose a particular firm, but we do not live in an ideal world. As such, we believe the Commission is best positioned to create a standardized disclosure about the services provided to investors through the brokerage and investment advisory advice models. This will directly address and avoid investor confusion.

This standardized initial layer of disclosure is an education piece that would support investors in making that critical first decision on what type of account they want. It should focus, in general terms, on the primary decision points that a reasonable retail investor should consider when choosing a potential financial services provider. For example, the disclosure would include general service levels, compensation structures, and material conflicts of interest that are common in the advisory and brokerage models, including conflicts that may arise when a firm offers both models as a dual registrant. This disclosure will facilitate the discussion between the investor and the firm representative as to how investors want to manage and pay for the services attributable to their personal assets. We anticipate that discussion would include the following:

- Do they want on-going advice through the advisory model, episodic advice through the brokerage model, both or do they prefer to invest without advice through execution only brokerage?

³ In addition to the concern that firms could be challenged on the content of the customized disclosure elements, we are also concerned that the mandated affirmative statements of broker-dealers’ and investment advisers’ obligations under SEC rules and interpretations in the “Our Obligations to You” section could create contractual liability under state law. The potential for a broad and unlimited private right of action under state law was the biggest flaw in the DOL’s fiduciary rule and drove many firms to restrict access to brokerage platforms.

- Do they want to pay an on-going advisory fee, or transaction-based fees at their personal direction?

A template of a proposed Form CRS disclosure is included in Appendix B to this letter.

Firms would also have the option to create a second disclosure layer in the form of a single page “executive summary” document which highlights key information that an investor would find useful. This could include cross-references to other documents (third layer), such as client agreements, disclosure booklets, confirmations, and Form ADV brochures. In this way, clients would know that additional detailed information existed if they wanted to review it.

Each firm would then have flexibility to create subsequent layers of disclosure that are tailored to their particular business models, service offerings, compensation and conflicts, subject to the anti-fraud provisions and other disclosure obligations under applicable securities laws and regulations.

B. Regulation Best Interest Should Be Revised to Confirm that Conflicts Can Be Addressed Through Disclosure and Consent

We urge the SEC to avoid repeating the mistakes in the DOL’s fiduciary rule and revise Regulation Best Interest to clearly reaffirm the long-standing principle under the securities laws that a financial institution can generally address conflicts by fully and fairly disclosing them to investors and obtaining client consent. This approach will better harmonize the standards for broker-dealers and investment advisers, it will eliminate the uncertainty the proposals have created by attempting to differentiate “financial incentive” conflicts from other conflicts, and preserve investor choice, in general, and the transaction-based brokerage advice model, in particular.

The SEC should recognize that brokerage and advisory compensation structures both pose conflicts for financial institutions and their representatives. Mandating that conflicts in one model be “mitigated” or “eliminated,” while conflicts in the other need only be “disclosed and consented to” creates an uneven playing field in favor of one model over the other. It also represents a step away from a pillar of the common law of agency and trusts, as well as the federal securities laws, that clients are generally competent to understand and consent to a financial institution’s conflicts as part of deciding and directing how they want to engage with a financial professional or gain access to financial products.

We further note that reinforcing a well-thought out disclosure approach would not leave investors without protection from conflicts of interest. Importantly, under Regulation Best Interest, broker-dealers would still have to meet the care obligation when making a recommendation to a retail customer.

Broker-dealers must also currently comply with rules and obligations that help address conflicts and the potential for recommendations that could harm investors. These requirements include registration, testing, continuing education, and recordkeeping requirements, as well as requirements that broker-dealers supervise their representatives for compliance with the federal securities laws. Customers can also seek redress for harms that result from bad advice through arbitration and class actions, and the SEC and the Financial Industry Regulatory Authority (FINRA) can enforce these rules and sanction broker-dealers for providing advice that is not appropriate for the investor. This happens today. Moreover, segments of retail investors who may require additional protections, such as seniors, are already protected by additional requirements. Consequently, the SEC already has the tools to address egregious conduct in the brokerage industry.

We are concerned that the SEC’s blanket decision to require broker-dealers to mitigate or eliminate “financial incentive” conflicts—an undefined term—is a slippery slope that exposes the broker-dealer model to excessive potential liability (beyond that of the advisory model) and may have been driven in large part by the perception that Regulation Best Interest would sit alongside the DOL’s fiduciary rule, which incorporated similar concepts in its BIC exemption. As the DOL’s rule has been vacated, we do not see any reason for imposing this obligation on the brokerage model and unduly preferencing the advisory model.

We believe the disclosure and consent approach is critical to preserving the brokerage advice model and would be consistent with the SEC’s goal of seeking to harmonize the standards across the brokerage and advice models.

C. Regulation Best Interest Should Be Revised to Confirm the Care Obligation is No Greater than the Obligation that Applies to Investment Advisers.

Regardless of whether advice is episodic (as in brokerage) or ongoing (as in advisory), it should be based on the exercise of reasonable diligence, care, and skill to determine that the advice is appropriate for the customer. We believe a logical starting point for a broker-dealer’s care obligation should be the tenants under which they currently operate, and the premise that the standard should be no greater than that of an investment adviser.

We note that current rules require broker-dealers to:

- Deal fairly with customers;
- Ensure that prices received on trades are favorable considering market conditions, and that the firm’s compensation on those trades is fair and not excessive; and
- Provide recommendations that meet customer specific suitability given the investor’s individual financial circumstances, needs, and goals (based on the information the

customer provides) (i.e., the recommendation must be supported by a reasonable basis that the transaction is appropriate for the investor).

We believe that these tenants work well to protect retail investors today. They also allow investors to access a variety of products and services while permitting firms flexibility in building and maintaining their compliance programs.

We are concerned that the proposed care obligation, and inconsistent statements the SEC made in the proposing release about its requirements (including how cost should be taken into account in evaluating a recommendation) could be read to impose a standard that exceeds the standard required under the Advisers Act. This will only serve to harm the brokerage model and limit choice for those investors who prefer the brokerage advice model.

The Commission should consider **codifying** a combination of its suggested rule text along with the obligations⁴ that govern broker-dealer customer relationships today. Specifically, the Commission should finalize Regulation Best Interest as set forth in the attached Appendix A.

We believe that a final rule that adopts a Care Obligation founded on current broker-dealer obligations in conjunction with the disclosure regime suggested above will go a long way to achieve our shared goals of protecting investors while preserving choice.

III. Our Concerns with the Current Proposals.

We understand that, in crafting the proposals, the SEC needed to balance complex and, in some cases, competing interests that may have resulted in proposals that are less than ideal. Perhaps most significantly, at the time the SEC was drafting the proposals, it appeared as though the SEC's rules would have to coexist alongside the now vacated DOL "fiduciary rule," which would have provided extremely prescriptive standards and restrictions for retirement accounts, including IRAs. As such, we understand that the SEC may have felt constrained to adopt an approach more closely aligned with the DOL's rule. We believe this constraint resulted in unnecessary complexity and deviation from longstanding principles under the securities laws. In particular, this constraint seems to unduly preference advisory programs and unintentionally restrict choice and access to financial services and investment products. This outcome is particularly problematic for middle and lower income Americans who are most in need of help planning for a secure financial future.

If the proposals are finalized in their current form, we are concerned that the result will be:

- ***Overly complicated.*** In spite of the goal of harmonizing the standards that apply to broker-dealers and investment advisers, the proposals appear to create two different standards—a "fiduciary" standard for advisers and a "best interest" standard for broker-dealers. Putting aside definitional ambiguities for now, the "best interest" standard

⁴ <http://www.finra.org/industry/faq-finra-rule-2111-suitability-faq>

counter-intuitively could be read to impose a higher standard on broker-dealers than the “fiduciary” standard imposes on investment advisers. This is because broker-dealers must *disclose and mitigate or eliminate conflicts*, whereas investment advisers can address conflicts with *disclosure and informed consent*. It is also unclear whether a broker-dealer’s duty of care is the same as, or higher or lower than, that of an investment adviser.

Additionally, the proposals include three different Form CRS disclosures—one for investment adviser, one for broker-dealers, and one for dual-registrants. Each of these have elements with prescribed language and other elements that must be customized for each firm creating unnecessary burdens and risks for firms if the goal is to clarify the differences between the brokerage and advisory models for retail investors.

- ***A regulatory preference for advisory models and registered investment advisers over broker-dealers and dual-registrants.*** Because investment advisers can address conflicts through disclosure and informed consent, but broker-dealers must also mitigate or eliminate conflicts, investment advisers will be able to operate with fewer restrictions on conflicts (and compensation streams), and will have less legal risk. We are concerned that these differences could lead to a transition away from brokerage towards advisory as a customer’s ability to choose the brokerage model decreases. Choice will be limited because the proposal, as drafted, is likely to cause firms not to offer brokerage account options for certain types of clients or sizes of accounts due to excessive cost and legal risk. Given that a stated intention of the SEC is to preserve the brokerage advice model, we think that the intended result of the proposals will not be realized, and we believe investors will be harmed because they will lose access to this cost-effective means of receiving investment advice and services. In short, the SEC should not create a rule that creates winners and losers in the market for financial services.
- ***Increased investor confusion due to the ruleset’s complexity, different standards, and different disclosures.*** In spite of the goal of increasing transparency for retail investors, we are concerned that the proposals could result in more confusion. Even a current Commissioner has observed that the term “fiduciary” is used as if it’s a panacea when, in reality, it simply affords people a false sense of security⁵. It is also unclear to us that investors understand what a “fiduciary” standard is or what the difference is between a “fiduciary” standard and a “best interest” standard. The proposal does not explain how similar or different “best interests” is from the “fiduciary” standard. This creates problems for the industry because it leaves open the possibility that the standards will be developed through litigation and enforcement.

⁵ <https://www.sec.gov/news/speech/speech-peirce-072418>

Proposed Form CRS (in its three iterations) does little to dispel confusion on this point, or to meaningfully explain the differences between the brokerage and advisory models. We are concerned that it will be left to costly private litigation and enforcement priorities that change with each election to sort out the differences and similarities of what these standards mean and what they require. This is a time-consuming, costly, and inefficient way to regulate.

- ***Significant regulatory and compliance uncertainty and numerous unanswered questions.*** In addition to questions about what “best interest” and “fiduciary” mean, the proposals raise a lot of other questions and issues that will make it difficult to design and implement compliance and supervision programs with any certainty that they are addressing the rules requirements. For example:
 - What is a “financial incentive” that must be mitigated or eliminated under Regulation Best Interest, as opposed to a conflict that can be disclosed? Did the SEC mean to distinguish between conflicts for representatives and associated persons and conflicts for financial institutions?
 - What types of conflict mitigation are acceptable under Regulation Best Interest, and how will a broker-dealer know when a conflict has been adequately mitigated?
 - How do broker-dealers satisfy “prudence” to meet Regulation Best Interest’s “care obligation”?
- ***The Commission Must Clearly State that it is NOT creating any new Private Rights of Action.*** The Commission should do this explicitly as well as by clarifying that broker-dealers may include, in both their contracts and disclosures, disclaimers of contract liability based on the new Commission rules and required disclosures.
- ***The Commission must allow firms to provide monetary and non-monetary incentives to registered representatives.*** The Commission should not interfere with a firm’s decision to award a registered representative with compensation for growing the assets in his/her book of business. Asset gathering is common practice and a firm providing its registered representatives with incentives for increasing those assets does not harm investors. In fact, registered representatives who take the initiative to discuss financial products with their customers provide beneficial financial education to them. We strongly support the Commission maintaining the ability of registered representatives to continue to be able to educate their customers about markets, stocks, funds, and other financial products. If there is a particular incentive situation the Commission seeks to prohibit, then the specific facts and circumstances associated with that situation must be clearly stated in any final rule.



While we have many more concerns and questions about the proposals, we decided to focus on and highlight these as our primary issues—and the ones that we think could risk limiting choice and access to advice for middle income Americans. We urge the Commission to consider revising the proposals to prevent this unintended consequence.

IV. Conclusion.

We look forward to continuing to engage in discussions with you as you work towards finalizing these rules. We believe establishing a simple approach that harmonizes the standards for broker-dealers and investment advisers and is focused on improving retail investors' understanding of their choices through a layered disclosure approach as outlined above, will allow different business models to continue to exist, will give American businesses clear direction in how they set up their compliance programs to adhere to that standard, and will protect Americans' abilities to meet their investment objectives while preserving investor choice.

We are eager to work with you to address these issues in a constructive and practical way so that we can continue our business of creating and preserving wealth for the American people.

We look forward to discussing this approach in more detail.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer

Cc:

Chair Clayton
Commissioner Jackson
Commissioner Peirce
Commissioner Stein

APPENDIX A: PROPOSED RULE TEXT

- **Best Interest:** A broker, dealer or a natural person who is an associated person of a broker or dealer shall make recommendations, for any securities transaction or investment strategy involving securities to a retail customer, in the best interest of the retail customer at the time the recommendation is made.
 - **Customer First Obligation:** For a recommendation made by a broker, dealer or a natural person who is an associated person of a broker or dealer to satisfy this obligation, the recommendation shall not place the interest of the broker, dealer, or natural person who is an associated person of a broker or dealer ahead of the interest of the retail customer.

- **Care Obligation:** A broker, dealer or a natural person who is an associated person of a broker or dealer in making a recommendation will exercise reasonable diligence, care, and skill to determine that the advice is appropriate for the customer.
 - **Reasonable Basis:** A broker-dealer can satisfy this obligation by having a reasonable basis to believe that a recommended transaction (or investment strategy) is appropriate for the retail customer, based on the information the customer provides and that which is obtained through reasonable diligence.
 - Customer information can include the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other relevant information the customer discloses.⁶

- **Cost:** A broker, dealer or natural person shall fully and fairly disclose all fees when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.
 - This requirement does not obligate a broker to recommend the "least expensive" security or investment strategy (however "least expensive" may be quantified), as long as the broker is not placing his or her interests ahead of the customer's interests;⁷ and
 - The cost associated with a recommendation is only one of many important factors to consider when determining whether the subject security or investment strategy involving a security or securities is in the best interests of the customer.

⁶ Id. "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."

⁷ Id.



- ***Conflict of Interest Obligations.*** A broker or dealer shall establish, maintain and enforce written policies and procedures reasonably designed to identify conflicts of interest associated with a recommendation of any securities transaction or investment strategy involving securities to a retail customer and require the disclosure of such conflicts to the retail customer.

- ***Disclosure & Mitigation of Conflicts:*** To mitigate a conflict of interest, material or otherwise, a broker, dealer, or a natural person who is an associated person of a broker or dealer shall:
 - (1) disclose such conflict to a retail customer prior to or at the time a recommendation of any securities transaction or investment strategy involving securities is made; and

 - (2) obtain consent to such conflict from the retail customer prior to or at the time any securities transaction or investment strategy involving securities is made.

The care obligation, the conflict of interest obligations, and the disclosure and mitigation of conflicts language set forth above should apply to Investment Advisors as well.

APPENDIX B: SAMPLE FORM CRS

What You Should Know Before You Hire Someone to Help with Your Investments

Broker-dealers and investment advisers offer many different ways you can get help with your investments. This brochure provides general information about key issues you should consider when comparing your options.

Available services, fee structures, and conflicts vary from firm to firm, so you should review each firm’s disclosures carefully before making your decision. Banks and insurance brokers and agents may also provide access to financial planning and advice services, but these services are beyond the scope of this document.

What are the differences in Recommendations from Broker-dealers and Investment Advisors?

When broker-dealers and investment advisers recommend investment products and strategies they each have the **same care obligations** to clients when making those recommendations. Any recommendation must always be in the best interests of the client and no other interests can come *ahead of* the interests of the client:

Standard of Care— Regardless of the provider, investment advice recommendations must be in the Best Interest of the investor. Further, the Adviser and Financial Institution providing the advice must act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters, based on the investment objectives, risk tolerance, financial circumstances, and needs of the investor, without placing the interest of the Adviser or Financial Institution ahead of the investor’s interest.

What kinds of services do broker-dealers and investment advisers offer?

Both broker-dealers and investment advisers can recommend investment products and strategies, but there are some important differences in their services depending on the type of account you open. Account types:

- **Execution only**—Some broker-dealers offer services limited to custody, trade-execution and access to trading tools, education and research (but will not make individual investment recommendations). These services are generally provided through a call center or internet website. This service is not offered by investment advisers.
- **Advised brokerage**—Broker-dealers offer this account. In advised brokerage, a broker-dealer can recommend trades for you to consider but won’t make investment decisions for you. Typically, broker-dealers do not monitor your investments on an on-going basis, so you will be responsible for making sure you are comfortable with each trade and that your investment mix stays right for your goals.

- **Non-discretionary and discretionary advisory**—Investment advisers offer these accounts. They can recommend investments (like advised brokerage), but can also offer “discretionary” management services where the adviser makes the individual trading decisions for you. Many, but not all, investment advisers will monitor your account on an on-going basis—you should ask whether the investment adviser you are considering takes on this responsibility.

Some firms are “dual-registrants” and can offer their services as either a broker-dealer or investment adviser. Dual registrants offer access to each of the services above.

When you are looking at different firms, you should find out what services they offer and think about whether their services match your needs.

What fees will I pay?

The fees you pay (and how you pay for them) will be different depending on whether you use brokerage or advisory services. Fees and fee structures vary from firm to firm and within individual firms depending on the particular services you choose, and other factors, like how much you invest. Fees and expenses are a very important factor in how your account performs over time, so you should make sure you understand what you will pay before you open an account for a particular service. In general:

- **Broker-dealers do not charge a separate fee for their investment recommendations.** You will typically pay them a commission or other fee when you buy or sell an investment.

Commission amounts depend on various factors like the type of investment and investment amount, and can be charged up-front when you buy, or when you sell. You should ask for the firm’s commission schedule for more details. The actual amount of commissions you pay will be disclosed on the confirmation you receive after your trade.

Additionally, some commissions are paid to broker-dealers from your investments over time. These include “Rule 12b-1 fees” (from mutual funds) and placement fees. You can get information about these fees from the prospectuses or other offering documents of the investment products in which you invest. But, you should ask if these fees exist if you decide to purchase a mutual fund.

Broker-dealers also typically charge account maintenance, margin interest, custody (including IRA custodial fees) and other fees for maintaining and administering your account. More information about brokerage fees is available from the SEC in “[How to Open a Brokerage Account](#)” and “[Brokers’ Miscellaneous Fees](#).”

- **Investment advisers typically charge an additional fee for their advice.** Unlike broker-dealers, investment advisers generally charge a separate fee for their advice.

Advisory fees can be calculated as a percentage of the assets in your account, or a fixed dollar amount. They can also be charged on an on-going basis, regardless of the amount of trading in your account.

Advisory fees can be in addition to commission and other transaction charges you pay the broker-dealer who executes your trades, or in the case of a “wrap advisory fee,” certain transaction charges are included in this fee, which is usually calculated as a percentage of assets in your account.

You may also pay account maintenance, margin interest, custody (including IRA custodial fees) and other fees to a broker-dealer or custodian for maintaining and administering your account. More information about advisory fees is available from the SEC in “[Opening an Investment Advisory Account](#)” and Investor Publication “[Investment Advisers: What You Need to Know Before Choosing One.](#)”

When you are comparing different firms, you should ask about their fees (and compensation) and where you can get more information. You should also ask whether their fees are negotiable, whether lower fee options are available and their policy of aggregating household accounts for better pricing.

- *Remember that these account-level fees are in addition to the fees and expenses of the products you may invest in, such as the expense ratio of a mutual fund or insurance product.*
- *Fees may seem small, but over time they can have a major impact on performance.*

For more information, please review the SEC Investor Bulletins “[Ask Questions – Questions You Should Ask About Your Investments](#)”; “[How Fees and Expenses Affect Your Investment Portfolio](#)”; and “[Ten Things You Should Know About Investing.](#)” Additional information is on the SEC’s Investor.gov website at <https://www.investor.gov/introduction-investing/basics/investment-products.xxxxxxx>

How else do broker-dealers and investment advisers make money?

Broker-dealers and investment advisers may earn money from various sources in addition to what you may pay directly, including:

- **Certain investment products in which you invest and from the products’ sponsors and managers.** This compensation generally depends on the amount you invest in the particular investment product and can be paid when you invest, an on-going basis or both.
- **Affiliated products.** If the broker-dealer or investment adviser offers investment products provided, serviced or sponsored by it or an affiliate, your investment will generally result in additional compensation being paid to the firm or the affiliate.

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- **Payment for order flow.** Broker-dealers can also receive compensation from market centers called “payment for order flow” for directing your trades to the market centers.
 - **Principal trades/Underwritings.** Broker-dealers and investment advisers (with your approval) can trade with you for their own accounts on a “principal basis”. When they do, they earn compensation by marking up the price of securities they sell to you, and marking down the price of securities they buy from you. They can also earn selling concessions for underwritings and IPOs for which the firm participates in the selling syndicate.
 - **Sweeps.** If a broker-dealer or investment adviser offers a sweep program for uninvested cash in your account, the firm can earn additional revenue from the banks or money market funds that hold your cash.
 - **Margin.** If you hold investments in a margin account, the broker-dealer can earn additional compensation from margin interest charged to you, as well as compensation it may receive for using assets held in the account for lending purposes.

Ask the firms you are considering about compensation they receive from other sources and where you can get more information. Even though you do not pay these fees directly, they affect your investment performance indirectly and should be considered part of the overall fees you are paying for services.

What conflicts do firms have?

Broker-dealers and investment adviser have conflicts when they recommend, or invest your savings in investment products, services, and transactions that result in them receiving greater compensation. Conflicts vary from firm to firm, but here are some general conflicts to look out for:

- **Rollovers and asset transfers.** Broker-dealers and investment advisers don’t generally get paid unless you hire them. Thus, whether you are thinking about moving your assets from an account at another firm, or from your company retirement plan, you should know that the broker-dealer or investment adviser you are talking to has an incentive to encourage you to move your assets to their firm.
- **Brokerage vs. Advisory.** If you are working with a dual-registrant offering both advisory and brokerage services, the firm will have a conflict to encourage you to select the service that results in the most compensation for the firm. This will generally depend on your trading volume—if you trade a lot, the firm may have an incentive to get you into a brokerage account, but otherwise, advisory programs often result in the firm earning more compensation.
- **Advisory Program A vs. Advisory Program B.** Some advisory programs are more expensive than others, and investment advisers have an incentive to encourage you to pick the most expensive one. When making your choice,

understand the differences in service levels, and choose the program that best services your needs.

- **Product A vs. Product B.** Firms are compensated more for some products than for others. For example, the commissions you pay to a broker-dealer for a variable annuity may be higher than the commissions you pay for a mutual fund. A mutual fund sponsor may pay a broker-dealer or investment adviser more for selling its mutual funds than it does for selling a similar exchange traded fund (“ETF”). And a firm might get more compensation for selling mutual funds from one fund family than it does from another fund family, or for selling mutual funds managed by an affiliate.
- **Share classes.** A firm may offer investment products in different share classes with different compensation amounts and structures and have an incentive to recommend you invest through the share class that results in the most compensation to the firm. Additionally, depending on the share class compensation structure, the firm may have an incentive to encourage you to buy and sell share classes with up-front commissions, and to hold share classes that pay compensation over time. Not all share classes are offered by all firms to all customers.
- **Principal trade vs. agency trade.** Broker-dealers and investment advisers have an incentive to encourage you to invest in securities they hold in inventory or where they are participating in an underwriting syndicate, and to execute trades against their proprietary accounts.
- **Order routing.** Broker-dealers have an incentive to route trades to market centers that pay them more.

You should ask the firms you are considering about their conflicts of interest and how those conflicts affect their services to you. You should also ask for the firm’s conflicts disclosures and review these disclosures before making investment decisions.

What conflicts do financial professionals have?

Broker-dealers and investment advisers compensate and incentivize financial professionals for working with investors.

Financial professional compensation varies significantly from firm to firm, but is typically affected by the amount of client assets the financial professional is responsible for and the fees and commissions those assets generate.

Compensation can include both (i) cash compensation and bonuses, and (ii) non-cash incentives like eligibility for sales clubs, trips, and other awards.

Thus, financial professionals have an incentive to encourage you to invest your savings in the services, products, and transactions that result in the financial professional earning the most compensation.

You should ask the firms you are considering about how financial professionals are compensated (both cash and non-cash) and what the firm does to mitigate and supervise those conflicts.

How do broker-dealers' and investment advisers' obligations to investors differ?

Federal securities laws use different words to describe the standards that apply to broker-dealers ("best interest") and investment advisers ("fiduciary"), but both types of firms are required to take steps to make sure the investments and strategies they recommend or implement are appropriate or suitable for you.

Additionally, broker-dealers and investment advisers are required to address their conflicts. They can do this by disclosing their conflicts to you.

What disclosures should I look at before deciding to hire a firm?

Each firm will make a number of disclosures available to you about their specific services, fees and compensation, and conflicts of interest. *If you need help understanding these disclosures, ask the firm or financial professional for help.*

For information about how to check a financial professional's background, review the SEC Investor Bulletins "[Check Out Brokers and Investment Advisers](#)"; "[Check Out Your Financial Professional](#)"; and "[Top Tips for Selecting a Financial Professional](#)."

To report a problem to the SEC, visit the SEC's [Center for Complaints and Enforcement Tips](#) or call the SEC's toll-free investor assistance line at (800) 732-0330. To report a problem to FINRA, visit www.finra.org/investors/problem or call FINRA's call center at (301) 590-6500.