FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

August 7, 2018

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

Re: Regulation Best Interest; Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation; Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles

Dear Secretary Fields:

On May 5, 2018, the U.S. Securities and Exchange Commission (SEC) published its request for public comment on two proposed rules and interpretive guidance to address any retail investor confusion about the relationships that they have with investment professionals (Proposed Rulemaking Package).[1] This rulemaking package is designed to enhance the quality and transparency of investors' relationships with registered investment advisers, registered broker-dealers, and their associated persons (financial professionals) while preserving access to a variety of types of advice relationships and investment products.[2]

The Financial Services Institute[3] (FSI) appreciates the opportunity to comment on this important proposal. FSI members have long supported a uniform best interest standard of care that is applicable to all professionals providing personalized investment advice to retail clients and enforced by the SEC as the appropriate jurisdictional agency. Such a standard should draw on duties of care and loyalty, and require reasonable and streamlined disclosures to ensure

[1] U.S. Securities and Exchange Commission, Proposed Regulation Best Interest ("Proposed Regulation Best Interest"), 83 Fed. Reg. 21574 (May 9, 2018) *available at:* https://www.sec.gov/rules/proposed/2018/34-83062.pdf; Proposed Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, 83 Fed. Reg. 21203 (May 9, 2018) *available at:* https://www.sec.gov/rules/proposed/2018/ia-4889.pdf; Form CRS Relationship Summary; Amendments to Form ADV ("Proposed Form CRS"); Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, 83 Fed. Reg. 21416 (May 9, 2018) *available at:* https://www.sec.gov/rules/proposed/2018/34-83063.pdf.

[2] Press Release, U.S. Securities and Exchange Commission, SEC Proposes to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships with Investment Professionals (April 18, 2018) *available at* https://www.sec.gov/news/press-release/2018-68.

[3] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial professionals and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

industry participants effectively communicate their conflicts of interest to their clients and potential clients.[4] We largely support the Proposed Rulemaking Package and offer more detailed feedback and suggestions below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial professionals, which account for approximately 52.7 percent of all producing registered representatives.[5] These financial professionals are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).[6]

FSI's IBD member firms provide business support to independent financial professionals in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial professionals are small-business owners and job creators with strong ties to their communities. These financial professionals provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans meet their financial goals. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial professionals are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.[7]

Discussion

FSI appreciates the opportunity to comment on the Proposed Rulemaking Package. Since 2009, we have publicly supported a carefully-crafted, uniform best interest standard of care applicable to all professionals providing personalized investment advice to retail clients.[8] Further, Congress specifically charged the SEC with evaluating the effectiveness of existing standards of care and delegated the authority to promulgate a uniform standard of care for broker-dealers and investment advisers.[9] While it is not perfect, we believe that the Proposed Rulemaking Package provides a clear standard of care for financial professionals, including guidelines for managing conflicts of interest, while preserving investor access to the broad range of products

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[4] Letter from David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, to Jay Clayton, Chairman, U.S. Securities and Exchange Commission (October 30, 2017) (responding to request for Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker Dealers) *available at* https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2657870-161400.pdf

[5] Cerulli Associates, Advisor Headcount 2016, on file with author.

[6] The use of the term "financial professional" in this letter refers to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant.

[7] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

[8] *See, e.g.*, Bellaire Letter FN 4.

[9] Dodd Frank Wall Street Reform and Consumer Protection Act §913, 12 U.S.C. 5301 (2010).

and services available in the broker-dealer model. We offer specific constructive feedback and suggestions below.

I. Overview

FSI has been actively engaged in the discussion surrounding the final form of a standard of care and has provided the SEC with detailed comments in response to earlier requests.[10] In our response to SEC Chairman Jay Clayton's (Chairman Clayton) request for information, which was made in anticipation of the SEC's work to formulate the best interest standard proposal, FSI suggested several key questions for the SEC to address, including defining a best interest standard of care; determining how firms and financial professionals would demonstrate compliance; and ensuring investors retain access to investment products, services and advice. The Proposed Rulemaking Package largely addressed these suggestions.

While Proposed Regulation Best Interest clearly extends to broker-dealers a duty to act in the customer's best interest - that is, putting the customer's needs first - the Commission has properly adopted a principles-based standard allowing firms to tailor their practices to their business model and clients. Broker-dealers would demonstrate compliance with this duty by: 1) disclosing key facts about the customer relationship, including material conflicts of interest; 2) exercising reasonable diligence, care, skill and prudence to understand the product and have a reasonable basis to believe that product is in the customer's best interest; and 3) establishing and enforcing policies and procedures reasonably designed to identify, disclose, and mitigate or eliminate conflicts of interest arising from financial incentives. We applaud the SEC for acknowledging that conflicts will inevitably exist, but must be managed appropriately.

Further, we commend the SEC for integrating the proposed standard of care into the investor protections provided by the existing regulatory framework. Proposed Regulation Best Interest is intended to build upon existing suitability obligations, but enhances those obligations by requiring the broker-dealer to have a reasonable basis to believe that the recommendation is in the best interest of the customer.[11] Indeed, the extensive disclosure and conflict mitigation requirements in the Proposed Rulemaking Package go far beyond existing suitability requirements. As the Director of the Division of Trading and Markets Brett Redfearn recently observed, "best interest means what it says" and is a facts and circumstances-based determination of the reasonableness of the match of product to customer, "not a check the box compliance exercise."[12] The Proposed Rulemaking Package goes beyond suitability, while recognizing that disclosure alone is not enough.

As we discuss in greater detail below, FSI has long advocated for a two-tier client disclosure regime that starts with a one-page point-of-sale document at the time of formal engagement between the advisor and the investor. This initial disclosure would then be supplemented with more detailed disclosures posted to the firm's website or otherwise made available to the investor in a

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[10] *See, e.g.*, Letter from David T. Bellaire FN 4.

[11] See S.E.C. Release No. 34-83062; File No. S7-07-18 at p. 10.

[12] Brett Redfearn, Director, SEC Division of Trading and Markets, Remarks FINRA Annual Conference (May 22, 2018) *available at* https://www.sec.gov/news/speech/redfearn-remarks-finra-annual-conference-052218. FSI suggests that, because this is a facts and circumstances determination, the Commission consider publishing frequently asked questions (FAQs), or other guidance, after the final rule is published. We further suggest those FAQs clarify, where applicable, that certain conduct would not violate Regulation Best Interest, such as when a registered representative only has the ability to sell one recordkeeper's retirement product and, as such, only presents that one product to a retail customer.

format or formats they prefer. We believe that the proposed Customer Relationship Summary (Form CRS) matches many of the aspects of this suggested approach to disclosure.

We support the SEC's goal of ensuring that retail investors understand the kind of financial professional they are doing business with by restricting the use of potentially misleading titles. Most of FSI's member firms and financial professionals are dual registrants or dual hatted professionals (i.e. those who are both registered representatives of a broker-dealer and investment advisor representatives). Our members hold themselves to a high standard as stewards of their clients trust and do not want unscrupulous actors to be able to present themselves as offering the same level of service without proper registration. Given the different business models across member firms, we suggest some clarification as to how the title restrictions will work in practice.

Finally, FSI agrees that there are areas in which regulation of broker-dealers and investment advisers would benefit from greater harmonization. Below, we identify specific areas in which current broker-dealer regulations provide investor protections that may not have counterparts in the investment adviser context. Leveling the playing field in these key areas will result in better investor protection, reduce investor confusion as to the standard of care owed to them by their financial professionals, and preserve access to the variety of products and services offered by broker-dealers and their representatives.

II. Best Interest Standard of Care

A. Introduction

We strongly support the Proposed Rulemaking Package's clearly defined best interest standard of care for broker-dealers, which draws on an investment adviser's duties of care and loyalty. This best interest standard of care instructs firms to avoid material conflicts of interest when possible or obtain informed client consent to act when they cannot be avoided; and requires financial professionals to provide advice with skill, care and diligence based on the client's investment profile. FSI commends the SEC for recognizing the unique characteristics of the broker-dealer model and choosing to build upon the already extensive regulatory regime in that space, rather than simply imposing a new standard. We offer further supportive feedback below.

B. Clearly Defined Duty to Act in the Best Interest of a Retail Customer

Proposed Regulation Best Interest requires that, when making a recommendation to a retail customer, a broker-dealer has a duty to act in the best interest of the retail customer at the time a recommendation is made, without putting the financial or other interest of the broker-dealer ahead of the retail customer.[13] Articulating the standard in this way correctly recognizes that a broker-dealer's financial interest can and will inevitably exist, but that interest cannot be the predominant motivating factor. As we have previously commented, a best interest standard does not require broker-dealers to maintain a conflict-free culture, but rather that conflicts be adequately addressed to ensure that the broker-dealer's interests align with those of its customer.[14] Thus, a best interest standard must be designed to appropriately address conflicts of interest because they may arise in any relationship where a duty of care or trust exists between two or

[13] Proposed Regulation Best Interest, FN 1 at 21585.
[14] Letter from David T. Bellaire FN 4 at 3-4.

more parties.[15] Indeed, being completely "conflict free" is not possible for financial professionals, as Wall Street Journal columnist Jason Zweig explains, "All financial advis[ors]—like all people who perform a service for anyone else, including journalists—have conflicts of interest. That's true regardless of whether they work for someone else or for themselves, whether they earn fees or commissions, or whether they call themselves 'fiduciaries' who put clients' interests ahead of their own."[16] Chairman Clayton recognized this in remarks before the House Financial Services Committee, when he said "the proposed broker-dealer best interest obligation draws from the principles underlying an investment adviser's fiduciary duty, recognizing that both broker-dealers and investment advisers often provide advice in the face of conflicts of interest."[17]

C. Different Standards Based on Uniform Principles

Some commenters have expressed concern that the Proposed Rulemaking Package does not impose a uniform fiduciary standard of care on both broker-dealers and investment advisers. However, the SEC correctly approached this rulemaking effort with the goals of providing clear, understandable, and consistent standards for recommendations across a brokerage relationship; better aligning this standard with other advice relationships; and preserving investor choice and access to existing products, services, service providers and payment options.[18] This last goal is essential to FSI members and their clients – investors must retain their ability to choose both the relationships with their financial professional and the products and investment vehicles they wish to utilize to meet their financial goals because research shows that investors who work with financial professionals save more, are better prepared for their retirement, and have greater confidence in their retirement planning.[19] Rather than imposing the exact same standards on different business models, the Proposed Rulemaking Package draws from key principles underlying the fiduciary obligations that apply to investment advice in other contexts.[20] Further, the SEC specifies that it has given "extensive consideration" to the concept of imposing a uniform fiduciary standard, but declined to do so in favor of "a more tailored approach focusing on enhancements to broker-dealer regulation…build[ing] upon this regulatory regime…"[21] Because their business models are different, it is appropriate to have different standards for investment advisers and broker-dealers provided that they are based on a uniform set of principles.[22] As Chair Clayton observed, "while the two standards draw from common principles, some obligations of broker-dealers and investment advisers will differ because the relationship types of these investment professionals differ. This is a practical necessity. But the principles are the same…."[23] FSI commends the SEC for recognizing the unique characteristics of the broker-dealer model and choosing to build upon the already extensive regulatory regime in that space.

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[15] FINRA, Report on Conflicts of Interest (October 2013) *available at* https://www.finra.org/sites/default/files/Industry/p359971.pdf.
[16] Jason Zweig, *Why Your Financial Adviser Can't be Conflict Free*, The Wall Street Journal (April 7, 2017) *available at*: http://jasonzweig.com/why-your-financial-adviser-cant-be-conflict-free/.
[17] *Oversight of the U.S. Securities and Exchange Commission: Hearing Before the House Committee on Financial Services*, 115th Congress (2018) (Statement of Jay Clayton, Chairman, U.S. Securities and Exchange Commission) *available at* https://financialservices.house.gov/UploadedFiles/HHRG-115-BA00-WState-JClayton-20180621.pdf.
[18] Proposed Regulation Best Interest, FN 1 at 21583.
[19] Claude Montmarquette, Nathalie Viennot-Briot. Centre for Interuniversity Research and Analysis on Organizations (CIRANO), *The Gamma Factor and the Value of Advice of a Financial Advisor, available at* https://www.cirano.qc.ca/files/publications/2016s-35.pdf
[20] Proposed Regulation Best Interest, FN 1 at 21584.
[21] *Id.* at 21590.
[22] See generally Chamber of Commerce of USA, et al. v. US Department of Labor, et al., No. 17-10238 (5th Cir. 2018) at Section III (discussing the differences in the broker-dealer and investment adviser models).
[23] Clayton Statement FN 17.

Further, the client relationships have different characteristics under each business model. A brokerage relationship is transaction based, a broker-dealer may provide a variety of services some of which may include advice, and they may be acting in a principal or agent capacity. An advisory relationship, as its name implies, revolves around the provision of advice related to investments, which may include portfolio management on a discretionary basis. Some industry stakeholders object to the fact that broker-dealers have an episodic duty of care, whereas investment advisers have an ongoing duty of care. Not only does the proposed best interest obligation for broker-dealers reflect the fundamental difference in the relationship, but §913 of Dodd Frank instructed the Commission to consider establishing a standard of conduct for broker-dealers and investment advisers "when providing personalized investment advice about securities to retail customers." Based on their needs and preferences, retail clients can choose whether to work with a broker-dealer or an investment adviser, including negotiating the frequency of account monitoring. Further, as the client's needs change, they have the flexibility to change how they work with their financial professional. Maintaining the differences in business models is essential to preserving investor choice and access to a range of products and services.

In summary, FSI commends the SEC for recognizing the unique characteristics of the broker-dealer model and the benefits it provides to investors. By choosing to build upon the already extensive regulatory regime in broker-dealer space, the SEC is rightfully validating the important role broker-dealers play in our financial system and preserving investor choice.

D. Disclosure Obligation

FSI and its members agree that a best interest standard of care should require reasonable and streamlined disclosures to ensure industry participants effectively communicate their conflicts of interest to their clients and potential clients. The Proposed Rulemaking Package would require broker-dealers to disclose to their retail customers key facts related to the scope and terms of their relationship, including material conflicts of interest. Material facts relating to the scope and terms of the relationship include: that the broker-dealer is acting in a broker-dealer capacity with respect to the recommendation; the fees and charges that apply; and the type and scope of services provided. A material conflict of interest is one that a reasonable person would expect might incline a broker-dealer to make a recommendation that is not disinterested. However, the Proposed Rulemaking Package does not require broker-dealers and their registered representatives to be conflict free, nor would it *per se* prohibit or allow certain transactions involving conflicts such as transaction-based compensation or proprietary products. This is critical to ensuring investor access to advice, products and services. We support the SEC's principles-based approach to the form, timing and method of this disclosure obligation and agree that the format should be concise, clear, and readable. Broker-dealers' and investment advisers' disclosure obligations should address material conflicts of interest arising in a firm's specific business model.

We offer comments on the requirements of the proposed Form CRS in a subsequent section and support the SEC's layered approach to these disclosures. However, more disclosure does not result in better disclosure. For example, the 1999 Gramm-Leach-Bliley Act required banks and other financial institutions to make very detailed annual privacy policy disclosures to consumers. Critics contended that the resulting notices were long, complex, and written in legalistic jargon that was difficult for consumers to understand. In 2006, Congress directed the financial regulatory

agencies to jointly develop a streamlined model financial privacy form.[24] Consumer testing commissioned by the agencies showed that consumers were more likely to read notices that were simple, provided key context up front, and had pleasing design elements, such as large amounts of white space. This testing indicated that notice in the form of a table was more effective than the long notice originally required by Gramm-Leach-Bliley, which performed poorly on all measures.[25] These findings were successfully incorporated into the agencies' final model form.[26] We suggest the SEC consider using Form CRS as a similar model disclosure form, incorporating the effective design elements, and serving as a safe harbor if firms choose to use it. As we discuss further below, because the two broker-dealer disclosure requirements serve similar purposes and may provide duplicative information, we suggest that providing the Form CRS be deemed to satisfy the broker-dealer's Disclosure Obligation under Proposed Regulation Best Interest.

Similarly, FSI has long advocated for a two-tier client disclosure regime that starts with a concise point-of-sale document at the time of formal engagement between the financial professional and the investor. This initial disclosure would hyperlink to more detailed disclosures posted to the firm's website or otherwise made available to the investor in a format or formats they prefer. As we discuss below, we believe the Form CRS matches many of the aspects of such a disclosure regime, but we also urge the SEC not to underestimate the value investors place on their relationship with their financial professional. The greatest benefit of these disclosures will come in the conversations they facilitate between the client and their financial professionals.

E. Care Obligation

FSI believes that a best interest standard of care includes a duty to provide advice and service with skill, care and diligence based upon the information known about the client's investment objectives, risk tolerance, financial situation and needs.[27] This standard draws on an investment adviser's duties of care and loyalty[28] and other similar standards applicable under federal securities laws,[29] but it expressly excludes basic financial planning services where no specific personalized advice is given. The Proposed Rulemaking Package incorporates many of FSI's suggested components of a best interest standard of care. Proposed Regulation Best Interest requires broker-dealers to exercise reasonable diligence, care, skill and prudence, to (i) understand the product; (ii) have a reasonable basis to believe that the product is in the retail customer's best interest; and (iii) have a reasonable basis to believe that a series of transactions is not excessive and is in the retail customer's best interest.[30] This standard is intended to incorporate the investor protections in the existing regulatory framework, including a broker-dealer's existing well-established obligations under reasonable basis, customer specific, and quantitative

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[24] Peter Swire & Kenesa Ahmad, Investment Company Institute, Delivering ERISA Disclosure for Defined Contribution Plans: Why the time has come to prefer electronic delivery (June 2011) *available at:* https://www.ici.org/pdf/ppr_11_disclosure_dc.pdf.

[25] *Id.*

[26] Final Model Privacy Form under the Gramm-Leach-Bliley Act, 17 CFR Part 248 (2009) *available at:* https://www.sec.gov/rules/final/2009/34-61003.pdf.

[27] See Bellaire Letter FN 4.

[28] Thus, while this suggested standard of care would require a financial professional to provide advice that is in the best interest of the customer, it would not necessarily require recommending the lowest cost investment option. Cost would be an important factor in assessing the appropriateness of an investment recommendation, but not the only factor. See, e.g., Advisory Opinion 2002-14.

[29] See, e.g., FINRA Rule 2111. It has long been recognized that a broker-dealer has a duty to deal fairly with the public. See Charles Hughes & Co. v. SEC, 139 F.2d 434 (2d Cir. 1943), cert. denied, 321 U.S. 786 (1944), FINRA Rule 2010 and FINRA Supplementary Material 2111.01.

[30] Proposed Regulation Best Interest FN 1 at 21575.

suitability. Further, the Proposed Rulemaking Package enhances those obligations by requiring the broker-dealer to have a reasonable basis that the recommendation is in the best interest of the retail customer. For the forgoing reasons, we support Proposed Regulation Best Interest's Care Obligation.

F. Conflicts of Interest

Just as no rulemaking should be expected to eliminate all conflicts, which are inherent and unavoidable, no proposal can address conflicts through comprehensive and exhaustive disclosures alone. Experience shows that investors already ignore much of the enormous volume of regulatory disclosures they are being provided. Instead, a more realistic approach is to require broker-dealers to adopt written supervisory procedures to detect and manage conflicts of interest, to avoid those they can and take steps to mitigate the impact of those conflicts that can't be avoided. Our previous comments suggested requiring broker-dealers to: (i) identify conflicts of interest inherent in their business model, means of product distribution or service model; (ii) assess whether each conflict is material; and (iii) develop a means of avoiding the conflict, mitigating its impact and/or disclosing the conflict to the customer if the conflict is material.[31] Like all written supervisory procedures, these should be tailored to the broker-dealer's business operations.

The SEC designed the Proposed Rulemaking Package to reduce retail investor confusion while preserving the unique structure and characteristics of the broker-dealer customer relationship and building upon existing regulatory obligations by drawing on the principles of the obligations that apply to investment advice in other contexts. Specifically, it would not *per se* prohibit a broker-dealer from transactions involving conflicts of interest, including for example: receiving commissions or transaction-based compensation, recommending proprietary products, principal transactions, or complex products; but would require such material conflicts to be reasonably disclosed. We agree that not all conflicts can reasonably be eliminated, but they must be appropriately managed. However, broker-dealer firms could benefit from some regulatory guidance in identifying material conflicts and mitigating them successfully. As a result, we urge the SEC to consider publishing guidance providing specific examples of when a conflict of interest is material, as well as what constitutes sufficient mitigation in order to permit a conflict to remain. In the alternative this guidance could be provided by a summary of best practices noted in regulatory examinations conducted after Proposed Regulation Best Interest is implemented.

Some have expressed concern that the Proposed Regulation Best Interest does not require broker-dealers to eliminate or mitigate conflicts, merely to have policies and procedures in place. However, we contend that this principles-based approach will allow firms the flexibility to manage conflicts as appropriate to their business model. Industry is innovative and the differences in business models will lead firms to eliminate conflicts that they cannot manage or mitigate. Others argue that mitigation does not go far enough. Commissioner Jackson observed that, "many of the most harmful conflicts are created by firms themselves through practices like sales contests, quotas, and bonuses for selling proprietary products."[32] However, the Proposed Regulation Best Interest clearly states that it would be inconsistent with a broker-dealer's Care Obligation to make a recommendation solely to satisfy firm sales quotas, or to win a firm-sponsored sales

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[31] Bellaire Letter FN 4 at 4.

[32] Robert J. Jackson, Jr., Commissioner, U.S. SEC, Public Statement, Proposed Rulemakings and Interpretations Relating to Retail Investor Relationships with Investment Professionals (April 18, 2018) *available at:* https://www.sec.gov/news/public-statement/proposed-rulemaking-retail-investor-relationships-investment-professionals.

contest. Further, the vast majority of firms have eliminated the old-style sales contests contemplated by Commissioner Jackson. Rather, firms have adopted the use of incentives such as annual reward trips with a business component based on a product agnostic goal, which do not have the same conflicts as old-style sales contests. We would ask the final rule to clarify that, subject to the Care and Disclosure Obligations, product agnostic incentives such as these are permissible.

G. Key Terms

We believe that the definition of retail customer should be clarified to harmonize with existing FINRA rules and guidance. Specifically, the definition in the Proposed Rulemaking Package does not contain a carve-out for sophisticated or high-net worth investors. FINRA Rule 2111(b) imposes a different and lower standard of care on natural persons with total assets of $50 million. Further, FINRA Regulatory Notice 11-02 incorporates an institutional investor exemption given the sophistication of such investors. Harmonizing the final rule with existing FINRA rules and guidance will provide clarity to firms, financial professionals, and investors.[33]

We further suggest that the final rule codify the term "recommendation" in accordance with the FINRA guidance and case law referenced in the Proposed Rulemaking Package. This guidance defines a recommendation based on whether it is a call to action to engage in a specific investment or investment strategy, expressly including situations where no specific personalized advice is given. FINRA Rule 2111 sets forth an explicit standard for what constitutes a recommendation and recognizes "call to action" as the hallmark. This concept is fully understood and in use by the industry, so there is no need to create a new standard. The Proposed Rulemaking Package properly excludes general investor education and limited investment analysis tools (such as a retirement savings calculator) from the definition of a recommendation.

III. Form CRS Relationship Summary

A. Introduction

FSI supports a layered approach to disclosure, providing key information up front in a concise, easy to read format, which links to more detailed and current disclosures on the company's website. We believe the Form CRS matches many of the aspects of the two-tiered disclosure regime that we have supported for the past several years. We agree that brief disclosure is more effective than a long-form narrative and support requiring the use of "plain-language" principles in the relationship summary. However, we believe that some of the prescribed disclosure language is highly problematic, will add to investor confusion, and would negatively impact their client relationships. Further, we request clarity on particular points outlined below.

B. Disclosure Obligation vs. Form CRS

The Proposed Rulemaking Package would require broker-dealers to make two, potentially duplicative, disclosures: (1) the Disclosure Obligation required by Proposed Regulation Best

[33] We suggest the SEC consider providing guidance related to whether the best interest standard applies to financial professionals working with individual investors in group business marketplaces or institutional plans. For example, if employees make individual purchase decisions through a workplace plan with a financial professional's help, will the financial professional be held to a best interest standard?

Interest; and (2) the Form CRS Relationship Summary. Investment advisers would only be required to provide the Form CRS in addition to Form ADV. These disclosure obligations would supplement rather than replace existing disclosure requirements and are intended to clarify the capacity in which a firm or financial professional is acting through a layered approach to disclosure. In order to provide broker-dealers greater flexibility, the SEC did not specify the form, manner, or frequency of the Disclosure Obligation. In contrast, the majority of the content and form of Form CRS is dictated in order to standardize disclosures across firms and business models. While both provisions are well intended, having two such disclosure requirements – one of which gives the firm broad discretion, the other very little discretion - will likely result in investor confusion and a lack of clarity for firms who wish to ensure they have met their obligations. Further, broker-dealers are already subject to requirements that add another layer of protection for investors, including: periodic examinations, advertising review, and continuing education requirements. Because the two broker-dealer disclosure requirements serve similar purposes and may provide duplicative information, we suggest that providing the Form CRS be deemed to satisfy the broker-dealer's Disclosure Obligation under Proposed Regulation Best Interest.

C. Form and Delivery

Registered investment advisers and broker-dealers would be required to provide the Form CRS relationship summary to retail investors at the establishment of a relationship, and to provide updates to retail investors following a material change. Requiring disclosures at the point of each transaction is unworkable and would not provide usable information to the client. Or, as stated previously, more disclosure does not necessarily result in better disclosure. The proposed conflicts disclosure can be made once and then updated periodically or if there are substantive changes, rather than every time the client makes a transaction, which is less burdensome for financial professionals and more effective for investors. While the Proposed Form CRS is clear that delivery of an updated Form CRS would only be required if there is a material change in the nature of the firm's relationship with an investor, the determination of whether a change is material "would depend on specific facts and circumstances."[34] To reduce potential confusion for firms and their financial professionals, we suggest that the SEC provide further guidance on what specific facts and circumstances would trigger delivery of a new CRS.

Further, we are pleased to see that the Proposed Rulemaking Package allows delivery of disclosures electronically. In addition, we would ask that the final rule allow firms and financial professionals to obtain negative consent to electronic disclosures rather than requiring positive consent or an opt-in approach. The internet has become an integral part of everyday life and the majority of investors are comfortable using it for researching and making investments. Investor advocates have observed that electronic delivery could enhance the effectiveness of disclosures, provided that investors actually read and retain them. In December 2017, the SEC's Investor Advisory Committee's (IAC) Investor as Purchaser subcommittee recommended that "the Commission continue to explore methods to encourage a transition to electronic delivery that respect investor preferences and that increase, rather than reduce, the likelihood that investors will see and read important disclosure documents."[35] They expressed support for a layered disclosure including a summary disclosure document incorporating key information along with prominent notices regarding how to obtain a copy of the full report, as well as the ability in the

[34] Proposed Form CRS FN 1 at 21454.
[35] Recommendation of the Investor as Purchaser Subcommittee: Promotion of Electronic Delivery and Development of a Summary Disclosure Document for Delivery of Investment Company Shareholder Reports (December 7, 2017) *available at https://www.sec.gov/spotlight/investor-advisory-committee.shtml*

electronic document to click through to more detailed disclosure on a particular topic. We understand that not all retail investors prefer electronic disclosures, but firms need flexibility in order to design and provide more effective disclosures.

While we support the Commission's efforts to ensure concise disclosure by limiting the required Form CRS to four pages (or its electronic equivalent), we suggest an even shorter document (perhaps as short as one page) with hyperlinks to more detailed disclosures. This approach benefits consumers by allowing them to click through to more information on specific points of concern to them; and it benefits firms by allowing them to keep these disclosures up-to-date in the most cost-effective way possible. Financial professionals can point their clients to one centralized location that will always have the most accurate information. This one-page-with-hyperlinks model also facilitates the delivery of an updated Form CRS in the event of a material change.

The Proposed Rulemaking Package is intended to reduce customer confusion, which involves balancing comprehensiveness and simplicity of client disclosures. This poses a particular challenge as it relates to the material conflicts which may or may not exist at each firm depending on their business model.[36] We support the SEC's investor testing of customer disclosures as part of this rulemaking and suggest that testing inform future guidance related to more detailed disclosures of material conflicts.

D. Disclosure Effectiveness

It has been argued by some that retail investors will not read or use the information in Form CRS because they are not currently reading and using existing disclosure documents. Many stakeholders have called for more research into disclosure effectiveness. Commissioners Stein and Peirce have suggested requiring disclosures to be more visually dynamic and engaging.[37] The SEC's IAC has discussed this topic at several of their recent meetings, inviting academics, industry members, and advocacy groups to present their research on the subject.[38] Further, the SEC's Office of the Investor Advocate is engaged in an evidence-based study of the impacts of proposed policy changes, including disclosure-oriented policies.[39] As part of this rulemaking, the SEC is conducting investor roundtables to learn what sorts of disclosures and formats are important to them.

Everyone agrees that disclosures need to be more effective, but there is no consensus as to how to make that happen. There is no easy solution to the problem of disclosure, but the Proposed

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[36] For example: whether the firm receives 12b-1 fees, shareholder service fees, or marketing support from product providers. As we and others have observed, firms want to provide customers with enough information to make informed decisions, but do not want to further confuse them with complex disclosures they do not read or use. These types of material conflicts are perfectly suited to more detailed second-tier disclosure.

[37] See Kara Stein, Commissioner, U.S. SEC, 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 (April 18, 2018) *available at* https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818; and Hester Peirce, Commissioner, U.S. SEC, Statement at the Open Meeting on Standards of Conduct for Investment Professionals (April 18, 2018) *available at* https://www.sec.gov/news/public-statement/statement-peirce-041818.

[38] See Meetings of the Investor Advisory Committee, December 7, 2017, and March 8, 2018, available at https://www.sec.gov/spotlight/investor-advisory-committee.shtml.

[39] SEC Office of the Investor Advocate, Report on Objectives FY 2019 at 13 (2018) *available at* https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2019_0.pdf

Rulemaking Package should allow firms flexibility to design more effective disclosures. We encourage the SEC to continue investor testing of these disclosures after the final rule is in place to determine whether the final format is achieving its intended purpose or if further adjustments need to be made. We suggest the final rule provide that the SEC will perform a review of the effectiveness of Form CRS within the first five years following the rule's effective date.

E. Prescribed Language

In addition to requiring delivery of the Form CRS, the Proposed Rulemaking Package specifies the bulk of its content and presentation in the form's instructions, allowing firms limited discretion in the scope and presentation of firm-specific information. For some items, firms would have flexibility in how they provide required information; for others, firms are required to use prescribed wording and/or formats. While we appreciate the SEC's intent to facilitate comparisons across firms, some of the prescribed language may result in unintended investor confusion and undermine the relationship between investors and their financial professionals.

As discussed above, FSI members include both IBD firms and their affiliated financial professionals, which include registered representatives of a broker-dealer, investment adviser representatives of a registered investment adviser firm, and dual registrants. To learn more about how the prescribed language in Proposed Form CRS would affect client relationships in practice, we surveyed a group of our financial professional members. The vast majority of them responded that they currently provide up front relationship disclosures to their clients in either written or verbal form. They did not feel that explaining the best interest standard of care was problematic, but expressed deep concern about the statement that "our interests can conflict with your interests." Though investors surely consider the cost of products and the fees they pay, and they certainly expect their financial professional to make recommendations in their interest, they also highly value the relationship they have with the financial professional. This type of relationship is impossible to summarize the way you can summarize legal duties and product fees. Given that the Proposed Form CRS already includes disclosures related to material conflicts of interest, an additional statement that "our interest can conflict with your interests" may confuse investors and undermine their relationship with their financial professional. We suggest removing it from the prescribed language required by Form CRS.

The Proposed Rulemaking Package seeks to recognize the benefits of retail investors having access to diverse business models and of preserving investor choice among brokerage services, advisory services, or both. Further, the SEC expressed concern regarding the potential risk that any additional regulatory burdens may cause investors to lose choice and access to products, services, service providers and payment options. As Commissioner Jackson observed, the Proposed Rulemaking Package's Cost Benefit Analysis does not attempt to quantify the benefits of advice to investors;[40] neither does the Proposed Form CRS' prescribed language. Chairman Clayton has said that he sees Form CRS as the starting point for a conversation between investors and their financial professionals. Such a conversation is made more confusing by requiring statements such as those that would undermine or negatively impact the client relationship.

The Proposed Form CRS also uses ongoing monitoring as the demarcation between investment advisers and broker-dealers. In practice, many broker-dealers and dual registrants engage in ongoing monitoring to various degrees. While the demarcation may be legally

[40] Jackson Statement FN 32.

accurate, many financial professionals find the statement "unless we agree otherwise, we are not required to monitor your portfolio or investments on an ongoing basis" to be highly problematic. If indeed the Proposed Form CRS is part of a larger conversation between the financial professional and retail investor, the extent and frequency of monitoring would already be made clear and this required language could result in investor confusion. We suggest either removing the specific language, or allowing financial professionals to customize the language to specify the frequency or lack of ongoing monitoring.

F. Disclosure Alone is Not Enough

As we have discussed at length, FSI supports a layered or two-tiered approach to disclosure, the initial piece of which would serve to provide investors with the information that is most critical to their decision-making at the point in time when that information is most useful, can be delivered most efficiently, and provides the investor the opportunity to ask additional questions. We believe the Proposed Form CRS incorporates many of our suggestions and will facilitate meaningful conversations between the client and their financial professional.

IV. Restrictions on the use of Certain Names or Titles

A. Introduction

The Proposed Rulemaking Package would restrict the use of the terms "adviser" or "advisor" to registered investment advisers and their supervised persons providing investment advice on their behalf. We wholeheartedly support the SEC's intended purpose of ensuring that retail investors understand the standard of care owed to them by their financial professional. However, we are concerned that restricting the use of certain titles may lead bad actors to simply adopt other similarly misleading titles rather than solving the problem. Most of FSI's member firms and financial professionals are dual registrants or dual hatted professionals. We agree that it does not make sense to base title restrictions on the type of product offered, but rather they should be based on disclosure, which will ensure that the investor understands the capacity in which they are working with the financial professional.

B. Narrow Prohibition

Under the Proposed Rulemaking Package, a broker-dealer and its associated persons would only be able to use the terms "adviser" or "advisor" in part of its name or title in communications with retail investors if it is registered as an investment adviser under the Advisers Act or with a state. Dually registered firms would be permitted to use the terms in their title, but only associated persons of the firm who are supervised by a registered investment adviser and provide investment advice on their behalf may use them. That is, an associated person who does not provide investment advice may not use the term "adviser" or "advisor" simply by virtue of the fact that they are associated with a dually registered firm.

The majority of financial professionals want their clients to understand the value of the services they provide in addition to the standard of care owed to them and do not want unscrupulous actors to be able to present themselves as offering the same level of service without proper registration. We support allowing dual registrants to use the terms "adviser" and "advisor" regardless of how they are working with a client because they must comply with both broker-dealer and investment adviser regulations Further, dual registrants are able to work with

their clients in either capacity or even to switch capacities at some point with the client's approval. The Proposed Rulemaking Package's disclosure requirements will ensure that the retail investor understands the capacity in which they are working with the financial professional.

C. Dually Registered Firms vs. Affiliated Entities

Most of FSI member firms are dually registered as broker dealers and investment advisers. However, a common business model in the IBD industry is for a firm's registered broker-dealer and registered investment adviser to be affiliates rather than one firm that is dually registered. In such a case, some but not all, of their associated financial professionals will be dually registered. The Proposed Rulemaking Package does not indicate whether or under what circumstances financial professionals associated with firms who have a broker-dealer firm and a registered investment adviser firm who are affiliated could use "adviser" or "advisor" in its name or title when communicating with retail investors. Because this is a common business model, we suggest that the final rule specify that firms and their associated persons that are affiliated in this way will be treated as dual registrants or dual hatted professionals.

V. Areas of Enhanced Investment Adviser Regulation

A. Introduction

The Proposed Rulemaking Package also requests comment on areas in which regulation of broker-dealers and investment advisers would benefit from greater harmonization. [41] FSI and its members support a balanced and efficient program of regulatory supervision, examination, and enforcement for all Financial Professionals working with retail investors. As the SEC Staff's §913 Study identified, there are several key areas in which current broker-dealer regulations provide investor protections that may not have counterparts in the investment adviser context.[42] The goals of the Proposed Rulemaking Package include addressing investor confusion while preserving access to the pay-as-you-go broker dealer model. Leveling the playing field between broker-dealers and investment advisers will result in better investor protection and reduce investor confusion as to the standard of care owed to them by their financial professionals.

Further, the uneven regulatory requirements provide an incentive for financial professionals to leave the broker-dealer model, depriving retail investors of access to a variety of types of advice relationships and investment products. As Commissioner Peirce recently observed, "I fear that more and more broker-dealers will decide to become advisers that offer only fee-based accounts resulting in many Americans being shut out from receiving any investment advice…Brokers are taking a hard look at the existing regulatory framework coupled with FINRA arbitrations in which sometimes a fiduciary standard is applied Then they look over the fence to the adviser world with its principles-based fiduciary standard, less frequent exams, absence of arbitration, and predictable revenue streams."[43] This comparison leads many financial professionals to abandon the broker-dealer model in favor of fee-only advisory business.

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[41] Request for Comment on Enhancing Investment Adviser Regulation FN 1 at 21211.
[42] Staff of the U.S. Securities and Exchange Commission, Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011), available at https://www.sec.gov/news/studies/2011/913studyfinal.pdf. ("913 Study")
[43] Hester Peirce, Commissioner, U.S. SEC, What's in a Name? Regulation Best Interest v. Fiduciary (July 24, 2018) available at https://www.sec.gov/news/speech/speech-peirce-072418.

B. Federal Licensing and Continuing Education

We strongly support subjecting investment adviser representatives to federal continuing education and licensing requirements just as registered representatives of broker dealers are. Currently, registered representatives of a broker-dealer are required to take and pass a licensing examination in order to sell securities products, [44] while investment advisers are not.[45] The SEC has no exam requirement for federally registered investment advisers. In order to provide advice concerning securities products, most states require advisers to pass a Series 65 or 66 exam, but waive that requirement if they hold one of several acceptable professional designations such as CFP, CFA, ChFC, PFS, or CIC. This results in a confusing, inconsistent patchwork of qualifications that retail investors are likely unaware of. Further the "alphabet soup" of professional designations is confusing for investors. Imposing similar licensing requirements will ensure that financial professionals have similar qualifications, regardless of their professional designation.

Registered representatives of a broker-dealer are required by FINRA to complete both Regulatory and Firm Element continuing education requirements.[46] The Regulatory Element includes regulatory, compliance, ethical, supervisory subjects, and sales practice standards; and must be completed within 120 days of the second anniversary of a registered representative's initial securities registration and every three years thereafter.[47] The Firm Element is designed, implemented, and overseen by the broker-dealer firm and consists of job and product related training programs.[48] These education programs are intended to enhance the registered representatives' securities knowledge, skill and professionalism. There is no rule related to continuing education under the 1940 Act, thus investment advisers have no continuing education requirements. Retail investors are similarly unaware of this disparity. Imposing continuing education requirements on investment advisers will benefit retail investors be ensuring that investment advisers are similarly proficient in applicable compliance, regulatory, and ethical standards, thus enhancing investor protections.

C. Provision of Account Statements

While FSI is committed to regulatory harmonization in order to ensure a level playing field for broker-dealers and investment advisers, requiring investment advisers to provide account statements regardless of whether they have custody of client assets is unnecessary in light of the SEC's Custody Rule and its requirements regarding the provision of account statements. The Custody Rule requires an investment adviser to maintain client assets with a qualified custodian and to have a reasonable basis for believing the custodian sends quarterly account statements directly to the clients.[49] Thus, if investment advisers or their parent firms do not maintain the client's assets, they will not have access to the information necessary to provide a complete account

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[44] Securities Industry Essentials Exam and Series 7; *See generally* Exam Restructuring http://www.finra.org/industry/exam-restructuring; and http://www.finra.org/sites/default/files/registered-representatives-brochure.pdf
[45] Investment Advisers Act of 1940, 15 U.S.C. §80b (2012).
[46] FINRA Registered Representatives Brochure FN 44 at 7.
[47] *Id.*
[48] *Id.* at 8.
[49] Rule 206(4)-2 of the Investment Advisers Act of 1940 FN 40, 17 CFR 275.206(4)-2 (2010).

statement. Further, account statements based on incomplete information would cause investor confusion counter to the Proposed Rulemaking Package's intended purpose.

D. Financial Responsibility

Both broker-dealers and investment advisers are subject to rules regarding custody of client funds and securities. However, broker-dealers are subject to more detailed technical requirements that complicate the job of demonstrating compliance, while investment advisers have more principles-based rules. Broker-dealers are subject to the net capital rule[50] to ensure that it has sufficient liquid assets to satisfy non-subordinated liabilities without formal liquidation; and the customer protection rule requiring them to segregate customer assets in order to protect investor funds in the event of a broker-dealer liquidation. [51]

FINRA Rule 4360 requires broker-dealer firms to maintain fidelity bonds to insure against certain losses and the potential effect of such losses on firm capital. Furthermore, broker-dealers are required to pay assessments to the Securities Investor Protection Corporation (SIPC) which offers investors protection in the event that a brokerage firm fails, leaving clients without money or securities. Investment advisers are not required to maintain fidelity bonds or pay assessments to SIPC or another similar fund, yet investment advisers present as much risk for loss to investors as broker-dealers do

In contrast to the requirements faced by broker-dealers, if an investment adviser has custody of client assets, it is required to implement controls designed to protect client assets from being lost, misused, misappropriated or subject to the investment adviser's financial reserves. However, investment advisers are not subject to specific fidelity bond, net capital or other requirements. Thus, while both broker-dealers and investment advisers are subject to custody rules, broker-dealers are subject to requirements that are more technical, detailed and costly. The SEC should harmonize net capital rules for broker-dealers and investment advisers because they handle client funds in much the same way. Harmonizing financial responsibility requirements for investment advisers and broker dealers will provide an additional layer of investor protection.

E. Other Areas

While not specifically addressed in the Proposed Rulemaking Package, there are several other areas in which current broker-dealer regulations provide investor protections that may not have counterparts in the investment adviser context and would benefit from harmonization. FSI is most concerned with the different requirements related to supervision, advertising, and examination. Closing the regulatory gaps in these areas will provide clarity for industry and retail investors while increasing investor protection.

In general, there are similar supervision burdens for broker-dealers and investment advisers, but broker-dealers are subject to much more technical requirements that complicate the job of

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[50] Uniform Net Capital Rule, Rule 15c3-1, Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq*. (2012).
[51] Customer Protection Rule, Rule 15c3-3 Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. (2012). requires that a broker-dealer in custody of client funds either deploy those funds "in safe areas of the broker-dealer's business related to servicing its customers" or, if not deployed in such areas, deposit the funds in a reserve bank account to prevent commingling of customer and firm funds.

demonstrating compliance,[52] while investment adviser supervision is principles-based and the nature and complexity of supervisory programs differs significantly depending on the firm's business model.[53] Under the Proposed Rulemaking Package, a broker-dealer would be required to either mitigate or eliminate any material conflict of interest, while an adviser would only be required to disclose it.[54] We suggest imposing the duty to mitigate or eliminate material conflicts rather than merely disclose them on advisers, either as part of the final rule or through further guidance.

Similarly, broker-dealers have more complicated advertising requirements than investment-advisers. Investment adviser regulations[55] prohibit the use of certain materials such as testimonials, past specific recommendations, and misleading pieces; and interpretive guidance is available. Broker-dealers can generally use a wider array of advertising materials, but they must comply with FINRA Rule 2210 and undergo the firm's review and approval process and possibly an additional review by FINRA. Harmonizing the regulations surrounding the supervision and advertising across broker-dealers and investment advisers will provide transparency for retail investors and clarify industry requirements.

Finally, FSI members are deeply concerned by the different examination requirements as it is a major factor driving the industry shift away from the broker-dealer model.[56] As part of its regular cycle, each broker-dealer firm is examined at least once every four years; many firms are examined more frequently either because they qualify for a cause exam or are otherwise deemed to be higher risk.[57] While the SEC has increased the frequency with which it examines registered investment adviser firms, it remains well below FINRA's examination rate. In 2017, the SEC examined 15% of its registered firms, an increase of 4% over 2016, and 7% over 2012.[58] The SEC's FY2019 Budget Request estimates that the 15% examination rate will remain unchanged in 2018.[59] At its current rate, the SEC would examine each of its member firms on average once every 6 years. However, the SEC acknowledges that nearly 35% of all registered investment advisers have never been examined.[60] This is a particular concern from an investor protection standpoint because of the rapid growth of the independent advisory industry. Indeed, the lower examination burden and other regulatory gaps discussed above have led many financial professionals to switch to advisory only business. This shift is depriving Main Street investors of access to the broad range of products and services available in the broker-dealer model. Harmonizing examination requirements is a crucial step to ensuring that retail investors have access to the affordable financial advice, products, and services necessary to achieve their investment goals.

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[52] FINRA Rule 3110, Supervision (2017) *available at* http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11345.
[53] Rule 206(4)-7 of the Rules and Regulations promulgated under the 1940 Act.
[54] Peirce Remarks FN 42.
[55] Rule 206(4)-1 of the Rules and Regulations promulgated under the 1940 Act.
[56] The Financial Services Institute, The Shift of Firm Revenue from Commissions to Advisory Fees (April 11, 2018) on file with author.
[57] FINRA, Report on FINRA Examination Findings (December 2017) *available at* http://www.finra.org/sites/default/files/2017-Report-FINRA-Examination-Findings.pdf.
[58] U.S. Securities and Exchange Commission, Fiscal Year 2019 Congressional Budget Justification and Annual Performance Plan, 30 (February 12, 2018) *available at* https://www.sec.gov/files/secfy19congbudgjust.pdf
[59] *Id.*
[60] *Id.* at 27.

Conclusion

FSI and its members support the Proposed Rulemaking Package because it integrates principles-based standards into the current regulatory framework. Proposed Regulation Best Interest imposes on broker-dealers a duty to put their clients' interests first in addition to disclosure and conflict mitigation requirements that go beyond the existing suitability standard. FSI commends the SEC for taking a layered approach to disclosure, which we suggest could be improved by allowing the Form CRS to be delivered electronically as a single page document with hyperlinks to more detailed disclosures. We believe this approach will improve the likelihood that clients will understand and use the disclosures rather than adding four pages of additional disclosure they will not read. We further suggest in order to avoid duplicative and confusing disclosures that providing the Form CRS be deemed to satisfy the broker-dealer's Disclosure Obligation under Proposed Regulation Best Interest. We applaud the SEC for acknowledging that conflicts of interest will inevitably exist but must be managed appropriately. We also contend that harmonizing regulations across broker-dealers and investment advisers will accomplish the Proposed Rulemaking Package's goals of reducing investor confusion, increasing investor protection, and preserving retail investor access to a range of advice, products and services.

With the consideration of the constructive feedback provided above, FSI supports the Proposed Rulemaking Package. We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the SEC on this and other important regulatory efforts. Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

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