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Via Electronic Filing

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: (1) Regulation Best Interest (Release No. 34-83062; File No. S7-07-18)

(2) Form CRS Relationship Summary (Release No. 34-83063; IA-4888; File No. S7-08-18)

(3) Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation (Release No. IA-4889; File No. S7-09-18)

Charles Schwab & Co., Inc. ("Schwab") appreciates this opportunity to comment on the above noted proposals and request for comments. We support the intent behind the proposed rules to enhance the standard of conduct of broker-dealers when they give investment advice, and to adopt a new uniform disclosure that would summarize the key aspects of retail investors' relationships with their broker-dealer or investment advisor (collectively, the "Rule Proposals"). This is consistent with Schwab's "through clients' eyes" strategy and our efforts to be transparent about our business practices. Below in Sections II and III we offer specific recommendations on how to improve the Proposals to better serve retail investors. Our recommendations are based on what retail investors tell us they want and need, as shown through independent research Schwab recently commissioned. The results of that illuminating survey of a broad cross-section of retail investors are attached in **Appendix A**. We have also attached materials that demonstrate an alternative one-page Form CRS that would better meet retail investor needs and what they tell us they prefer. *See* **Appendix B**.

With respect to the *Request for Comment on Enhancing Investment Adviser Regulation* (the "Request"), as discussed in Section IV we see no investor protection rationale that outweighs the substantial costs and burdens to registered investment advisors ("RIAs") and their clients of imposing new prescriptive rules on RIAs for federal licensing and continuing education, financial responsibility requirements akin to broker-dealers ("BDs"), and mandatory account statements.

I. Schwab's Perspective and Summary of Main Points

As a dually registered broker-dealer and investment advisor with $3.4 trillion in total client assets and 11 million active accounts that also serves 8,000 independent RIAs, we believe we can offer a valuable and unique perspective for the Commission's consideration. Our client base reflects the investing public. It runs the spectrum from small "Mom and Pop" investors, to sophisticated self-directed investors, to investors who delegate and entrust their financial lives to an RIA. Schwab's assets under custody are divided almost evenly between our Investor Services business which directly serves retail investors, and our Advisor Services business which serves independent RIAs and their clients.

In our direct retail investor business, about 15% of the assets are in an investment advisory relationship with Schwab. Of those households, most also have at least one brokerage-only account. The majority of our retail clients are self-directed, some of whom ask us for occasional investment advice. This large group of investors does not need, and may not be willing or able to pay the additional fees for, an ongoing investment advisory relationship. Our financial and portfolio consultants who serve our retail clients are dually licensed to serve clients holistically across multiple types of accounts, including retirement and non-retirement. Most are Certified Financial Planner ("CFP") professionals subject to the CFP Board Code of Ethics and its fiduciary obligations.

The dual registration of our firm and representatives, and our platform of services for independent RIAs, enable us to uphold investor choice and provide access to a wide range of investment advice services. Guided by the SEC, FINRA, and the Department of Labor over the years, and believing in the principle of transparency, we are very clear about our business practices. This includes making available on our public website clear explanations about how we pay our representatives, how our firm makes money, and the resulting potential conflicts of interest.

It is important for the Commission's final rules to enhance investor protection while not diminishing the autonomy and choice for retail investors who maintain their accounts at dual registrant firms like Schwab or who hire independent RIAs to help them invest and manage their accounts. To this end, our comments focus on these primary issues:

(1) Regulation Best Interest, to best serve retail investors and meet their expectations, should include enhanced best interest language to make clear that when giving investment advice the

retail investor's interest must come first; how BDs and RIAs deal with material conflicts of interest can and should be harmonized; and to avoid disclosure overload the Disclosure Obligation at the point of transaction should be minimal if the Relationship Summary through Form CRS is sufficient. **Section II, page 3 below**.

(2) Form CRS - based on expert comments, investor research, and a need to simplify for retail investor understanding of this important document - should be one page and digitally friendly with links to more information, focus on the specific relationship (BD or RIA) the retail investor is in or contemplating, and delivered at or before account opening with an annual or periodic update and kept current on a firm's website. **Section III, page 13**.

(3) Additional Regulations for Advisors would not add to retail investor protection and would be costly and burdensome; consequently, the Commission should not move forward with any rule proposals in the areas of licensing and education - which would be duplicative of state efforts; financial responsibility - which without cause would treat RIAs like BDs; and advisor account statements - which are unnecessary because custodian statements and RIA communications already show investors the fees they pay to their RIAs. **Section IV, page 22**.

II. Regulation BI: Harmonize the Best Interest Language, Standard of Care, Disclosure and Conflict of Interest Obligations to the Extent Consistent with Preserving Investor Choice and Maintaining the Distinctions between Broker-Dealers and RIAs

A. Raise the Bar for Broker-Dealers with a Transactional Best Interest Obligation, while Preserving Investor Choice and the Distinctions between BDs and RIAs when it Comes to Investment Advice

Retail investors should expect that those who make securities recommendations to them will act in their best interest, exercise due care to understand their needs and the investments they recommend, and address and disclose potential conflicts of interest that could undermine acting in their best interest. Schwab, therefore, supports the purpose and intent of proposed Regulation BI.

Retail investors as a group also deserve access to a full range of investment advice options including:

(1) Occasional or episodic buy or sell recommendations for no additional fee, paying only a commission or cost associated with the transaction,
(2) More frequent or regular non-discretionary investment advice for a fee, or
(3) Discretionary management of investments including monitoring of the account.

Broker-dealers can only provide the first category of investment advice, and for many investors it is the best choice depending on their need, ability, and willingness to pay a fee for that advice. Given the limited investment advice service the client is paying for, the investment advice duties BDs owe their clients are at the time of the recommendation; they are transactional.

RIAs provide the second and third categories of investment advice. They include a more in-depth level of investment advice service usually for an asset-based fee and customarily spelled-out in an investment management agreement between the investor and RIA. Given the trust and confidence an investor has placed on the RIA and is paying for, the investment advice duties RIAs owe their clients are ongoing.

Preserving these distinctions between BDs and RIAs is highly important to preserving investor choice and access. As discussed in Section III below, making sure retail investors understand the scope and limits of the investment advice service they are receiving (transactional or ongoing), and the corresponding obligations their financial services firm owes them (whether BD or RIA), are the most important items that should be disclosed prominently on Form CRS.

Subject to this distinction between BDs and RIAs, we agree with Chairman Clayton that the standard of care for BDs and RIAs should essentially be the same.[1]

Keeping the above important considerations in mind, our comments below suggest changes to the proposed rule and guidance in the preamble that would eliminate nuances where unnecessary and harmonize investment advice obligations where possible. This will better serve retail investors and avoid confusion for firms and their representatives in the future.

B. Retail Investors and Those Who Serve Them Will Not Benefit from Nuances and Inconsistencies in Standards and Approaches, and the Final Rule Should Bring Some Additional Harmonization

Regulation BI will be a new federal duty that will stand on its own distinct from the fiduciary duties of loyalty and care that RIAs owe their clients under Section 206 of the Investment Advisers Act as interpreted by the courts drawing upon common law principles.[2] It fits

[1] *See* A Conversation with SEC Chairman Jay Clayton, FINRA Annual Conference, available at http://www.finra.org/industry/conversation-sec-chairman-jay-clayton (stating that "core duty" of BDs and RIAs is same and disagreeing that there is "daylight between the two").

[2] We appreciate and support that this BD transactional duty, as proposed, relies on settled definitions of "recommendations" and "suitability" with which BDs are well familiar.

comfortably within the Law of Agency,[3] and could very well be characterized as a transactional fiduciary duty, something our research tells us retail investors would understand and most likely welcome.

1. Survey – What Retail Investors Say

Because the Rule Proposals are intended to address retail investor confusion regarding the standard of conduct for BDs, we retained an independent research firm, Koski Research, to undertake a survey of 1,000 retail investors to see what they think. *See* **Appendix A**.[4]

In the survey, retail investors told us that they have a general understanding of the phrases "act as your fiduciary" (80%) and "act in your best interest" (96%).[5] An astonishingly high number understand the latter, including 94% of investors with more modest investable assets ($25,000 – $99,999).[6] On reflection, perhaps that is not surprising; at its basic form it is easy to grasp: "When you recommend something to me it is because you think it is best for me, not because you think it is best for you or someone else."

Almost twice as many retail investors think acting as a "fiduciary" and "acting in your best interest" should mean the same thing (59%) versus something different (32%).[7] By a margin of more than 2:1, by far the most popular response to a question about whether BDs and RIAs should be subject to a fiduciary or a best interest standard when giving investment advice was "both be subject to a fiduciary and a best interest standard."[8]

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[3] The primary function of the law of agency governing fiduciaries is the deterrence of bad conduct by imposing liability necessitated by the absence of a complete contract between the parties. The duty of care establishes a reasonableness or prudence standard to assure the agent acts competently. The duty of loyalty requires that the agent act in the client's best interest by regulating conflicts that can undermine performance. Specific duties are subject to modification by agreement of the parties. *See generally* Restatement (Third) of Agency § 8; Robert H. Sitkoff, *The Fiduciary Obligations of Financial Advisers under the Law of Agency* , 27 Journal of Financial Planning 42 (2014). *See also Kwiatkowski v. Bear, Stearns & Co, Inc.*, 306 F.3d 1293, 1307 (2nd Cir. 2002) ("[T]he giving of advice is an unexceptional feature of the broker-client relationship. . . . [G]iving advice on particular occasions does not alter the character of the relationship by triggering on ongoing duty to advise in the future (or between transactions) or to monitor all data potentially relevant to a customer's investment.").

[4] Retail Investor Study on Standards of Conduct and Communications for Investment Advice, Research Conducted by Koski Research, July 31, 2008 ("Koski Research Report"). Koski Research fielded the survey July 10-15, 2018. 1,000 U.S. investors completed the survey, representing a wide range of investing styles, assets, and needs. *See* Koski Research Report, Appendix A at 4 and 17-18. Koski Research is not affiliated with Schwab.

[5] *Id.* at 7. This is not a claim that lay persons understand the finer legal points of fiduciary law. There is no reason why they should. Even the most experienced lawyers and jurists can disagree on those points. However, a rule package that is focused on creating a standard of care and disclosing that standard ought to take into account investors' basic understanding and expectations.

[6] *Id.* at 19.

[7] *Id.* at 7.

[8] *Id.* at 9.

These survey results tell us that retail investors will not understand or appreciate subtle differences or nuances in the phrasing of best interest and fiduciary obligations for BDs and RIAs. They think they should mean the same and be applied the same – at least in similar circumstances. The difference, of course, is in the scope of investment advice service a BD or an RIA provides and the corresponding duration of the obligation: transactional, or ongoing.

2. Inconsistent standards would result in confusion and risks for representatives and their clients

We believe that most representatives are on the same side as their clients when it comes to wanting a consistently worded standard of conduct to follow, with the main difference being whether the obligation is transactional or ongoing depending on the service the retail investor has elected and is paying for. This is especially the case for those representatives who are CFP professionals, the most common certification in our industry. As of October 1, 2019, CFP professionals – whether working for a BD or an RIA – will be subject to robust fiduciary duties of loyalty and care whenever they give "financial advice."[9] While becoming a CFP professional is voluntary, according to the CFP Board of Standards, Inc. there are over 50,000 CFP professionals who are registered with FINRA today.[10] This could lead to a bifurcation in investment advice duties owed to retail investors between those BD representatives who are CFP professionals and those who are not. Representatives of a dually registered firm (BD and RIA) who are also CFP professionals are at risk of having three different duty of care formulations that they and their firms will need to understand and meet: Exchange Act, Advisers Act, and CFP Code of Ethics. If they give ongoing investment advice to retirement accounts, Department of Labor rules under ERISA provide yet a fourth formulation to follow. For these reasons, Schwab urges the following three considerations or changes to bring some order to the potential cacophony.

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[9] *See* CFP Code of Ethics and Standards of Conduct ("CFP Code") at https://www.cfp.net/about-cfp-board/code-and-standards ("The new Code and Standards expands the application of the fiduciary standard to all financial advice, and requires a CFP® professional to act in the best interests of the client at all times when providing financial advice.") The CFP Code defines "financial advice" as exercising discretionary authority and any communication that would reasonably be viewed as a recommendation that the client take or not take a particular course of action with respect to: "1. The development or implementation of a financial plan; 2. The value of or the advisability of investing in, purchasing, holding, or selling Financial Assets; 3. Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters; 4. The selection and retention of other persons to provide financial or Professional Services to the Client." *Id.* at 14.

[10] All together more than 80,000 financial professionals currently hold the CFP designation today. *See* https://www.cfp.net/news-events/research-facts-figures/cfp-professional-demographics.

3. Keep the final rule consistent with the ERISA best interest duty Department of Labor (DOL) included in the "Impartial Conduct Standards" of the Best Interest Contract (BIC) exemption.

The BIC exemption granted relief from prohibited transactions that would have resulted from the DOL's now vacated rule for non-discretionary investment advice to retirement accounts.[11] We appreciate the Commission's statement of intent in the *Regulation Best Interest Proposal* ("Regulation BI Proposal"),[12] as reflected in the proposed rule text, to follow closely the best interest standard in the BIC's Impartial Conducts Standards. Some may be tempted to stray further away from the DOL's standard now that the rule is vacated. However, the DOL's Temporary Enforcement Policy makes clear that DOL is not finished with its work in this area.[13] We think the Commission's final rule, if consistent with the Impartial Conduct Standards, will enable DOL to follow the Commission's lead and avoid having different standards in the future (again) for retirement and non-retirement accounts.

4. Use the same language for "best interest" under Regulation BI that is common for investment advisors.

Although the *Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers* ("IA Interpretation Proposal") does an admirable job parsing through decades of statements about RIAs' fiduciary obligations, we realize that there are a number of different formulations of an RIA's duty when it comes to the client's best interest.[14] This is because it is a principles-based standard that depends on the facts and circumstances of a particular relationship. In the more limited scope of a broker-dealer's transactional obligation we think the language – to best serve retail investors and to avoid confusion and unnecessary nuances - should be as close as possible to what RIAs are required to do when recommending a transaction. To this end we suggest altering the language of proposed Rule 15*l*-1(a)(1) to read (additions in underline):

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[11] *See* Best Interest Contract Exemption, 81 Fed. Reg. 21,002 (Apr. 8, 2016).

[12] *See Regulation Best Interest*, Release No. 34-83062; File No. S7-07-18 (April 18, 2018) ("Regulation BI Proposal") at 175-183.

[13] *Temporary Enforcement Policy on Prohibited Transactions Rules Applicable to Investment Advice Fiduciaries,* Department of Labor Field Assistance Bulletin (May 7, 2018). Following the Fifth Circuit's decision to vacate the fiduciary rule and the BIC Exemption, and knowing that some financial institutions were relying on compliance with the impartial conduct standards of the BIC to avoid prohibited transactions, the Department "concluded that financial institutions should be permitted to rely upon [their compliance with the impartial conduct standards] pending the Department's issuance of additional guidance."

[14] *See Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers,* Release No. IA-4889, File No. S7-09-18 (April 18, 2018) ("IA Interpretation Proposal") at 9-19.

> A broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, by putting that retail customer's interest first, and without placing the financial or other interest of the broker, dealer or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.

This has the merit of being absolutely clear that the retail investor's interest must come first at the time a recommendation is made, tracking best interest language ("putting the client's interest first") often used in the RIA context.[15] It also should dispel doubts about the meaning or depth of the best interest obligation for BDs in the transactional context.

5. Harmonize the obligation of BDs and RIAs to Address Conflicts of Interest.

The standard and guidance for identifying, disclosing, and mitigating material conflicts of interest should be the same, whether a best interest obligation is called fiduciary or not, and whether that obligation is transactional (for BDs) or ongoing (for RIAs). If there are some conflicts of interest the Commission believes are so egregious that they must be avoided or eliminated, then they should be identified more clearly and it should be the same for BDs and RIAs. In Schwab's opinion, sales contests that focus on a particular product (in contrast to rewards that are product agnostic, such as based on acquiring new assets under management) is one such conflict.[16]

In discussing material conflicts of interest, on the one hand the Regulation BI Proposal preamble discusses the obligation of BDs to have reasonable procedures to identify conflicts relating to financial incentives and then to make a determination whether disclosure is enough or whether the conflict must be mitigated or even eliminated. On the other hand, the IA Interpretation Proposal says that if an RIA cannot provide adequate and clear disclosure because the material conflict is so complex or is not understandable, then it should be eliminated or mitigated.[17]

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[15] *See id.* at 15 (citing authorities). "For at least forty years, courts have consistently held that an investment adviser is a fiduciary that must put his or her client's interests first." *In the Matter of Christopher M. Gibson*, SEC Release No. 1106 (Jan. 25, 2017), available at https://www.sec.gov/alj/aljdec/2017/id1106bpm.pdf. *See also Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Release No. IA-2653; File No. S7-23-07 (Sept. 24, 2007) at 31 (discussing fiduciary duty of advisors in context of principal trades to "put their clients' interests first").

[16] Another example might be an arrangement whereby the BD or the RIA, as the case may be, receives 5% of an issuer's or distributor's proceeds on sales when recommending a client invest in that product, while generally limiting its range of recommendations to such products although similar higher performing products are available. Although that conflict could be easily disclosed, it may be the case that only mitigation or elimination of such a conflict can assure that the BD or RIA meets the required standard of care to give advice in a client's best interest.

[17] *See* IA Interpretation Proposal at 18-19.

There is already confusion in the industry regarding the intended differences in these two approaches. For clarity, and to enable financial services representatives to best serve their retail clients, we recommend the Commission harmonize its material conflict of interest disclosure and mitigation guidance. We believe the Commission has the authority and obligation to do so as the expert agency.

What a firm is required to do when it identifies a material conflict of interest should be the same, whether that firm is acting as a BD or RIA. For BDs this should include changes to proposed Rule 15*l*-1(a)(2)(iii) by removing or collapsing the distinction between "all material conflicts of interest" in subparagraph (A) and "material conflicts of interest arising from financial incentives" in subparagraph (B). The only non-financial material conflict of interest we can imagine would be a recommendation that benefits a friend or family member, but we think that material conflict should be classified as financial. So it seems unnecessary to have slightly different wording for two Conflict of Interest Obligations under Regulation BI.

Schwab appreciates the guidance in the preamble that basing compensation for representatives on "neutral factors" is one method for mitigating financial conflicts of interest that a registered representative might otherwise have when recommending a security. In the adopting release it would be helpful to emphasize, as the Department of Labor did for the BIC's Impartial Conduct Standards, that mathematical precision for leveling representative compensation is not necessary,[18] and that neutral factors are just one way to mitigate material conflicts of interest.[19]

C. <u>The Disclosure Obligation Language and Guidance in the Preamble Should Be Clearer that the Client Relationship Summary Can Be Sufficient to Avoid Onerous Transaction-by-Transaction Disclosures</u>.

The preamble of the Regulation BI Proposal indicates firms will have flexibility in designing methods to fulfill the Regulation BI disclosure obligation based on their particular business models and what they recommend to their clients. For example, the proposing release at least implies that the disclosures through Form CRS can be sufficient:

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[18] *See* BIC Exemption Release at 21,040 (differential payments "must reflect neutral factors" but "pure mathematical precision is not necessary to justify differential payments"), available at https://www.federalregister.gov/d/2016-07925/p-405. *See also id.* at 21,002 ("Rather than create a set of highly prescriptive transaction-specific exemptions [] the exemption flexibly accommodates a wide range of compensation practices . . . By taking a standards-based approach, the exemption permits firms to continue to rely on many common compensation and fee practices, as long as they adhere to basic fiduciary standards aimed at ensuring that their advice is in the best interest of their customers and take certain steps to minimize the impact of conflicts of interest."), available at https://www.federalregister.gov/d/2016-07925/p-10.

[19] Some commenters will argue that neutral compensation is unrealistic or even impossible. Schwab disagrees with those assertions.

- "[W]e believe that some disclosures may be effectively provided in a standardized document at the beginning of the relationship."

- "[W]e would like to emphasize the importance of determining the appropriate timing and frequency of disclosure that may be effectively provided 'prior to or at the time of' the recommendation, but which may be achieved through a variety of approaches: (1) at the beginning of a relationship (e.g., in a relationship guide, such as or in addition to the Relationship Summary [meaning Form CRS] . . . ."

- "[In] a layered approach to disclosure, certain material facts are conveyed in a more general manner in an initial written disclosure, and [then] followed by more specific information in a subsequent disclosure, which may be at the time of the recommendation."

- "While certain forms of disclosure may be standardized, certain disclosures may need to be tailored to a particular recommendation, for example if the standardized disclosure does not sufficiently identify the material conflicts presented by the particular recommendation."[20]

Schwab appreciates the flexibility refrain in the proposing release regarding the Disclosure Obligation. We believe that if the CRS Form is structured properly and BDs like Schwab can address their status, investment advice services with corresponding obligations, fees, and conflicts of interest through the Form CRS, then nothing more should be required. This would reinforce the primacy of the Form CRS as the key foundational disclosure for BDs, and would be consistent with the disclosure obligations of RIAs who are not obligated to make disclosures to their clients at the time they recommend securities or transact on behalf of their clients.

[20] Regulation BI Proposal at 118, 119, 120, and 121, respectively (emphasis added).

However, the Regulation BI Proposal also states:

- "[W]hile the Relationship Summary would require a high-level description of specified conflicts of interest, the Disclosure Obligation would require more comprehensive disclosure of all material conflicts of interest related to the recommendation."

- "[W]e believe broker-dealers should, consistent with the goal of layered disclosure, build upon their disclosure in the Relationship Summary, and provide additional information regarding the types of services that will be provided as part of the relationship . . . ."[21]

The potentially conflicting guidance could result in an unfair "gotcha" for some firms who in good faith do not believe more than the Form CRS should be necessary. For example, if the compensation of a representative is the same no matter what security he or she recommends or if he or she recommends nothing at all, and the conflicts of interest a firm has based on different revenue it could receive depending on what a representative recommends is already disclosed through the Form CRS, then that should be sufficient. Neither retail investors nor the associated persons who serve them should have to endure repetitive disclosures at the time of a recommendation just to protect the firm from potential liability. This would be the same old approach of overkill disclosure implemented to protect firms instead of what is actually necessary to protect retail investors. This is especially the case when an investor simply wants an occasional straight-forward mutual fund, ETF, stock or bond recommendation from his or her financial professional based on that client's already established investor profile.

Mandating a complicated transaction-based disclosure regime would cost the industry hundreds of millions of dollars in the aggregate which are not fully contemplated by the Commission's cost-benefit analysis.[22] If not reasonably contained, the Disclosure Obligation would be the most

[21] *Id.* at 103 and 109 (emphasis added).

[22] The Commission acknowledges that it is "unable to fully quantify the costs of the Disclosure Obligation for a number of reasons" but estimates an initial aggregate cost of "at least $1,391.07 million and an ongoing aggregate annual cost of at least $460.81 million on broker-dealers." *Id.* at 282; 284. In 2004, in response to proposed Rule 15c23, SIFMA estimated that per firm implementation costs of point-of-sale requirements would be approximately $1 million to $1.2 million. *See* Letter dated April 12, 2004, from George R. Kramer, Securities Industry Association Comment Letter, Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, File No. S7-06-04, available at https://www.sec.gov/rules/proposed/s70604/sia041204.pdf.

expensive part of the Rule Proposals to implement, thereby requiring extraordinary review.[23] We also note that a detailed transaction-specific disclosure was one of the fatal flaws of the DOL's overturned Best Interest Contract exemption.[24]

The above faults can be avoided with a straight-forward language change to the Disclosure Obligation in proposed Rule 15*l*-1(a)(2)(i) that better integrates the Form CRS disclosure, and makes clear that this obligation belongs to the broker or dealer and is not a personal obligation of the associated person (additions in underline, deletions in strike-through):

> The broker or dealer~~, or natural person who is an associated person of a broker or dealer,~~ prior to or at the same time of such recommendation by providing Form CRS or by other means if not covered through Form CRS, reasonably discloses to the retail customer~~, in writing,~~ the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest that are associated with the recommendation.

Clearer guidance in the adopting release should accompany this language change. As noted above, for ordinary recommendations (such as a stock, bond, ETF, or mutual fund) where the terms of the relationship and the conflicts of interest have not changed from what is spelled-out through the Form CRS, nothing else should be required. The proviso "or by other means if not covered through Form CRS" would make clear that if terms of the relationship have changed or it is a more unusual investment product recommendation (such as certain structured products or annuities), then the firm would need additional policies and procedures to make sure its representatives supplement the disclosures in the Form CRS at the time of the recommendation. Recognizing that many if not most recommendations today occur over the phone and in the future will take place through various digital means, the Commission should remove the "in writing" mandate and allow firms to design and document the best method depending on the situation.

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[23] This would result in Regulation BI being a "Major Rule" subject to Congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), which amended the Congressional Review Act ("CRA") to provide that no rule can become effective until the issuing agency submits a report with certain information, including whether the rule is a "major rule," to both houses of Congress and the Comptroller General. See 5 U.S.C.§ 801(a)(1)(A). "Major rule" means, among other things, any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in "an annual effect on the economy of $100,000,000 or more." 5 USC § 804(2).

[24] *See, e.g.*, Letter, dated August 9, 2017, from Lisa Bleier, Managing Director & Associate General Counsel, SIFMA, to U.S. Department of Labor, Reference: RIN 1210-AB82, at 25 available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00599.pdf ("The BIC exemption has a two-tier transaction disclosure requirement which will drive additional costs of compliance to firms. The on-demand transaction disclosure has the potential to delay transactions, a delay which would be harmful to retirement savers and is operationally challenging due to the complexity and recordkeeping requirements.").

III. Simplify and Shorten the Client Relationship Summary and Allow More Links to Additional Information

We agree with the underlying intent of the proposed *Form CRS Relationship Summary* ("Form CRS Proposal"). Like RIAs do today, BDs should make sure their clients understand and have common expectations about key aspects of their relationship. This has the potential to make the services and corresponding obligations, terms of payment, and material conflicts of interest clearer to investors. We are concerned, however, that the current Proposal as reflected in the sample disclosures accompanying the preamble will defeat this purpose because the proposed rule and form instructions try to do too much. This includes: a summary of typical brokerage account and investment advisory account services (and for dual registrants, a summary of "types of relationships and services" they actually offer that fall under "brokerage accounts" and "advisory accounts"); obligations owed to the investor; fees and costs; conflicts of interest; additional information on disciplinary history and reporting problems; and 10 "key questions to ask."[25] That is too much to expect an investor to review and process in the context of opening an account. For firms like Schwab that offer a whole range of services at different price points to all kinds of investors, it is not possible to cram it all into a four-page document to be understandable, visually appealing to encourage reading, and meaningful to a particular investor's needs.

Instead, with respect to RIAs, Form CRS should simply be a short navigation aid to the existing Form ADV Part 2 disclosure. With respect to BDs, the Form CRS should navigate investors to additional information readily available on the firm's website or enclosed with account documentation. That additional information would be considered incorporated by reference. No more is needed.[26] For RIAs and BDs, Form CRS should be a one-page plain English summary using Pew disclosure principles[27] that focuses on the relationship and account type that the

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[25] *See Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles*, Release No. 34-83063; IA-4888; File No. S7-08-18) (April 18, 2018) ("Form CRS Proposal") at 14.

[26] This allows some necessary flexibility for BDs depending on their business model and whether they have preexisting disclosures (as Schwab does) that cover firm and representative compensation and conflicts of interest. Combined with the change we recommend above in Section II to the Disclosure Obligation under Regulation BI to tie it more directly to Form CRS, there would be no loopholes for BDs. The Regulation BI Disclosure Obligation would read: "The broker or dealer prior to or at the same time of such recommendation by providing Form CRS or by other means if not covered through Form CRS, reasonably discloses to the retail customer the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest that are associated with the recommendation." As a result BDs would need to disclose material conflicts associated with their recommendations either on Form CRS and in materials a link away from the Form CRS or at the point of the recommendation.

[27] *See, e.g. Who Reads 40 pages of Disclosures? Pew's Model Disclosure Box for Checking Accounts* at http://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/who-reads-40-pages-of-disclosures.

investor is considering. Requiring more, at best, will lead to investors ignoring another four pages of government-mandated boilerplate drafted by lawyers; at worst, it will lead to investor confusion.

Below we discuss in more detail the problems with the current approach, and then explain a better alternative that will meet the Commission's purpose while allowing firms the flexibility to explain their business model as relates to the services they provide and corresponding conflicts of interest. The alternative approach also will allow investors to receive the disclosures digitally on smart devices (or paper) with links to get more information should they desire. Our alternative one-page approach is in **Appendix B**; it reflects the retail investor research that Schwab commissioned in **Appendix A**.

A. Form CRS as Proposed is Confusing and Tries To Do Too Much

Schwab is in favor of a uniform framework for disclosures and the intent behind the Form CRS Proposal. However, based on our 45 years of experience in communicating with retail investors, we caution that the proposed templates try to do too much, undermining the Commission's investor protection goals. We are not alone. Commissioners and Investment Advisory Committee members have commented:

- "I am concerned that the approach we are taking will simply mean a few more pages of unread paper landing in investor trash cans . . . . [T]he proposed disclosure falls back on an unimaginative paper-based default . . . . We do not want to turn an investor's visit to her investment adviser or broker-dealer into a sterile compliance exercise that focuses on delivering a pile of documents and checking off a list of required disclosures rather than engaging with the investor's needs."[28] **-Commissioner Peirce**

- "Will investors understand the implications of what they see on Form CRS? To what degree will investors actually use that information when making the crucial decision as to who to trust with their money?"[29] **-Commissioner Jackson**

- "The question I have . . . is whether we are proposing disclosure that is both too generic and too legalistic such that retail investors won't bother to read it. We are

[28] Commissioner Hester M. Peirce, April 18, 2018, Statement at the Open Meeting on Standards of Conduct for Investment Professionals, available at https://www.sec.gov/news/public-statement/statement-peirce-041818 ("Peirce Statement").

[29] Commissioner Robert J. Jackson, Jr., April 18, 2018, Statement on Proposals Relating to Regulation Best Interest, Form CRS, Restrictions on the Use of Certain Names or Titles, and Commission Interpretation Regarding the Standard of Conduct for Investment Advisers, available at https://www.sec.gov/news/public-statement/proposed-rulemaking-retail-investor-relationships-investment-professionals.

all too familiar with the stilted boiler-plate jargon tat riddles today's corporate disclosure documents."[30] **-Commissioner Stein**

- "[I]t is evident that our relationship summary templates – as proposed – are in need of substantial public input. [The template] does not make sense if our true goal with these forms is to help retail customers break through the confusion that can cloud their interactions with broker-dealers and investment advisers."[31] **-Commissioner Piwowar**

- "Particularly, when I look at the dual registrant document, it seems that we are trying to do too much in too generic a fashion in one document."[32] **-Barbara Roper, Consumer Federal of America**

Despite these shared concerns, we are encouraged by the Commission's efforts to solicit industry and expert input, including the June 14 Investor Advisory Committee Meeting in Atlanta ("IAC Meeting"). Schwab was fortunate to participate on that panel.[33] Many participants there believed that the disclosure was too long and/or tried to do too much. At the meeting, Susan Kleimann, an expert in consumer communications, noted the following. Disclosures should focus on questions that a consumer has, and those questions should be the organizing principle. Design of the disclosure is critically important. Consumers have a short attention span; they will skim information. So it is important to design documents for "cognitive fluency." Make it simple for them to understand where they can get more information. "Context is king." When providing information, the reader should understand the implications of the information you are giving them. Testing is critical to understand if an approach works.[34] So it is important to text for understanding of the material, not just a potential reader's favorability or preference.

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[30] Commissioner Kara M. Stein, April 18, 2018, Statement on Proposals Relating to Regulation Best Interest, Form CRS, Restrictions on the Use of Certain Names or Titles, and Commission Interpretation Regarding the Standard of Conduct for Investment Advisers, available at https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818.

[31] Commissioner Michael Piwowar, April 18, 2018, Statement at Open Meeting on Form CRS, Proposed Regulation Best Interest and Notice of Proposed Commission Interpretation Regarding Standard of Conduct for Investment Adviser, available at https://www.sec.gov/news/public-statement/statement-piwowar-041818.

[32] Comment of Barbara Roper, June 14, 2018 Investor Advisory Committee Meeting, Part 2, Webcast Archives at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=061418iac.

[33] The Form CRS panel members at the IAC Meeting included Joe Carberry, S VP for Corporate Communications, Charles Schwab & Co.; Dale Brown, President & CEO, Financial Services Institute; David Certner, Legislative Counsel and Director of Legislative Policy for Government Affairs, AARP; and Susan Kleimann, Founder and President, Kleimann Communication Group, Inc.

[34] *See Making Disclosures Work For Consumers*, Susan Kleimann, PhD, available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-slides-by-susan-kleimann.pdf.

At the IAC meeting, Schwab presented a simplified one-page disclosure based on our firm's core principles for effective communication:

- Stay Focused (less is more)
- Unfold Complexity in Stages
- Be Clear
- Make it Visual
- Think Digitally.

We would add to these an additional principle, "Be Sparing with Frequency" to avoid numbing retail investors to repetitive government-mandated disclosure incantations. As Joe Carberry noted at the IAC Meeting,[35] today's digitally connected consumers have, on average, 3.6 connected devices. There are more than 800 TV channels, 500 digital properties, and 1.3 million mobile apps - all competing for their attention. More than 400 hours of video are uploaded to YouTube every minute. U.S. adults now spend almost 6 hours per day on digital media, more than half on mobile devices. A Facebook executive recently estimated that a typical mobile device user scrolls through 300 feet of content per day – the equivalent of the Statue of Liberty. It has never been more important to ensure that communications work hard to get the right amount of information to people at the right time, through the right channels.

Adhering to the above principles is critical in today's environment because investors are already saturated with information. To be effective, the disclosures will need to cut through the clutter and focus on the specific account type that the client is in the process of selecting. The information presented should uphold investor freedom of choice, not unnecessarily raise doubts about their decisions to invest with a professional and how to invest, and reflect their expectations and needs in terms of investment advice disclosures.

1. Survey – What Retail Investors Say

What do retail investors want? Because Form CRS is intended to address retail investor confusion regarding the investment advice they receive from a BD or RIA, the Koski independent survey of 1,000 retail investors asked them for their views on how they would like to receive communications, the frequency of those communications, and what content should be in those communications.

Over half of retail investors either rarely read disclosures or skim them selectively.[36] In terms of what changes would get them to read disclosures more, "relevant to me and my account" at 91%, "short and to the point with links to more information if I want it" at 85%, and "visually

[35] Joe Carberry, SVP for Corporate Communications, Charles Schwab & Co., Inc., Statement read and distributed at the June 14, 2018 Investor Advisory Committee Panel on Form CRS in Atlanta, available at https://www.sec.gov/spotlight/investor-advisory-committee.shtml.

[36] Koski Research Report, Appendix A at 11.

appealing and did not seem like a legal document" at 79% were selected most.[37] 61% said they would be less likely to read a disclosure the longer and more comprehensive it is.[38] Smaller investors were even more likely to skim disclosures and be turned off by longer, more comprehensive disclosures.[39]

Retail investors also have opinions about the method of receiving disclosures. 76% prefer receiving disclosures about investment advice online or digital with a choice to receive paper, or only online or digital (including by email).[40] They also have concerns about the frequency. 82% would like to receive disclosures about investment advice at or before account opening, with an annual update and availability online, while only 17% said they want such disclosures each time they receive investment advice.[41] This was true for investors across the spectrum, no matter how big or how little.[42]

Given that retail investors want short, relevant-to-them disclosures about investment advice, the information they believe is most useful should be an important consideration for the Commission. This is because the more that is stuffed into an investment advice disclosure the less likely investors will read it. The top four items, in order, that retail investors believe should be given to them about investment advice are:

- "The costs I pay for investment advice,"
- "A description of the advice services the firm will provide to me."
- "The obligations the firm and its representatives owe me when it comes to investment advice,"
- "Any conflicts of interest related to the investment advice I receive."[43]

The analysis and recommendations below to improve the Form CRS proposal reflect these retail investor needs.

2. Investors need concise information about <u>their</u> advice relationship

First, as a threshold matter, the final form, both on its face and in the instructions, should be clear that it is intended only to cover investment advice services that a BD or dual registrant might provide, and not the many other services a BD offers including to self-directed investors who neither want nor will receive investment advice. A BD, in other words, should be able to choose

[37] *Id.* at 12.

[38] *Id.*

[39] *Id.* at 21 and 22.

[40] *Id.* at 13.

[41] *Id.* at 14.

[42] *Id.* at 21.

[43] *Id.* at 15.

not to deliver the Form CRS to clients unless and until it provides them investment advice services.

Second, for a number of reasons it is confusing to combine disclosure about two different kinds of accounts (brokerage and investment advisory) and to ask "which account is right for you?" In most cases, the other type of account won't be applicable or appropriate given a particular client's interests and needs, and it does them a disservice to force firms to suggest otherwise. For example, a self-directed investor who is opening a brokerage account because she wants to make her own investing decisions but would welcome occasional suggestions does not need to be asked "which account is right for you?" Many investors cannot afford or do not want to pay the additional fee associated with an investment advisory account, so it is inappropriate to ask them the question "which account is right for you?" The investors who establish an RIA relationship also will be confused by the question "which account is right for you?" because under the Custody Rule those investors also must open up an account at a qualified custodian (bank or broker-dealer) so by definition those investors are opening up <u>both</u> an investment advisory account and most often an accompanying brokerage account.

The Commission also should take note of the way consumers behave in a digital world with many choices. Retail investors, from the relatively sophisticated and experienced to those just starting out, already will have spent time and effort comparative shopping for the right investing firm and the type of relationship they want. A representative of a brokerage firm or an RIA will have already explained the options available at that firm. At the decision point whether or not to open the selected account, the most useful information within the context of the decision should focus on a brief statement confirming the type of account, a short explanation of the advice service to be provided with the firm's corresponding obligations, how the investor will pay for the advice, the material conflicts of interest relating to investment advice, and links to additional information including other questions an investor might want to ask if they are unsure. That's it. *See* **Appendix B** (discussed in more detail below), which includes a Schwab version of a brokerage account relationship summary, and a Schwab version of an investment advisory account relationship summary. As a dual registrant, the two forms would reference one another without trying to combine all of the information on a single form, which would be confusing.

3. Firms should not have to promote account types or services they either do not offer or would not recommend to the particular client

<u>Sole-registered RIAs and BDs</u>. Only dual registrants offer both brokerage and investment advisory accounts. It is unfair and illogical to make sole-registered RIAs (and sole-registered BDs) in the midst of summarizing their own account and relationship also to have to try to explain a type of account and relationship they do not offer. We are unaware of any other SEC regulation that requires something akin to this. As Commissioner Peirce stated: "[T]he relationship summary mandate [requires firms] to disclose information about services they do not offer. Directing firms to talk about what

other firms do is unusual and not likely to produce accurate, meaningful information for investors."[44] Indeed, in the real world it is hard to imagine a solely-registered RIA (or BD) helping a prospective client understand and consider the virtues of getting investment advice through some other firm's brokerage account (or vice-versa).[45]

Including this element very likely will result in a representative who has just spent a fair amount of time getting to know their prospective client saying: "The SEC requires we give you this disclosure document. I don't think these other types of accounts make sense for you, as we have discussed already." It will lead the retail investor to ignore the other important information about the actual account they are about to open. And that would be a shame.

A better alternative to uphold the Commission's purpose in educating investors would be to require Form CRS to link to SEC Office of Investor Education and Assistance ("OIEA") materials that explain different kinds of accounts and relationships generally available in the marketplace.

Dual registrants. For dual registrants like Schwab, a client chooses an investment advisory relationship only after a recommendation from a properly licensed Investment Advisor Representative who determines whether the type of investment advisory service is appropriate. Recommendation of an investment manager is subject to a fiduciary duty under the Investment Advisers Act, and requiring a disclosure that suggests there may be a better solution unnecessarily second-guesses the recommendation.

Moreover, there is a whole range of advisory services to choose from including: digital advice, mutual fund and ETF wrap programs, separately managed accounts for equities and fixed income strategies, non-discretionary advice programs with a fee, and referrals to independent RIAs. Many clients at Schwab are not eligible for certain advisory accounts (due to investment minimums) or have no interest in paying the additional fees for an investment advisory relationship, so it does not make sense to bring those other services to their attention when they are opening a brokerage account.

B. A Better Alternative for Form CRS

Reflecting the data on retail investor input and the concerns expressed by various Commissioners that surfaced at the IAC Meeting on June 14, a better alternative would be a focused, one-page, engaging, plain English summary of the account relationship an investor has expressed interest in. The form should follow Pew disclosure principles to be visually appealing and should lend

[44] Peirce Statement, *supra* note 28.

[45] The Commission should examine more closely whether this requirement would have a negative burden on competition.

itself to online or digital viewing and presentation. It would summarize the specific relationship (per the name of the form), and would link to more detailed information about how the firm does business with respect to that account and to other information available such as disciplinary history and general investor education materials. Rather than suggesting 10 questions an investor might ask, its organizing principle would be to have firms answer the 5 most important questions without the distraction of information about other types of accounts.

This alternative allows flexibility and more tailoring so that firms can speak to investors about their business models, although the format and sequence of questions asked and answered can be prescribed to enable easy comparison among firms.[46]

To show how this can be done, **Appendix B** contains Schwab examples as a dual registrant of:

- A one-page brokerage account Form CRS, which cross-references an advisory program Form CRS.
- A transaction pricing hub on schwab.com that is linked from the Form CRS (example of linked content amenable to digital access).
- A one-page investment advisory program Form CRS, which would be a cover page to the ADV Part 2 and (to allow comparison) cross-reference to (i) other Forms CRS for other advisory programs Schwab offers because they are each different and there is not one "advisory account," and (ii) the brokerage account Form CRS.[47]
- An investment advisory program hub on schwab.com that is linked from the Form CRS that has fees and other information (example of linked content amenable to digital access).
- An annotated version of this alternative one-page Form CRS approach highlighting the benefits.

We note that these model Forms CRS are intended as illustrative only, and some of the links and content are not currently live and would need to be built or updated depending on the Commission's final rules and instructions.[48]

The model Forms CRS focus on the key items retail investors told us in the research that they find most valuable. The attributes of the model one-page Forms CRS include:

[46] If the Commission decides not to mandate a uniform one-page version of Form CRS, then we urge the Commission at least to allow firms the flexibility to use a one-page version with links to other information, and then study over time how effective this approach is versus the longer four-page template.

[47] Many dual registrants in addition to Schwab offer multiple types of advisory programs or "accounts" that should each be subject to their own Form CRS to avoid retail investor confusion while still allowing comparison.

[48] We will submit under separate cover a mark-up of the proposed instructions to Form CRS, which would enable the alternative one-page approach.

- Simple: allows for plain-English, easy to read content organized around key questions answered.
- Relevant: focuses on the type of account an investor has or is considering.
- Layered: highlights fees and conflicts of interest, with links to additional information about them.[49]
- Visual: allows for a digital presentation; Pew principles make it easier to find / compare information.
- Resourceful: links to investor education materials about different ways to invest (which we recommend the SEC's OIEA should create with industry input) as well as disciplinary history.

As retail investors themselves told us, less is more.

C. Timing and Frequency of Disclosure: Initial, Once a Year, Always on a Web Site

Retail investors from the Koski Research survey also told us that for the final rule to be effective, it must prevent disclosure overload. The right frequency is an important aspect of avoiding disclosure overload. Form CRS in tandem with the Disclosure Obligation under Regulation BI (as discussed above) should result in delivery as follows:

- Initially on Form CRS (including more detailed information incorporated by reference and available a link away);
- Always available on a website, including the linked information as well as a PDF for investors to print out the Form along with the linked information;
- An annual reminder to go to the website to view any updates, or a more frequent update when there is a material change to the Form CRS or the linked information (such notices could be delivered with monthly account statements);
- At the point of a recommendation for broker-dealers (the Disclosure Obligation under Regulation BI) only if the Form CRS does not cover the fees or material conflicts of interest associated with a more complex product such as a structured note or private equity investment.

Retail investors, through the Koski Research, tell us this is enough. Just like they don't want long disclosures, the vast majority of retail investors also do not want repeated reminders every

[49] Given the breadth of securities a Schwab representative might recommend, and the wide spectrum of different investment advisory programs available at Schwab, we do not think we could fit all information on one the proposed four-page version without leaving out necessary information. The layered approach allows linking to online materials or other information at account opening would solve this problem. The instructions to the Form could also require that a BD make available a PDF that contains all materials both online and in paper at the investor's request.

time they receive investment advice.[50] We hope the Commission will heed the opinion of retail investors on this important point. [51]

IV. The Case Has Not Been Made to Burden RIAs and Their Clients with More Prescriptive Rules

In the *Request for Comment on Enhancing Investment Adviser Regulation* ("Request"), the Commission is asking for comments on three areas for potential harmonization of broker-dealer and RIA regulations: (1) federal licensing and continuing education; (2) provision of account statements; and (3) financial responsibility rules, such as net capital requirements or fidelity bonding.[52] The Commission has previously requested comments on requiring fidelity bonding for RIAs.[53] More recently in 2013, the Commission requested data on applying broker-dealer-like rules to RIAs by issuing a *Request for Data and Other Information* ("2013 Data Request").[54] Schwab agrees with this cautious approach to considering whether more rules are necessary.

Imposing broker-dealer like rules on RIAs would be a fundamental change to the regulatory regime that has been in place for over seventy years and would impose significant costs and burdens on RIAs, diminishing the resources they have to serve their clients. For the reasons discussed below, Schwab strongly recommends that the Commission take no further action towards imposing new rules on RIAs.

Before discussing our specific concerns about each of the three areas identified in the Request, we highlight three foundational concerns that apply to each.

First, the Commission's authority to impose these types of rules on RIAs is unclear at best. We agree with Commissioner Peirce on this point.[55] Section 913 of the Dodd-Frank Act gave the

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[50] Koski Research Report, Appendix A at 14.

[51] Part of the Form CRS Proposal includes restrictions on the use of certain names or titles. Schwab agrees that it is potentially misleading for a representative of a non-RIA or non-dual registrant to use the title "adviser" or "advisor." There is no evidence that other titles, such as financial consultant, would be confusing to a retail investor as to registration status or, more importantly, the obligations the individual or firm owe to that investor when giving investment advice.

[52] *Request for Comment on Enhancing Investment Adviser Regulation*, Release No. IA-4889, File No. S7-09-18 (April 18, 2018) ("Request").

[53] *See Compliance Programs of Investment Companies and Investment Advisers Proposal,* Release No. IA-2107; File No. S7-03-03 (Feb. 5, 2003), at https://www.sec.gov/rules/proposed/ic-25925.htm.

[54] *See Request for Data and Other Information*, Release No. 34-69013; IA-3558, File No. 4-606 (March 1, 2013). The 2013 Request asked for data with respect to three areas: (1) federal licensing and continuing education; (2) books and records supervision; and (3) client communications.

[55] *See* Peirce Statement *supra* note 28 ("Not only do I believe we lack authority for these requirements, but they would represent a paradigm shift in the way we regulate investment advisers.").

Commission authority to address "existing standards of care for providing personalized investment advice to retail customers."[56] Congress directed the Commission to study the standard of care issue; it did not authorize the Commission to consider harmonizing other RIA and broker-dealer rules. The Commission's 913 Study, however, did recommend that the Commission consider harmonizing certain regulatory requirements but only "where such harmonization adds meaningful investor protection."[57] Of the three areas identified in the Request, the 913 Study only recommended consideration of one, federal licensing and continuing education.

Second, there is no cost-benefit data or analysis to support rulemaking in any of the areas identified. The Commission would need to quantify the potential compliance costs before taking any further action towards rulemaking. To respond to the Commission's 2013 Data Request, Schwab commissioned a third-party survey asking RIAs questions about the potential future compliance costs and impacts on clients with respect to the three areas identified: (1) federal licensing and continuing education; (2) books and records supervision; and (3) client communications (the "Schwab Survey"). [58]

We draw the Commission's attention to the Schwab Survey again. The results showed the following:

- Complying with broker-dealer like rules would increase some RIAs' compliance costs by 150% in year one;
- Complying with federal licensing and continuing education rules would be the most costly;
- Costs for the industry would exceed **$1.8 billion** dollars in year one; and
- **88%** of RIAs indicated their clients would suffer at least one negative impact and only **13%** thought there would be a positive impact.

The Schwab Survey results give an idea of the potential impact of the harmonization contemplated by the current Request, and show the type of quantitative data that the Commission would need to collect and analyze before taking any further action toward rulemaking.

[56] Section 913(g) of the Dodd-Frank Act.

[57] Study on Investment Advisers and Broker-Dealers (January 2011) ("Section 913 Study") at viii.

[58] Letter dated July 5, 2013, from Christopher Gilkerson, SVP and Deputy General Counsel, Charles Schwab & Co., Inc. to Elizabeth Murphy, Secretary, SEC Re: Request for Data and Other Information, Duties of Brokers, Dealers and Investment Advisers, Release No. 34-69013; IA-3558; File No. 4-606, at https://www.sec.gov/comments/4-606/4606-3137.pdf

Third, caution and economic analysis is especially important because the vast majority of RIAs are small businesses in the lay meaning of that term. This is a statistical fact.[59] Most RIAs have **fewer than 50 employees**, serve individuals, and have **100 or fewer clients**.[60] Imposing cumbersome and expensive regulation could put these firms in the difficult position of needing to cut services or raise fees – and for some, deciding whether to go out of business.

One of the Commission's goals is to ensure that "Main Street investors have access to a variety of investment advice services at reasonable cost."[61] Reducing competition and the number of small RIA firms would undermine this goal. And it could trigger far-reaching impacts, beyond Main Street, to our economy and capital markets at large. We know that the Commission is sensitive to the broad implications of changes to our retail investment market,[62] and urge the Commission to apply this perspective critically to all three areas identified in the Request.

A. Federal Licensing and Continuing Education Is Not Needed and Requires Infrastructure the Commission Does Not Have

As noted above and in the Request, the 913 Study recommended that the Commission consider federal licensing and continuing education requirements for investment advisor representatives ("IARs") of SEC-registered advisors.[63] However, the recommendation was equivocal, and the Staff acknowledged that the Commission faced an uphill battle:

> "The lack of a continuing education requirement and uniform federal licensing requirement for investment adviser representatives may be a gap, but establishing such requirements for investment adviser representatives may raise certain challenges for the Commission, given the current lack of infrastructure and resources to administer an education and testing program."[64]

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[59] *See* Investment Adviser Association, *2017 Evolution Revolution: A Profile of the Investment Adviser Profession*, available at https://www.investmentadviser.org/publications/evolution-revolution ("The data confirm that the **vast majority** of SEC-registered investment advisers are small businesses."). 56.8% of RIAs reported that they employ 10 or fewer non-clerical employees and 87.4% reported that they employ 50 or fewer non-clerical employees. *Id.*

[60] *Id.* at 15, 29. *See also id.* at 5 ("The investment adviser profession has always been dominated by small businesses and this year was not exception, as over 10,000 firms reported employing 50 or fewer individuals.").

[61] Chairman Jay Clayton, *The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice*, May 2, 2018, at https://www.sec.gov/news/speech/speech-clayton-2018-05-02 ("Access and Choice Speech").

[62] *Id.* ("[T]he retail investment market . . . is important, very important on a national, local and individual level. . . Continued broad, long-term retail participation in our capital markets is so important because, in a few words, we need it and we are counting on it.").

[63] Request at 28.

[64] 913 Study at 138.

We agree that the lack of infrastructure and resources would be a significant problem for the Commission. We disagree that there is a "gap" sufficient to justify new and costly federal regulations.

States already license and impose competency requirements on IARs who provide advice to retail investors on behalf of RIAs. Based on our fifty-state survey, we believe that the state licensing and registration requirements are relatively uniform. All states (with the exception of New York) require IARs to register by filing a Form U4 (the Uniform Application for Securities Industry Registration) and require IARs to meet similar competency standards: passing the Series 65 Exam or equivalent waiver by holding certain professional designations.[65] Both the Request and the 913 Study acknowledge the state regulation, but neither explains how redundant federal rules would lead to "meaningful investor protection."[66] There is no evidence that the state regulatory regime is inadequate or lacking in any way. There is data showing that the state regime *is* effective, and that states have "thorough and efficient" licensing units.[67]

The comprehensive state regime is reflective of the fact that Congress decided the licensing and registration issue twenty years ago when it passed the National Securities Markets Improvement Act in 1996 ("NSMIA"). NSMIA explicitly gave states the authority over licensing and registration of IARs who conduct business in their respective states.[68] The purpose of NSMIA was to promote efficiency by eliminating portions of the regulatory overlap between the states and the federal government. Requiring IARs to maintain two registrations would undermine regulatory efficiency, and the ongoing costs of the redundant requirements would almost certainly be passed onto retail investors. We agree with Chairman Clayton that investors cans be harmed when there are too many regulatory "cooks in the kitchen" and "not enough

[65] NASAA studies also indicate that state laws are relatively uniform. *See* State Securities Regulators Report on Regulatory Effectiveness and Resources with Respect to Broker-Dealers and Investment Advisers (Sept. 24, 2010) ("NASAA Report") https://www.sec.gov/comments/4-606/4606-2789.pdf at 6-7 ("[V]irtually all states require that Investment Adviser Representatives also register or be licensed to do business in their jurisdiction. To register, an [IAR] will submit a Form U4 to the state(s) in which they wish to register through the CRD. These individuals must have successfully completed required professional competency exams (the Series 65 or the Series 7 and 66) or currently hold one of five recognized professional designations: Certified Financial Planner; Chartered Investment Counselor; Chartered Financial Consultant; Personal Financial Specialist; or Chartered Financial Analyst.").

[66] *See* 913 Study at 86-87. After the NASAA Report and the 913 Study were issued in 2010, two states added IAR registration requirements. In 2013, Minnesota enacted a statute requiring IAR registration with proof of Series 65 examination or equivalents. MN Stat § 80A.58(a)(2013); https://mn.gov/commerce/industries/securities/investment-advisers-representatives/. Wyoming enacted a similar statute, effective July 1 2017. WY Stat § 17-4-403 (2017); https://soswy.state.wy.us/investing/docs/investment _faq_final.pdf.

[67] NASAA Report at 2 ("[T]he states are the sole regulator of smaller firms and Investment Adviser representatives and are exceptionally effective in that role."); *id.* at 11 ("state securities regulators have efficient and thorough licensing and examination units").

[68] NSMIA added section 203A(b)(1) to the Advisers Act. *See* 15 U.S.C. § 80b-3a(b)(1)(A) ("State may license, register or otherwise qualify an investment adviser representative that has a place of business located within that State ").

coordination."[69] This was the problem that NSMIA intended to and did resolve. The Commission should defer to Congress's decision to delegate licensing and registration to the states.

To the extent there is a gap with respect to continuing education, we believe the Commission should allow the states the opportunity to address this area as part of their existing IAR registration and licensing regime. Most IARs already have continuing education requirements due to professional designations, such as the CFP designation.[70] According to NASAA, more than 80% percent of IARs already receive continuing education due to such designations.[71] NASAA has been studying this issue, and recently completed a survey asking stakeholders how to best tailor any new requirement to IARs' needs and existing obligations.[72] Because NASAA appears to be close to issuing a model rule and states already have the infrastructure to administer continuing education programs, we believe the most pragmatic approach is for the Commission to allow the states to respond to NASAA's proposal.

This approach is consistent with Congress's allocation of regulatory responsibility under NSMIA and the expansion of state oversight under the Dodd-Frank Act.[73] Congress has placed, and continues to place, great confidence in the states' ability to regulate investment advisors. Schwab respectfully submits that the Commission should follow Congress's lead in that regard.

B. Provision of Account Statements Would be Duplicative and Potentially Increase Investor Confusion

The Commission has requested comment on whether it should propose new rules requiring RIAs to provide account statements reflecting fee and cost information. The Request states the Commission believes "that delivery of periodic account statements, if they specified the dollar

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[69] *See* Access and Choice Speech, *supra* note 61.

[70] Certified Financial Planner (CFP) professionals are required to complete 30 hours of continuing education in each two-year reporting period. https://www.cfp.net/for-cfp-professionals/continuing-education/continuing-education-requirements. Personal Financial Specialists (PFS) professionals are required to complete 60 hours of continuing education every three years. https://www.finra.org/investors/professional-designations/pfs. Charter Financial Consultant (CFC) professionals who are client-facing must complete 30 hours of continuing education every two years. http://www.funcpe.com/professions/chartered-financial-consultant-cpe-course.

[71] *See* NASAA Survey Regarding Continuing Education for Investment Adviser Representatives ("NASAA CE Survey") at http://www.nasaa.org/industry-resources/investment-advisers/nasaa-survey-regarding-continuing-education-for- investment-adviser-representatives/ ("Of the more than 340,000 state-registered investment adviser representatives, fewer than 20% are not receiving any form of continuing education: the remaining representatives hold professional designations or other registrations that already require continuing education.").

[72] *Id.*

[73] Section 410 of the Dodd-Frank Act significantly increased state oversight by raising the threshold for advisors to register with the SEC to $100 million of assets under management.

amounts of fees and expenses, would allow clients to readily see and understand the fees and expenses they pay for an adviser's services."[74]

Schwab supports the Commission's goal of providing investors with reliable and straightforward information about the fees they pay. However, we have serious reservations that requiring RIAs to send account statements is necessary or appropriate for meeting that goal.

Under the current regulatory regime investors are already receiving information about the advisory fees they pay—either from the client's qualified custodian, from the advisor, or both. Advisors are required to disclose their fees and billing practices in their ADV disclosure brochure.[75] In addition, the Custody Rule requires RIAs to confirm that the qualified custodian is sending account statements directly to advisory clients at least quarterly.[76] Many RIAs –with permission and authority granted by their clients – have the custodian debit their advisory fees directly from retail client accounts. As a result, the qualified custodian sends the client account statements that reflect the advisory fees charged to the account.

Schwab is the qualified custodian for 8,000 independent RIAs. Their clients (who are account holders at Schwab as the qualified custodian) routinely authorize Schwab to pay advisory fees from their accounts as instructed by the RIA. Fee payment authorization is a standard option included in our brokerage account agreements for advisory clients. If the client selects fee payment authorization, the account statements that we send directly to the client show the dollar amount of the advisory fees that were debited from the client's account and paid to the advisor. The advisory fee debit is clearly labeled as fee "to advisor." The vast majority of our RIA clients use our fee-debiting services. We believe that our account statements allow clients "to readily see and understand" the fees they pay for advisory services. In fact, the Commission has encouraged investors to rely on the custodian account statement with respect to fee deductions.[77]

With respect to RIAs who are not bound by the Custody Rule or do not rely on custodians for fee payment, the Commission does not point to any data to suggest that these RIAs are not sending their clients accurate fee information. If an RIA is not using the fee-debiting services that qualified custodians offer, the RIA must be billing (i.e., sending a periodic invoice) and

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[74] Request at 31.

[75] Form ADV Part 2A, Item 5 requires RIAs to disclose how the advisor is compensated for advisory services; provide a fee schedule; describe their billing practices; and disclose other expenses the client will pay in connection with the advisory services, such as custodian fees or mutual fund expenses. RIAs must specify whether they deduct fees directly from clients account or bill clients for fees incurred and how often they deduct or bill for fees.

[76] Rule 206(4)-2(a)(3).

[77] *See* SEC Investor Bulletin on Custody (March 4, 2013) at https://www.sec.gov/investor/alerts/bulletincustody.htm (requiring custodian statements "permits advisory clients to compare the statements they receive from the custodian with any statements or other information they receive from their adviser and to determine whether account transactions, including deductions to pay advisory fees, are proper").

collecting fees directly from the client. If the client is paying the RIA directly, it makes little sense to say that the investor may not understand the fees he or she is paying. And if advisors are not providing accurate fee information, the Commission has the exam and enforcement authority to address such failures.

As the Request acknowledges, the Commission has authority to ensure that RIAs provide accurate information to clients and have policies and procedures to "address the accuracy of disclosures made to investors, clients and regulators, including account statements."[78] The OCIE has made clear that its Staff will examine RIA disclosures and policies and procedures with respect to fees and expenses.

Indeed, shortly before the Commission issued the Request, the OCIE issued a risk alert detailing the most common advisory fee and expense issues identified in deficiency letters, and reminding RIAs of their fiduciary and compliance rule obligations with respect to billing clients and providing accurate information about the fees they charge.[79] We believe that the most effective and efficient way for the Commission to protect investors is to continue its examination of RIAs to identify weak internal controls and inadequate disclosures with respect to fees and billing practices.

Finally, retail investors would certainly end up paying the costs of a new government-mandated account statement requirement. Because there is no reasonable basis to conclude that the potential benefits would outweigh the costs, we believe the Commission should take no further action with respect to a new account statement requirement.

C. Financial Responsibility Rules Do Not Address Risks of RIA Business Model

The final area identified in the Request is financial responsibility rules, including minimum net capital requirements and fidelity bonding. There is no analysis or data to suggest that imposing net capital or fidelity bonding requirements on RIAs would be effective in enhancing investor protection or that the benefits would exceed the costs.[80]

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[78] Request at 32, note 73.

[79] *Overview of the Most Frequent Advisory Fee and Expense Compliance issues Identified in Examinations of Investment Advisers*, National Exam Program Risk Alert, Volume VII, Issue 2, April 12, 2018, at https://www.sec.gov/files/ocie-risk-alert-advisory-fee-expense-compliance.pdf .

[80] We also repeat here our concern that the Commission does not have authority to impose new financial responsibility rules on RIAs. The Commission appears to share this concern given the discussion in the Request about proposed legislation (in 1976 and 1992) that did not pass that would have given the Commission authority to impose such rules. Request at 36, note 84. ("In 1992, both the Senate and the House of Representatives passed bills that would have given the Commission the explicit authority to require investment advisers with custody of client assets to obtain fidelity bond.").

A premise of the Commission's harmonization efforts has been and should be: apply similar rules to similar conduct. Consideration of any new rules should honor this principle as articulated by the Staff in the Section 913 Study:

> The Staff believes that a harmonization of regulation—where such harmonization adds meaningful investor protection—would offer several advantages, including that it **would provide retail investors the same or substantially similar protections when obtaining the same or substantially similar services** from investment advisers and broker-dealers.[81]

Applying broker-dealer financial responsibility rules to RIAs would violate this key principle. Perhaps this is why the Commission's Section 913 Study did not recommend that the Commission consider rule harmonization with respect to financial responsibility rules.[82]

Imposing financial responsibility requirements on RIAs would not lead to "meaningful investor protection" because RIAs do not have the same or similar asset safety responsibilities as broker-dealers. RIAs have a straightforward business model: they provide investment advice in an agency relationship. RIAs are generally not allowed to take actual possession of client assets. Under the Custody Rule, RIAs must use "qualified custodians" to maintain all client funds and securities, either in a separate account under the client's name or in an account under the RIA's name as agent for the client (if the client assets are not comingled with other client assets).[83] This ensures separation of RIA assets and client assets.

Qualified custodians, usually a registered broker-dealer or bank, are subject to financial responsibility requirements. These requirements are important because broker-dealers and banks maintain actual physical custody of the advisory client's assets and securities. In contrast,

[81] Section 913 Study at viii.

[82] Section 913 Study at 130 ("[A]lthough broker-dealers and Commission-registered investment advisers are subject to different financial responsibility requirements, the Staff is not making a recommendation at this time on this subject.").

[83] Advisers Act Rule 206(4)-2(a)(1).

financial failure or physical custody related losses do not pose nearly the same level of risk for RIAs, and the Request does not seriously suggest otherwise.[84]

The Request does identify one specific risk - in cases of "serious fraud" an advisor may have insufficient assets to compensate clients. This concern was first raised by the Commission in 2003, and was repeated in the current Request.[85]

But over the last fifteen years the Commission has addressed in a comprehensive fashion the "serious fraud" risk by: amendments to the Custody Rule, enhanced Form ADV disclosure requirements, and the Commission's improved examination program.[86]

Imposing expensive financial responsibility rules would run the risk of diverting limited resources away from the more relevant and emerging risks of today's global market, such as protections against cyber intrusion, account takeover, and other cyber misconduct. This is particularly a risk for RIAs that are small entities.

Even in light of these concerns, additional approaches to protect investors who are harmed by serious fraud, may be an area worthy of further study. A lesser intrusive form of regulation to consider, for example, might be in the disclosure area, such as whether an RIA is bonded or carries insurance to protect against client loss. Moreover, the Commission has been able to increase regulatory resources for its examination program, and asset safety should remain a top priority of the OCIE.[87] We commend the Commission's actions in these areas and support their

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[84] The Commission has acknowledged that the Custody Rule protects investors against the risk of insolvency of the RIA. *See Significant Deficiencies Involving Adviser Custody and Safety of Client Assets,* National Exam Program Risk Alert, Volume III, Issue 1, March 4, 2013, https://www.sec.gov/about/offices/v ocie/custody-risk-alert.pdf ("The custody rule prescribes a number of requirements designed to enhance the safety of client assets by insulating them from any possible unlawful activities or financial reverses of the investment adviser, including insolvency."); *Custody of Funds or Securities of Clients by Investment Advisers,* Release No. IA-2968 (Dec. 30, 2009) at 6 ("We believe these amendments, together with the guidance for accountants, will provide for a more robust set of controls over client assets designed to prevent those assets from being lost, misused, misappropriated or subject to advisers' financial reverses.").

[85] *Compare* Request at 35 ("When we discover a serious fraud by an adviser, often the assets of the adviser are insufficient to compensate clients for their loss.") *with* Compliance Programs of Investment Companies and Investment Advisers, Release Nos. IC-25925, IA-2107; File No. S7-03-03 (Feb. 5, 2003), https://www.sec.gov /rules/proposed/ic-25925.htm ("When we discover a serious fraud by an adviser, often the assets of the adviser are insufficient to compensate clients.").

[86] *See* SEC Investor Bulletin on Custody, *supra* note 77 ("The custody rule is designed to prove additional safeguards for investors against the possibility of theft or misappropriation by investment advisers registered with the SEC.").

[87] *See* SEC Press Release, SEC Issues Risk Alert and Investor Bulletin on Investment Adviser Custody Rule, March 4, 2013, at https://www.investor.gov/additional-resources/news-alerts/press-releases/sec-issues-risk-alert-investor-bulletin-investment ("We take deficiencies in this area very seriously and want to put advisers on alert about the importance of complying with the custody rule . . . It is a key component of our investment adviser examination program.").

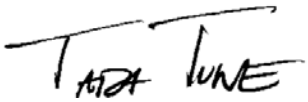
continuation. In any event, until the Commission conducts a quantitative economic analysis, we respectfully submit that it should take no further action towards rulemaking in this area either.

* * * * * *

Schwab appreciates the Commission's efforts on the Rule Proposals, and with the recommendations noted above in Sections II and III we support the adoption of Regulation Best Interest and Form CRS. Please contact us with any questions regarding our comments.

Very truly yours,

Christopher Gilkerson
Senior Vice President and General Counsel
Charles Schwab & Co. Inc.



Tara Tune
Director and Corporate Counsel
Charles Schwab & Co. Inc.

APPENDIX A

Retail Investor Study on Standards of Conduct and Communications for Investment Advice

Research Conducted by Koski Research

For Charles Schwab & Co. Inc.

July 31, 2018

Table of Contents

Purpose of Research

- Measure retail investor understanding of fiduciary duty and best interest standards for investment advice
- Obtain input from retail investors on method, frequency, and content of disclosure communications from investment advisor and broker dealer firms

Methodology

What	▪ Charles Schwab & Co., Inc. (“Schwab”) commissioned Koski Research to conduct an online study among a national sample of retail investors ▪ Koski Research is neither affiliated with, nor employed by, Schwab
When	▪ This survey was fielded between June 10 to June 15, 2018

Who	▪ 1,000 U.S. investors completed the study
	▪ To qualify for the study, investors had to:
	  ▪ Be 25 to 75 years old
	  ▪ Have a minimum of $25,000 in investable assets, excluding retirement plans and real estate
	  ▪ Must own stocks, bonds, mutual funds, exchange traded funds (ETFs) outside an employer-sponsored plan

Key Findings

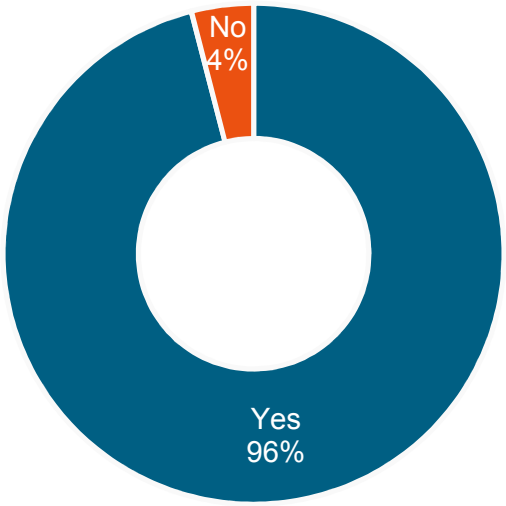
- Almost all retail investors (96%) say they understand the phrase “acts in your best interest”, though fewer (80%) say they understand the phrase “act as your fiduciary”.
- Over half of retail investors (59%) say that acting in your best interest and acting as your fiduciary should mean the same thing versus mean something different (32%).
- Almost half (46%) of retail investors say that both brokerage firms and RIAs should be subject to a fiduciary and best interest standard, with the next most popular response being that both should be subject to a fiduciary standard (19%).
- The majority of retail investors want communications that are relevant to them (91%), short and to the point (85%), and visually appealing (79%).
- Over three quarters (76%) want disclosures online or online with option for paper.
- The majority of retail investors (82%) want disclosures at or before they open their account, or at or before they open their account with annual updates, or online.
- The top four most important things retail investors say they want communicated to them are:
  - the costs they will pay for investment advice
  - the description of the investment advice services they will receive
  - obligations the firm and its representatives owe when it comes to investment advice
  - any conflicts of interest related to the investment advice they receive

Detailed Findings
Understanding of Best Interest and Fiduciary

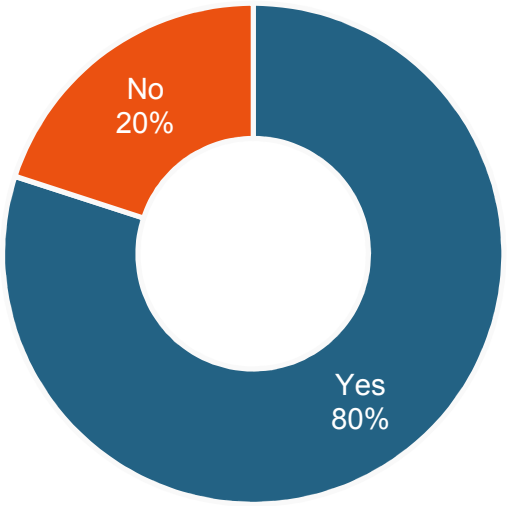
Almost all retail investors say they understand the phrase “acts in your best interest”; eight in ten say they understand “act as your fiduciary”

Understand the phrases:

“acts in your best interest”



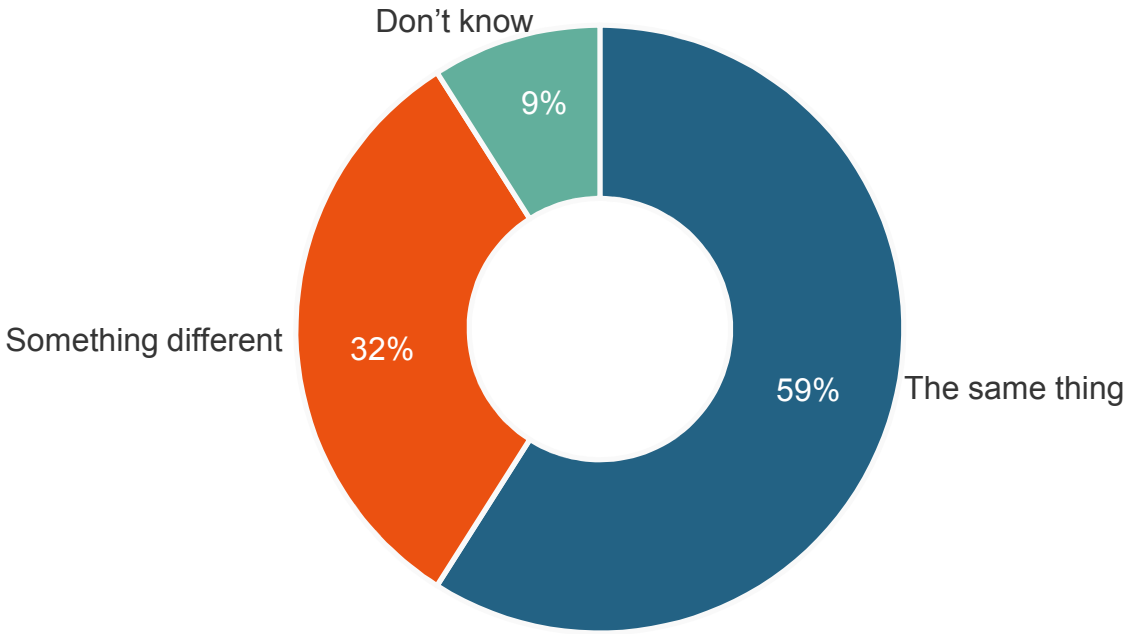
“act as your fiduciary”



Q4. When you see the phrase **“act as your fiduciary”** in the context of someone giving you investment advice, do you have an understanding about what this means? (Base: Total = 1,000)
Q5. When you see the phrase **“acts in your best interest”** in the context of someone giving you investment advice, do you have an understanding about what this means? (Base: Total = 1,000)

Over half of retail investors believe that acting as a fiduciary and acting in your best interest should mean the same thing

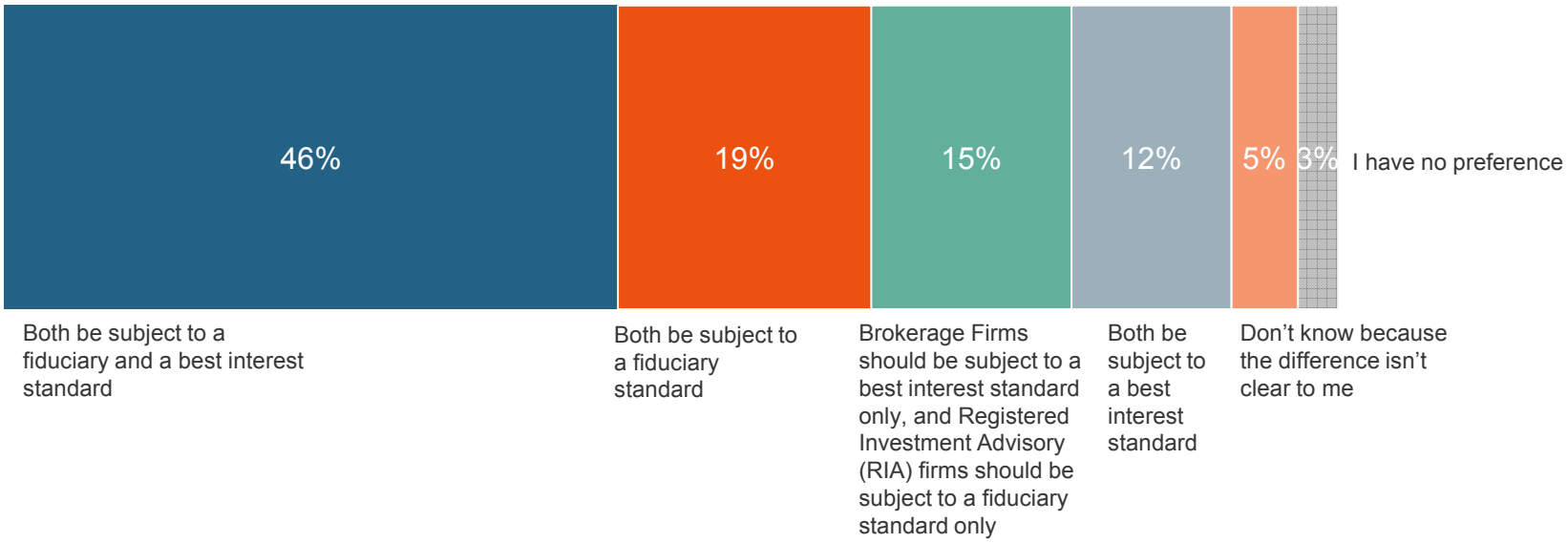
Acting as a “fiduciary” and acting in your “best interest” in the context of someone giving you investment advice should mean…?



Q6. Acting as a “fiduciary” and acting in your “best interest” in the context of someone giving you investment advice should mean…? (Base: Total = 1,000)

Almost half of retail investors say brokerage firms and RIAs should both be subject to a fiduciary and best interest standard

Standards expected for Brokerage Firms and RIAs

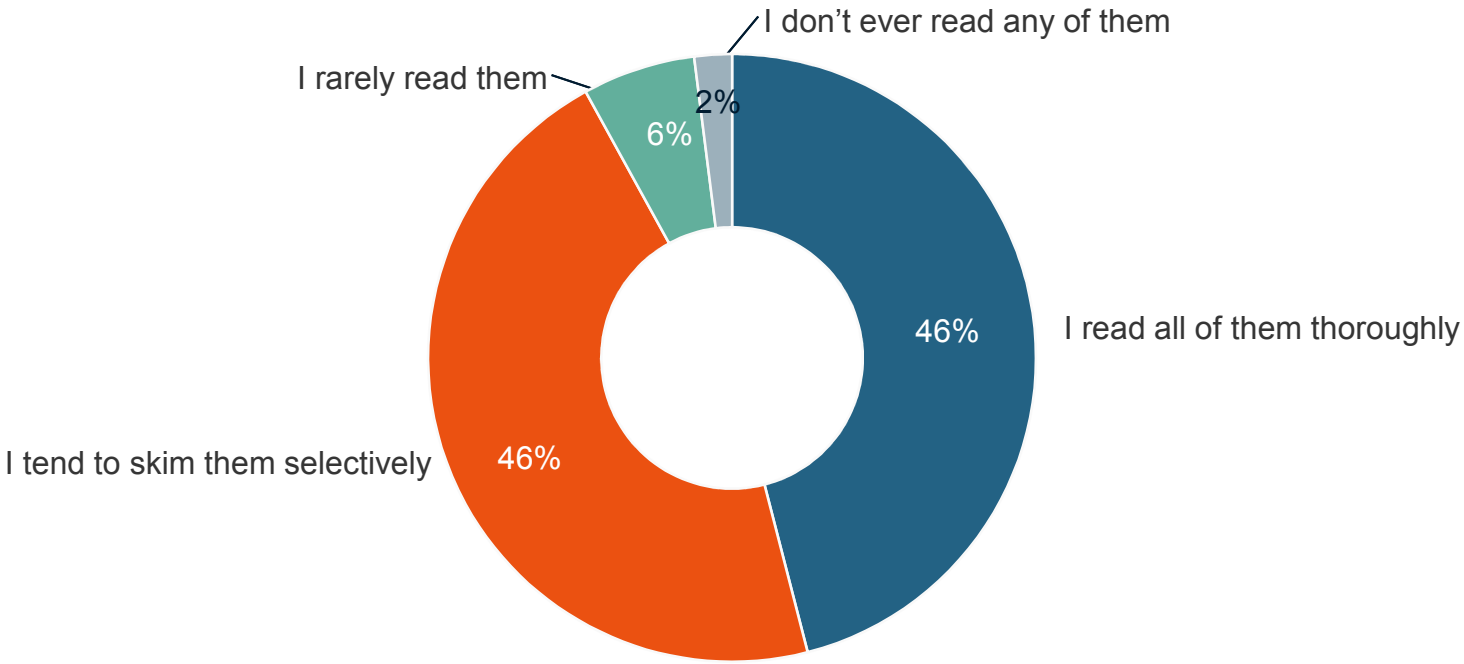


Q8. Whether investment advice comes from a representative of a Brokerage Firm or a Registered Investment Advisor (RIA), do you think they should…? (Base: Total = 1,000)

Detailed Findings
Retail Investor Communications Preferences

As many retail investors say they skim the disclosures as read them thoroughly

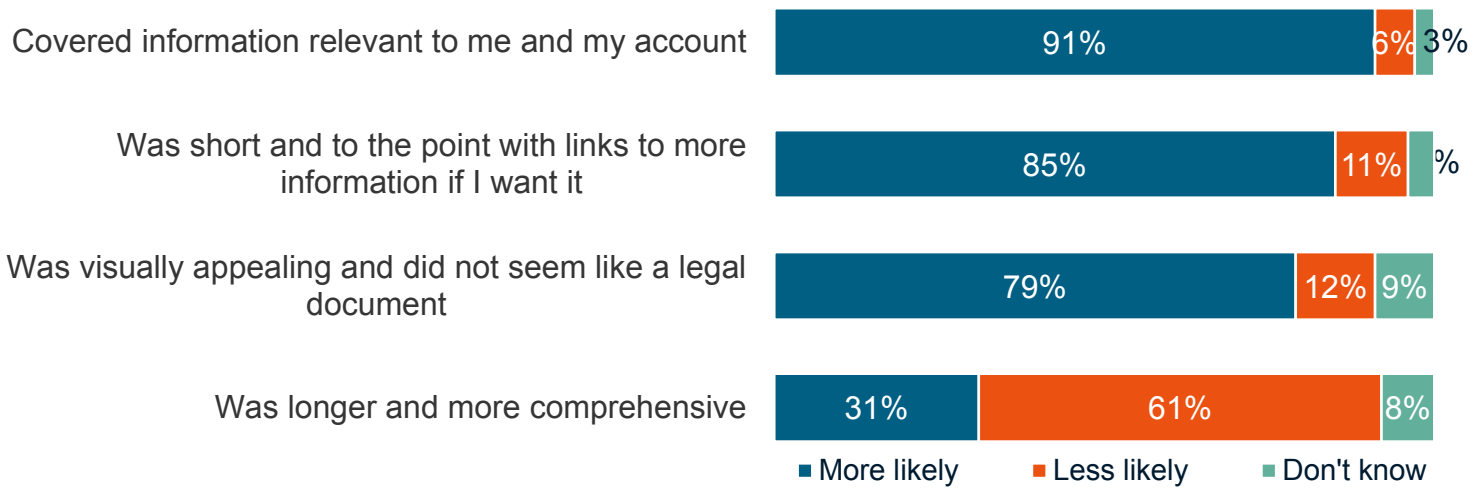
Approach to reading disclosures



Q11. Which best describes your approach to reading disclosures from the firm(s) you have investment account(s) with? (Base: Total = 1,000)

Disclosures that are relevant, visually appealing, and shorter with links to more information, are more likely to be read

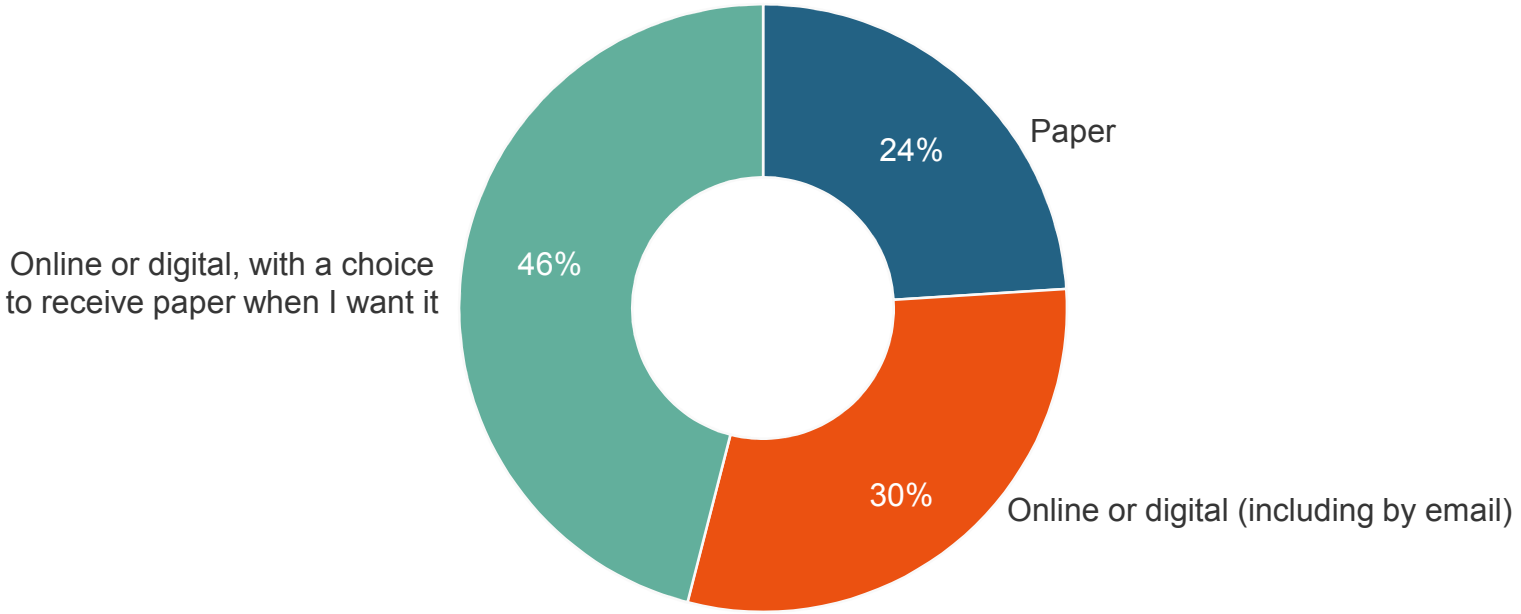
More or less likely to read disclosure if…



Q12. Would you be more or less likely to read a disclosure if it…? (Base: Total = 1,000)

Retail investors prefer to receive disclosures online/digitally with an option for paper, or just online/digitally

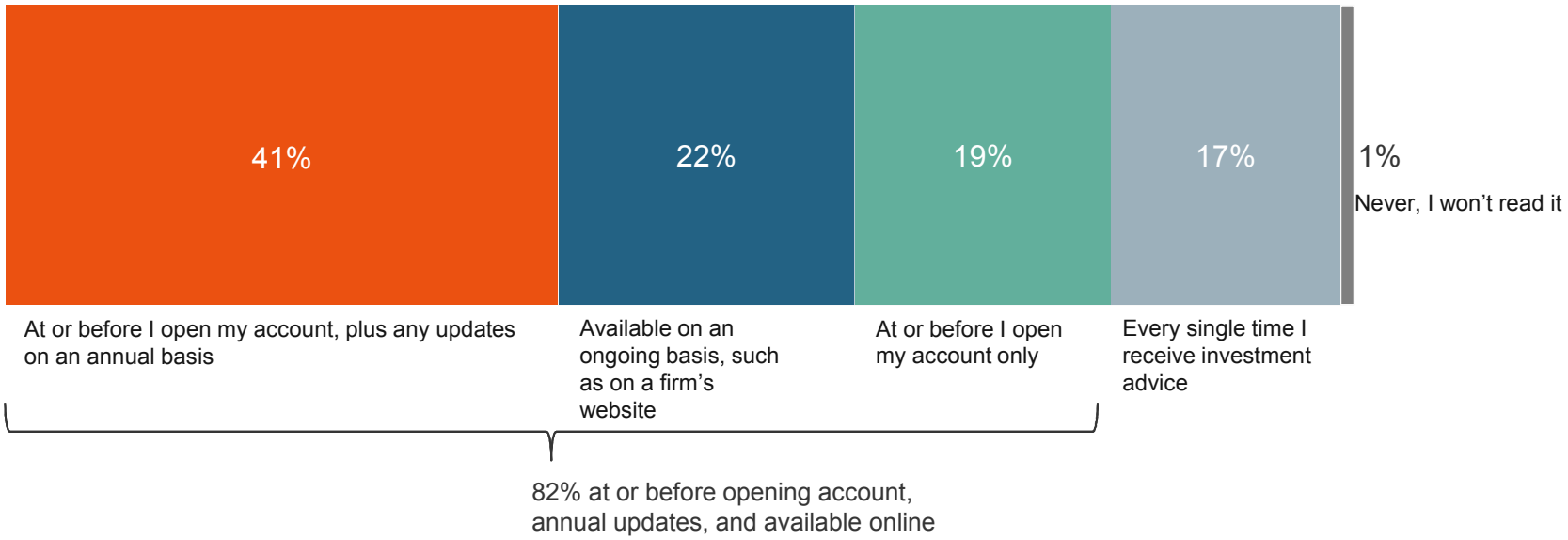
Preferred way to receive disclosures about investment advice



Q13. How would you prefer to receive disclosures about investment advice you would receive from a brokerage firm or investment advisory firm? (Base: Total = 1,000)

Retail investors prefer to receive additional information when or before they open their account, plus any updates on an annual basis

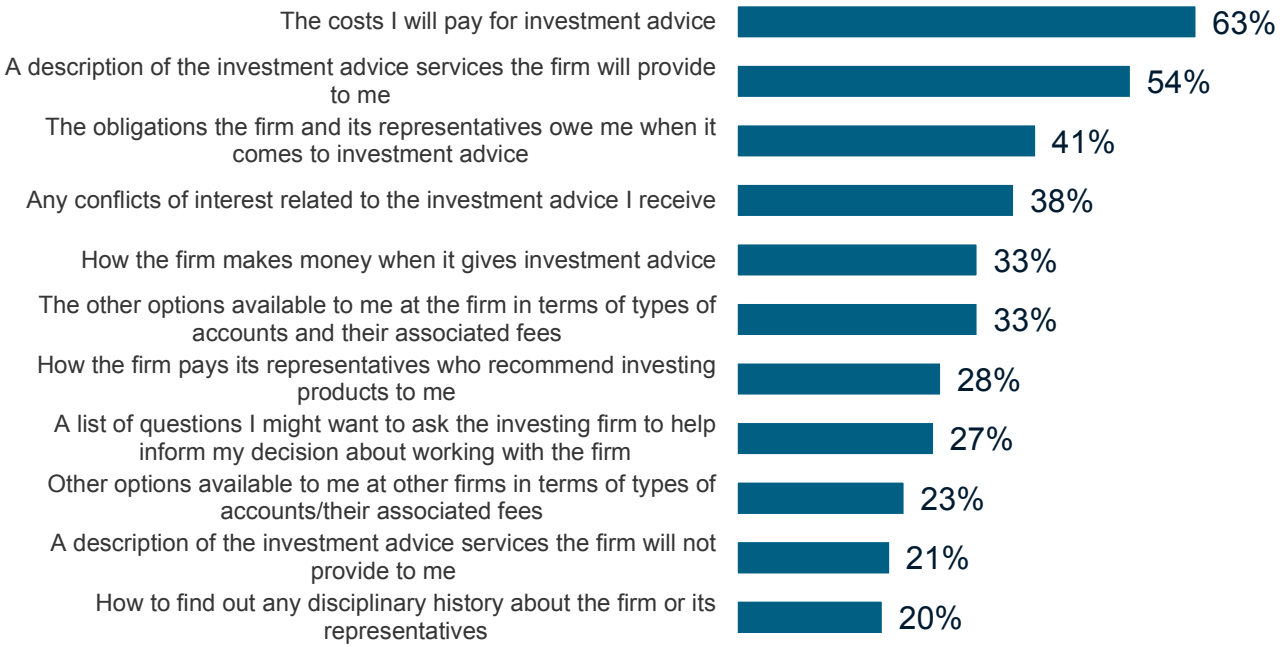
Preferred timing of information from Brokerage Firm or RIA



Q10. Which of the following best describes your preference for when you would like to receive information about how a Brokerage Firm or a Registered Investment Advisor (RIA) does business with you? (Base: Total = 1,000)

Retail investors say it is most important for firms to communicate costs for investment advice and a description of services provided

Most important things firms should communicate



Q9. Assuming you are thinking about an account or relationship with a Brokerage Firm or a Registered Investment Advisor (RIA), which 4 of the following would be most important for that firm to communicate to you? (Base: Total = 1,000)

Appendix

Investor Respondent Profile

	Total (n 1000)
As an investor, consider self:	
A beginner	24%
Somewhat experienced	48%
Experienced	24%
Highly experienced	4%
Currently work with investment professional	
Yes	67%
No	32%
Not sure	1%

	Total (n 1000)
How make investment decisions	
You do all the research and decision-making yourself without the assistance of a financial professional	26%
You make all of your own investment decisions, but want to be able to discuss them with a financial professional	39%
You make most of the decisions yourself, but rely heavily on a financial professional	22%
You delegate decision-making to a financial professional for your investments	13%

Advice and brokerage usage: Retail investors have a wide range of investing styles and range of professionals they work with

	Total (n 1000)
Do you have an account at a Brokerage Firm?	
Yes	77%
No	20%
Don't know	3%
Do you have an account or relationship with a Registered Investment Advisor (RIA)?	
Yes	58%
No	39%
Not sure	3%
When making investment decisions, which method best describes you	
You do all the research and decision-making yourself without the assistance of a financial professional	26%
You make all of your own investment decisions, but want to be able to discuss them with a financial professional	39%
You make most of the decisions yourself, but rely heavily on a financial professional	22%
You delegate decision-making to a financial professional for your investments	13%

	Total (n 1000)
Do you currently work with a financial professional for help with your investments?	
Yes	67%
No	32%
Not sure	1%
Which of the following best describes the type(s) of financial professional you work with (among those who work with a financial professional)	(n=671)
Representative of a Registered Investment Advisor (RIA)	44%
Representative of a Brokerage Firm	48%
A financial planner	46%
Other (specify)	0%
Not sure	3%

Detailed Results by Level of Investable Assets

		Investable Assets		
	Total (n 1000)	$25K $99.9K (n 369) A	$100K $249K (n 229) B	$250K+ (n 402) C
Understand meaning of:				
"act as your fiduciary"	80%	72%	81% A	88% AB
"act in your best interest"	96%	94%	98% A	96%
Acting as a "fiduciary" and acting in your "best interest" in the context of someone giving you investment advice should mean…				
The same thing	59%	59%	59%	60%
Something different	32%	30%	33%	33%
Don't know	9%	11%	8%	7%

Letter designations indicate statistically significant differences (95% confidence level) between groups.

Detailed Results by Level of Investable Assets

		Investable Assets		
	Total (n 1000)	$25K $99.9K (n 369) A	$100K $249K (n 229) B	$250K+ (n 402) C
Standards expected for Brokerage Firms and RIAs				
Both be subject to a fiduciary and a best interest standard	46%	48%	49%	44%
Both be subject to a fiduciary standard	19%	15%	22% A	21% A
Brokerage Firms should be subject to a best interest standard only, and Registered Investment Advisory (RIA) firms should be subject to a fiduciary standard only	15%	15%	12%	16%
Both be subject to a best interest standard	12%	13%	11%	11%
Don't know because the difference isn't clear to me	5%	7%	4%	5%
I have no preference	3%	2%	2%	3%

Letter designations indicate statistically significant differences (95% confidence level) between groups.

Detailed Results by Level of Investable Assets

		Investable Assets		
	Total (n 1000)	**$25K $99.9K (n 369) A**	**$100K $249K (n 229) B**	**$250K+ (n 402) C**
Preferred timing for information about how a Brokerage Firm or a Registered Investment Advisor (RIA) does business with you				
At or before I open my account, plus any updates on an annual basis	41%	39%	46%	40%
Available on an ongoing basis, such as on a firm's website	22%	23%	22%	23%
At or before I open my account only	19%	19%	17%	20%
Every single time I receive investment advice	17%	19%	14%	16%
Never, I won't read it	1%	0%	1%	1%
Approach to reading disclosures				
I read all of them thoroughly	46%	44%	43%	51%
I tend to skim them selectively	46%	49% C	49%	41%
I rarely read them	6%	6%	6%	6%
I don't ever read any of them	2%	1%	2%	2%

Letter designations indicate statistically significant differences (95% confidence level) between groups.

Detailed Results by Level of Investable Assets

		Investable Assets		
	Total (n 1000)	$25K $99.9K (n 369) A	$100K $249K (n 229) B	$250K+ (n 402) C
More or less likely to read disclosure if it…				
covered information relevant to me and my account				
More likely	91%	91%	90%	92%
Less likely	6%	7%	6%	5%
was short and to the point with links to more information if I want it				
More likely	85%	85%	87%	85%
Less likely	11%	13%	10%	10%
was visually appealing and did not seem like a legal document				
More likely	79%	80%	78%	79%
Less likely	12%	13%	10%	11%
was longer and more comprehensive				
More likely	31%	26%	31%	35% A
Less likely	61%	68% C	61%	55%

Letter designations indicate statistically significant differences (95% confidence level) between groups.

Detailed Results by Level of Investable Assets

		Investable Assets		
	Total (n 1000)	**$25K $99.9K (n 369) A**	**$100K $249K (n 229) B**	**$250K+ (n 402) C**
Preference for receiving disclosures about investment advice you would receive from a brokerage firm or investment advisory firm				
Online or digital, with a choice to receive paper when I want it	46%	46%	46%	46%
Online or digital (including by email)	30%	31%	31%	28%
Paper	24%	23%	23%	26%

Letter designations indicate statistically significant differences (95% confidence level) between groups.

APPENDIX B

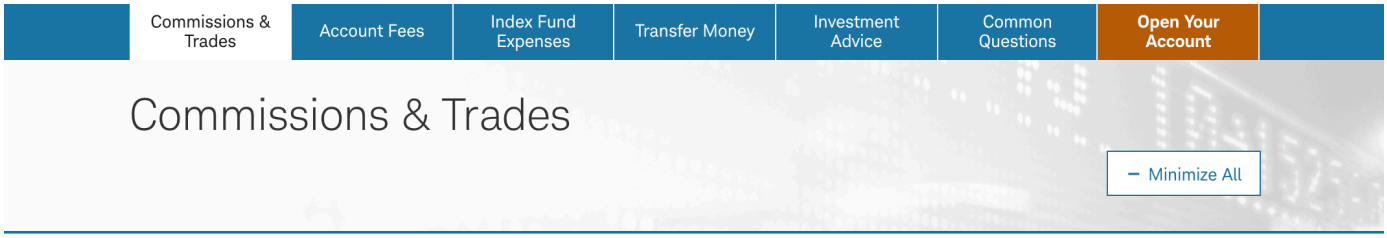
A Summary of Your Brokerage Account Relationship with Charles Schwab & Co., Inc.

The purpose of this summary is to inform you about the nature of our relationship for this and other brokerage accounts you may have with Schwab. For more information, please go to schwab.com/relationship.

What investment advice services do you provide and what are your obligations?	▪ If we give you investment advice such as recommending an investment or investing strategy, we will act in your best interest and not place our interests ahead of yours. ▪ You may invest on your own in this account without any advice from us. ▪ Even when we give you investment advice, you make the final decisions. ▪ We will not manage or monitor this or other brokerage accounts. Schwab offers investment advisory accounts, which include management of your investments for an ongoing fee. To inquire whether that type of account is right for you, talk to a Schwab representative or go to schwab.com/investmentadvisory to see a summary like this one for advisory accounts.
What are the fees and costs for investment advice?	▪ If you decide to buy or sell a stock, certain exchange-traded funds, mutual funds, or bonds, you will pay a commission or transaction fee. Other investments do not have a commission or transaction fee; instead, the price of the investment includes compensation for Schwab. ▪ The price you pay is the same whether we recommend an investment to you or not. ▪ For details on fees and pricing, please go to schwab.com/pricing.
How does your firm make money from investment advice and what are its conflicts of interest?	▪ Schwab makes more money from some investments you may select compared to others, whether or not a Schwab representative recommends the investment to you. ▪ For example, Schwab and its affiliates earn more if you purchase a Schwab-affiliated mutual fund or exchange-traded fund than if you purchase one managed by another company. ▪ For a detailed explanation about how Schwab makes money depending on the investments you choose and our related conflicts of interest, go to schwab.com/firmcomp.
How do you pay professionals who give investment advice?	▪ We compensate our representatives who provide investment advice based on factors such as the amount of client assets they service and the time and complexity required to understand your needs, make recommendations, and provide services to you. ▪ We do not pay our representatives based on product sales commissions. ▪ For details on how we pay all of our representatives, please go to schwab.com/repcomp.
What additional information should I consider?	▪ For investor education information about different types of investing account relationships and services that may be available to you, and other questions you might want to consider, please visit www.sec.investoreducation.gov. ▪ For free and simple tools to research our firm, our representatives, and other firms, including disciplinary events, please visit investor.gov and brokercheck.finra.org.

A Layered Approach Leads To More Information

Current Schwab Trading Pricing Hub (would be linked from Form CRS)



Commissions & Trades

– Minimize All

Stocks & ETFs — Commissions per Trade

	Online Trades	Automated Phone Trades	Broker-Assisted Trades
Stocks[1,10]	$4.95	$4.95 + $5.00 service charge	$4.95 + $25.00 service charge
Schwab ETF OneSource™[2]	$0	$0 + $5.00 service charge	$0 + $25.00 service charge
All other ETFs	$4.95	$4.95 + $5.00 service charge	$4.95 + $25.00 service charge

Mutual Funds — Transaction Fees per Executed Trade

	Online Trades	Automated Phone Trades	Broker-Assisted Trades
Mutual Fund OneSource® Service and other No Transaction Fee funds[3]	$0	$0	$25.00 service charge
All other funds[4]	Up to $76 per buy $0 per sell	Up to $76 per buy $0 per sell	Online pricing + $25.00 service charge

Options — Commissions per Trade[5]

	Online Trades[7]	Automated Phone Trades	Broker-Assisted Trades
Options[8]	$4.95 + $0.65 Per contract	Online pricing + $5.00 service charge	Online pricing + $25.00 service charge

https://client.schwab.com/secure/cc/products/fees#tradeCommissions

A Summary of Your Advisory Account Relationship with Charles Schwab & Co., Inc.

The purpose of this summary is to inform you about the nature of our relationship in Schwab Managed Account Services (MAS), an advisory program that gives you access to select money managers and investment strategies. For more information, please go to schwab.com/investment advice.

What investment advice services do you provide and what are your obligations?	▪ As the sponsor of this program and if we recommend it to you, we act as a fiduciary and in your best interest at all times. We review and select third-party money managers (MMs) that are made available to you and can recommend an MM based on your investment objectives. ▪ We periodically review MMs' performance and investment strategies, but do not review or monitor individual transactions in your account. The MM will monitor your account and make specific investment decisions in your account without your prior approval. ▪ For more information, see pages 1-2, and 13 of the MAS Brochure. ▪ Schwab offers other types of investment advisory accounts, and also brokerage accounts through which you can receive investment advice. To inquire what type of account is right for you, talk to a Schwab representative or go to schwab.com/relationship to see other summaries like this one.
What are the fees and costs for investment advice?	▪ You will pay us a quarterly asset-based fee that is a percentage of the assets in your account. ▪ This is a wrap fee program so you do not pay separate commissions for trades executed at Schwab. The asset-based fee covers the MM's account management services and our program and brokerage services. ▪ There are additional costs, such as fees for trades executed at other broker-dealers, certain fixed income trades executed by Schwab and operating expenses and fees charged by mutual funds. ▪ For more information, go to pages 4-5 of the MAS Brochure.
How does your firm make money from investment advice and what are its conflicts of interest?	▪ Our firm makes money based on the asset-based fees we charge you and from investments you make. ▪ Schwab makes more money from some investments your MM may select compared to others – for example, bonds purchased from Schwab's inventory. ▪ Schwab has additional business relationships with and earns additional direct and indirect compensation from some MMs, either because they are affiliates or they use other Schwab services. ▪ For more information, go to pages 5, 7-8 and 14 of the MAS Brochure.
How do you pay professionals who give investment advice?	▪ In addition to base salaries, our representatives receive compensation for successfully enrolling clients in the program and servicing those clients after enrollment; the amount of this compensation is based on factors such as time, complexity and expertise to understand and recommend a program. ▪ We pay MMs asset-based fees based on the assets they manage in the program and the type of investment strategy for those assets. ▪ For a detailed explanation about how Schwab pays its representatives and MMs, see pages 5-6 of the MAS Brochure.
What additional information should I consider?	▪ For investor education information about different types of investing account relationships and services that may be available to you, and other questions you might want to consider, please visit www.sec.investoreducation.gov. ▪ For free and simple tools to research our firm, our representatives, and other firms, including disciplinary events, please visit investor.gov and brokercheck.finra.org.

A Layered Approach Leads To More Information

Current Schwab Advice Pricing Hub (would be linked from Form CRS)

Commissions & Trades | Account Fees | Index Fund Expenses | Transfer Money | Investment Advice | Common Questions | **Open Your Account**

Investment Advice

− Minimize All

Automated Investing

	Minimums	Annual Fees
Schwab Intelligent Portfolios®[21]	$5,000	No advisory fees No commissions No account service fees

Personal Planning and Automated Investing

	Minimums	Annual Fees
Schwab Intelligent Advisory™[22]	$25,000	You'll pay just 0.28% of the assets in your account (excluding cash). No commissions and no account service fees charged.

Dedicated Financial Advice

	Minimums	Annual Fees
Schwab Private Client™[23]	$500,000	Starts at 0.90% for equities Starts at 0.70% for fixed income
Schwab Advisor Network®[24]		No charge for referrals Fees vary by advisor

Additional Solutions

	Minimums	Annual Fees
Schwab Managed Portfolios[25]	$25,000	Starts at 0.90%
Managed Accounts: Equity Strategies[25]	$100,000	Starts at 1.35%
Managed Accounts: Fixed Income Strategies[25]	$250,000	Starts at 0.65%

https://client.schwab.com/secure/cc/products/fees#advice

Benefits of Alternate One-Page Approach to Form CRS

Simple

Plain English, easy-to-read content in brief, one-page format.

- Covers key questions and provides answers
- Allows for easier comparison with other firms, as well as necessary tailoring

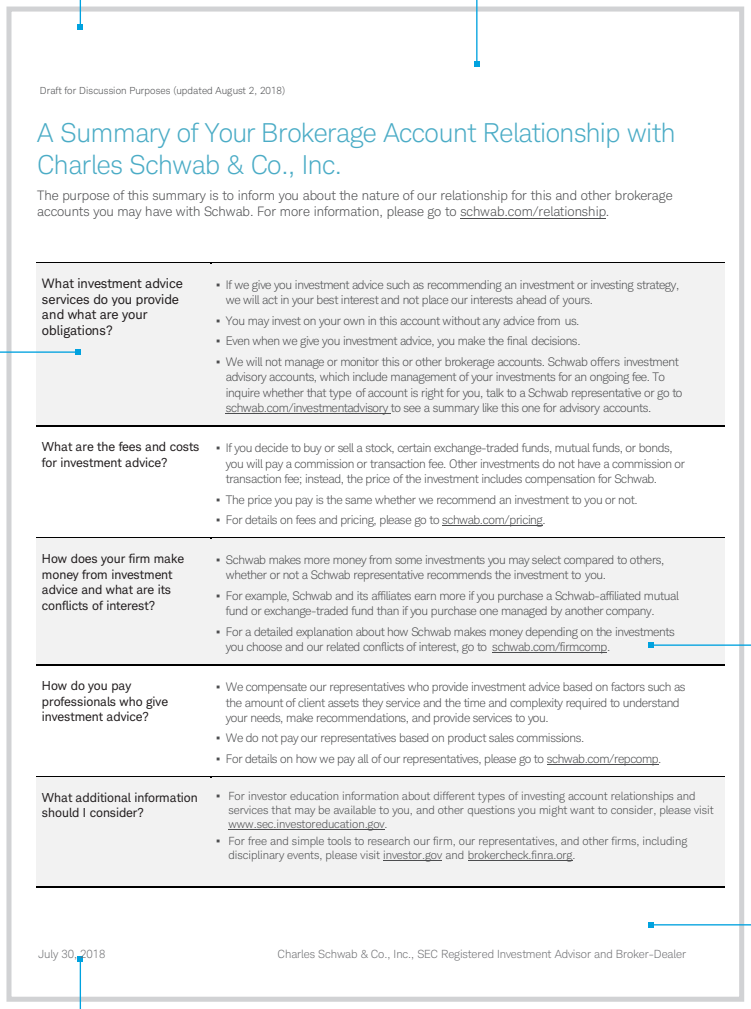
Focused

Includes easy-to-understand information on the most important elements of the relationship:

- Services and corresponding obligations
- Fees and costs
- Conflicts of interest
- Additional information, including disciplinary history

Visual

Employs a variation of the Pew disclosure format, making it easier for investors to find and follow information conveyed.



Draft for Discussion Purposes (updated August 2, 2018)

A Summary of Your Brokerage Account Relationship with Charles Schwab & Co., Inc.

The purpose of this summary is to inform you about the nature of our relationship for this and other brokerage accounts you may have with Schwab. For more information, please go to schwab.com/relationship.

What investment advice services do you provide and what are your obligations?	• If we give you investment advice such as recommending an investment or investing strategy, we will act in your best interest and not place our interests ahead of yours. • You may invest on your own in this account without any advice from us. • Even when we give you investment advice, you make the final decisions. • We will not manage or monitor this or other brokerage accounts. Schwab offers investment advisory accounts, which include management of your investments for an ongoing fee. To inquire whether that type of account is right for you, talk to a Schwab representative or go to schwab.com/investmentadvisory to see a summary like this one for advisory accounts.
What are the fees and costs for investment advice?	• If you decide to buy or sell a stock, certain exchange-traded funds, mutual funds, or bonds, you will pay a commission or transaction fee. Other investments do not have a commission or transaction fee; instead, the price of the investment includes compensation for Schwab. • The price you pay is the same whether we recommend an investment to you or not. • For details on fees and pricing, please go to schwab.com/pricing.
How does your firm make money from investment advice and what are its conflicts of interest?	• Schwab makes more money from some investments you may select compared to others, whether or not a Schwab representative recommends the investment to you. • For example, Schwab and its affiliates earn more if you purchase a Schwab-affiliated mutual fund or exchange-traded fund than if you purchase one managed by another company. • For a detailed explanation about how Schwab makes money depending on the investments you choose and our related conflicts of interest, go to schwab.com/firmcomp.
How do you pay professionals who give investment advice?	• We compensate our representatives who provide investment advice based on factors such as the amount of client assets they service and the time and complexity required to understand your needs, make recommendations, and provide services to you. • We do not pay our representatives based on product sales commissions. • For details on how we pay all of our representatives, please go to schwab.com/repcomp.
What additional information should I consider?	• For investor education information about different types of investing account relationships and services that may be available to you, and other questions you might want to consider, please visit www.sec.investoreducation.gov. • For free and simple tools to research our firm, our representatives, and other firms, including disciplinary events, please visit investor.gov and brokercheck.finra.org.

July 30, 2018 — Charles Schwab & Co., Inc., SEC Registered Investment Advisor and Broker-Dealer

Relevant

Focuses on the type of account an investor is in process of selecting (in this case, brokerage).

- Avoidsconfusion of mixing account types
- Instead, dual registrant links to summaries of advisory accounts
- Website version consolidates all linked information and enables download of comprehensive PDF

Layered

Q&A approach provides top-line answers on each topic area and links to more in-depth information on company website

Resourceful

Provides links to investor education materials and objective third-party sites.

Illustrative – for discussion only