

BLACKROCK®

August 7, 2018

Submitted via electronic filing: <https://www.sec.gov/rules/proposed.shtml>

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

Re: SEC Proposals on Standards of Conduct for Investment Professionals (File Nos. S7-07-18; S7-08-18; and S7-09-18)

Dear Mr. Fields:

BlackRock, Inc. (together with its affiliates, “**BlackRock**”)¹ appreciates the opportunity to respond to the Securities and Exchange Commission’s (“**SEC**” or “**Commission**”) proposals regarding standards of conduct for investment professionals.² As an investment adviser and leading asset manager for millions of retail investors who rely on our products and services to meet their financial needs, we embrace our role as a fiduciary to our clients. We strongly believe that all retail investors should receive investment advice that is in their best interest.

Our views in this letter expand upon our prior comments to the Commission regarding the standards of conduct applicable to investment advisers and broker-dealers.³ We continue to be supportive of changes to the financial ecosystem that enhance confidence in markets and encourage individuals to invest for their future. In particular, we support regulatory reform objectives that promote the following principles:

- Preserving and advancing investor choice in services and products that help achieve investment goals;
- Facilitating savings and outcome-oriented investment programs; and
- Embracing the investor benefits of technology in the asset management industry.

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals. BlackRock offers products and services through many different distributors, including broker-dealers, investment advisers, and other financial services firms.

² Regulation Best Interest, 83 Fed. Reg. 21574 (May 9, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-05-09/pdf/2018-08582.pdf> (“**Best Interest Proposal**”); Proposed Commission 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.gpo.gov/fdsys/pkg/FR-2018-05-09/pdf/2018-08679.pdf> (“**Adviser Interpretation Proposal**”); Form CRS Relationship Summary; Amendments to Form ADV; 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.gpo.gov/fdsys/pkg/FR-2018-05-09/pdf/2018-08583.pdf> (“**Disclosure Proposal**”, together with the Best Interest Proposal and Adviser Interpretation Proposal, collectively referred to as the “**Proposals**”).

³ Letter to the Honorable Jay Clayton, Chairman, Securities and Exchange Commission, from Barbara Novick, Vice Chairman, and Nicole Rosser, Vice President, BlackRock, Inc. (Aug. 7, 2017), available at <https://www.sec.gov/comments/ia-bd-conduct-standards/cl4-2189134-160256.pdf>.

We appreciate the Commission's leadership and its recognition of the importance of clear, consistent, and coordinated regulation that provides investors, financial professionals, and financial services firms with more uniform standards of conduct, especially as such standards govern interactions with retail investors. The Commission's leadership will mitigate the potential for a patchwork of state and federal regulations, which would not serve the best interests of retail investors.

With our overarching principles in mind, we provide the following comments and recommendations to the Commission relating to the Proposals, grouped into five categories.

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EXECUTIVE SUMMARY

1. Scope and Application of Obligations

We support the Commission's goals to provide investor protections to all retail investors and accounts. We also support the Commission's intent to align the standards of care applicable to broker-dealers with those applicable to investment advisers, while preserving investment choices for retail investors.

We recommend that the Proposals be revised to: (i) utilize a single definition of "retail" customer or investor that is focused on individuals and which will facilitate consistent compliance by financial professionals; (ii) acknowledge that under the Best Interest Proposal, "recommendations" made to an intermediary, such as a broker-dealer, registered investment adviser, or other financial institution, should not be subject to the "best interest" requirements because such entities exercise independent judgment when evaluating recommendations and are subject to the "best interest" obligations themselves; and (iii) recognize the varying levels of sophistication of investors (e.g., retail investors versus institutional investors) which necessarily affects the type of recommendation made to an investor.

2. Focus on Investment Outcome

We agree with the Commission's proposal of a standard of care for broker-dealers that acknowledges that a determination of whether a recommendation is in the "best interest" of a particular retail customer requires an analysis of factors beyond just cost and compensation structure. This framework permits financial professionals to consider a variety of factors that may affect investment outcome. Indeed, cost is "only one of many factors"⁴ associated with a recommendation, and a broker-dealer may weigh other factors more or less than cost when evaluating a security or investment strategy depending on a client's investment needs. Accordingly, we generally agree with the Commission's framework in the Best Interest Proposal to the extent it preserves investment choice by allowing for a principles-based balancing of factors by financial professionals when making recommendations to retail investors.

We recommend that the Commission emphasize this principles-based approach, recognizing that different managers, strategies, and products address different risks and offer different benefits to retail clients, as they have unique needs and preferences. Such differing

⁴ Best Interest Proposal at 21610. The SEC states: "For example, the cost associated with a recommendation is ordinarily only one of many factors to consider when evaluating the risks and rewards of a subject security..."

risks and benefits can influence investment outcomes and are important factors when considering a retail client's best interests.

3. Adviser Conflicts of Interest

Managing conflicts of interest is at the core of any standard of care for financial professionals. The Commission addresses conflicts in two ways: (1) under the Best Interest Proposal, by requiring broker-dealers to disclose and, in some instances, mitigate or eliminate material conflicts; and (2) under the Adviser Interpretation Proposal, by seeking to clarify existing disclosure and consent obligations with respect to conflicts. We agree with the Commission that firms must implement processes to prevent material conflicts of interest from affecting recommendations made by financial professionals to their clients. But, we also encourage the Commission to create a simplified overall framework to address conflicts of interest, including providing more clarity on when disclosure would not be sufficient to address any particular conflict.

As an asset manager providing investment advice to retail and institutional clients, we are providing specific comments on the conflict of interest discussions within the Adviser Interpretation Proposal, as those apply directly to our firm. We generally support the Commission's efforts in the Adviser Interpretation Proposal to apply and/or reaffirm certain conflict of interest standards applicable to investment advisers to the extent they will provide additional clarity for advisers providing investment advice to retail investors.

We recommend that the Commission refine the Adviser Interpretation Proposal so that it is more consistent with the common law principles that have historically governed an adviser's fiduciary duty. If additional protections are necessary, we urge the Commission to consider methods of addressing conflicts that allow firms to continue offering services that, notwithstanding the presence of potential conflicts, provide investors with valuable investment options, such as investment strategies that incorporate a firm's own investment products when determined to be in a client's best interest. As a starting point, we urge the Commission to work with the industry to consider and develop appropriate disclosure guidelines for conflicts of interest affecting retail investors.

4. Improving Access to Investment Technology for Retail Investors

When combined with technology, investment advice and education delivered by human advisors can provide new and scalable means to help bridge an increasing gap in retail investor financial literacy. In this regard, while we believe the Commission's application of the current framework for determining what is a "recommendation" as compared to what is "education"⁵ offers a consistent compliance framework, the Commission, and other regulators, should partner with industry participants to explore best practices for the provision of investor education, including education through digital and interactive investment tools that can improve investors' understanding of different investment methods, risks, and the role of investments in financial planning. We believe that improved access to such education, information, and insights will depend on regulatory clarity (including within the Best Interest Proposal) on the delineation between investor education and the more regulated provision of investment recommendations.

⁵ Best Interest Proposal at 21593. The SEC generally notes that exclusions under existing regulations with respect to "investor education" and "limited investment analysis" would continue to apply to the obligations under the Best Interest Proposal.

We recommend that the Commission give more consideration to the application of technology to investment advice, education, and recommendations, and seek to ensure that the Proposals encourage innovation that could be beneficial to retail investors.

5. Consistent and Tailored Disclosure

We support the Commission’s stated goal of “reducing investor confusion through disclosure”.⁶ To this end, the Commission has proposed within the Best Interest Proposal and Disclosure Proposal a comprehensive and complementary “layered” disclosure regime for investment advisers and broker-dealers. We agree that a “layered” disclosure regime could be beneficial to investors, so long as it is not excessive or duplicative.

We recommend that the Commission review the disclosure framework in the Proposals with an eye towards increasing investor education, reducing investor confusion, and disclosure fatigue. Rather than adding to the volume of investor disclosures, the Commission should streamline existing disclosures, such as the Form ADV Part 2 brochures, which already address many of the concepts identified in the Disclosure Proposal.

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COMMENTS ON THE PROPOSALS

The sections below offer our detailed comments, recommendations, and suggested enhancements to the Proposals.

1. Scope and Application of Obligations

More Uniform Standard of Care & Preservation of Investor Choice

We are encouraged by the Best Interest Proposal because it seeks to establish a more uniform standard of care for financial professionals while recognizing the variety of distribution models and preserving investment choices for retail investors. While advisory accounts offer benefits to many investors and limit potential conflicts of interest, the transaction-based broker-dealer business model may be more appropriate for other investors. For example, investors who trade infrequently could be subject to lower costs when paying per transaction, rather than when paying an ongoing asset-based fee on all assets in the account.

The proposed “best interest” standard intends to be a principles-based, facts and circumstances approach—an approach that is similar to the principles-based fiduciary standard applicable to investment advisers that has protected advisory clients, both retail and institutional, for decades. The principles-based approach under the Best Interest Proposal focuses on the reasonableness of a recommendation, requiring financial professionals to assess meaningfully their recommendations and firms to introduce policies and procedures to address the “best interest” requirements.

⁶ See Overview of the Standards of Conduct For Investment Professionals Rulemaking Package by Chairman Jay Clayton at Open Meeting on Standards of Conduct for Investment Professionals (Apr. 18, 2018) (“**April 18, 2018 Statement by Chairman Jay Clayton**”) available at <https://www.sec.gov/news/public-statement/clayton-overview-standards-conduct-investment-professionals-rulemaking>.

We think that if the Commission takes care to provide financial professionals and firms with flexibility to comply with the principles-based requirements in a manner appropriate for their business model, the Best Interest Proposal should not result in a significant reduction in choice and access to products and services for retail investors. The ultimate result, therefore, is a more consistent compliance regime for brokerage and advisory accounts, which also preserves choice for investors based on their individual needs and objectives.

Investor Sophistication and Relationship Structure

All of the stated objectives of the Proposals relate specifically to retail investors.⁷ And, many of the examples and related rationales regarding new requirements within the Proposals focus on retail client relationships. The new requirements and interpretations within the Proposals require harmonization with existing laws and regulations, including laws and regulations that have applications beyond retail relationships.

We urge the Commission to acknowledge the differences in the services offered to retail investors and institutional investors, and to address the impacts that the new requirements—that are ostensibly focused on retail investors—may have on institutional relationships, intermediated arrangements, and other services provided by investment advisers and broker-dealers. We recommend that the Commission review the topics detailed below to address these considerations.

i. Clear and Consistent Concept of “Retail” Client Limited to Only “Natural Persons”

The current definition of “retail customer” under the Best Interest Proposal is “a person, or legal representative of a person, who: (A) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (B) uses the recommendation primarily for personal, family, or household purposes.”⁸ We recommend revising the definition of “retail customer” to apply to “natural persons” instead of “persons” generally.

The proposed definition reaches non-natural persons, such as trusts or family offices. Such non-natural persons may otherwise satisfy well-established sophistication tests under the federal securities laws, such as qualifying as an accredited investor, qualified client, qualified purchaser, or otherwise satisfying the “institutional account” requirements under the rules of the Financial Industry Regulatory Authority (“**FINRA**”).⁹ We recognize that the Commission included a “purpose” requirement within the definition of “retail customer” clarifying that a “recommendation” is only in scope if made for a “personal, family or household purpose” ostensibly to constrain the application of the “best interest” obligations to retail situations. However, we do not believe the “purpose” requirement would be administratively practical, as it would require an *ex post* review of a client’s use of a recommendation by the financial professional making the recommendation. Accordingly, we do not think it is effective to define whether someone is a “retail customer” based on how that person plans to use a recommendation, and we think this construct should be removed.

⁷ April 18, 2018 Statement by Chairman Jay Clayton.

⁸ Best Interest Proposal at 21595.

⁹ FINRA Rule 4512(c)(3).

There are alternative methods of applying the protections offered by the Best Interest Proposal to non-natural persons that represent natural persons. For example, the definition of “retail investor” within the Disclosure Proposal is formulated to apply only to natural persons, or “entit[ies] that represent a natural person”.¹⁰ This framework would permit compliance through an examination of the beneficial owners of assets rather than potentially requiring an *ex post* review.

We think limiting the definition to only “natural persons” would not materially affect the stated objective of the Proposals and would enhance compliance by broker-dealers because the definition is consistent with existing rules¹¹, internally consistent with the Disclosure Proposal, and more administratively feasible.

ii. Requirements Should Not Apply to Recommendations Made to Financial Advisors and Other Intermediaries

We recommend that the Commission modify the language of the Best Interest Proposal to avoid inadvertently imposing “best interest” responsibilities on asset managers in arrangements where there is no direct relationship between the asset manager and a retail client. We specifically recommend that the Commission clarify explicitly that a “legal representative” of a natural person should not include a bank, registered broker-dealer, registered investment adviser, insurance company, or other financial institution or intermediary that is independently subject to the requirements of the Best Interest Proposal when making a recommendation.¹²

Asset managers regularly market products through wholesaling efforts and make recommendations directly to financial intermediaries, including financial advisors. Along with these marketing activities, asset managers may make model portfolios and investment tools available to such intermediaries to aid in portfolio construction and implementation. Such financial intermediaries generally have direct relationships with retail clients. By taking advantage of models and investment tools, these financial intermediaries are better able to work with their clients to construct portfolios that are designed to achieve their clients’ investment goals in a cost effective manner.

Model portfolios are collections of investment portfolios, comprising a wide range of strategies (e.g., growth, low volatility, inflation protection, and income), product types (e.g., exchange traded funds, mutual funds), and risks. The model provider does not generally purchase or sell the funds or other securities contained in the model on behalf of any investor. The models are developed based on what an asset manager believes would be an appropriate or attractive strategy, without targeting any particular investor. As model providers, asset managers generally do not have a relationship with the retail client. Thus, the model provider is not “recommending” any model to any particular client. Instead, the model provider is making the model portfolios available as a product or service to a financial intermediary, who, in turn, is

¹⁰ Disclosure Proposal at 21419.

¹¹ See Exchange Act Rule 17a-3 currently uses a definition of “retail customer” under 17a-3(17) that only applies to “natural persons”; see also definition of “retail customer” under 211(g)(2) of the Advisers Act.

¹² In various circumstances, the staff of the SEC’s Division of Investment Management has not applied certain provisions of the Advisers Act to advisers when dealing with other investment advisers or financial intermediaries like banks that are subject to fiduciary or other suitability obligations. See, e.g., BNY ConvergEx Group, LLC, SEC Staff No-Action Letter (Sept. 21, 2010); Morgan, Lewis & Bockius LLP, SEC Staff No-Action Letter (Apr. 16, 1997); Copeland Financial Services, Inc., SEC Staff No-Action Letter (Sept. 21, 1992); Kempner Capital Management, Inc., SEC Staff No-Action Letter (Dec. 7, 1987).

responsible for determining whether their client would benefit from the model recommendations. The financial intermediary will then determine whether to follow the model in its entirety or make modifications based on the intermediary's judgment or the client's preference.

Similarly, during wholesaling efforts, asset managers routinely interact with intermediaries that act on behalf of retail clients. During such interactions, the asset manager does not have insight into information concerning, or a contractual relationship with, the retail client. Nevertheless, the asset manager may make a security recommendation to the intermediary. The intermediary then determines whether to recommend the security to his or her client or include the security in the client's portfolio.

Under the Best Interest Proposal, it is not clear that asset managers could continue to offer model portfolios, investment tools, and recommendations to financial intermediaries without triggering "best interest" obligations with respect to the intermediary's client. The "best interest" requirements in the Best Interest Proposal generally apply to recommendations of any securities or investment strategy to a "retail customer" or their "legal representative".¹³ A financial intermediary that is engaged by a retail client may be considered a "legal representative" of such retail client. Given that the term "legal representative" is undefined we are concerned that such vagueness could be construed to render models, tools, and security recommendations during wholesaling efforts to be a recommendation to a retail customer by the asset manager that has no relationship with the retail customer. And, this could make an asset manager responsible for undertaking a "best interest" analysis for an intermediary's retail client when the intermediary uses an asset manager's model, tools, or wholesaling recommendations to generate the retail client's individualized portfolio, even though the asset manager has no insight into information concerning such retail client.

If recommendations made to a financial intermediary require an asset manager to undertake a "best interest" analysis with respect to such intermediary's retail client, the Best Interest Proposal could render it impossible to offer models, tools, and other value added services, as asset managers do not have information regarding the intermediary's client. This, in turn, could increase costs to retail clients and potentially force some asset managers to cease offering models, tools, and other guidance to financial intermediaries.

Models and tools are intended to improve the efficiency and reduce the cost of investing. One of the benefits of models and tools is that they allow a financial intermediary to select a model portfolio or investment strategy that satisfies the client's needs without taking the time and resources to create a bespoke solution, thereby providing more access to investment advice. The imposition of "best interest" obligations on the asset manager providing the model or tool threatens to impede that goal.

We do not believe the Commission intended this result as it is inapposite to the stated goal of "preserving retail investor access (in terms of choice and cost) to a variety of types of investment services and products."¹⁴ In our view, if a financial intermediary has a relationship with a client, whether as the client's legal representative or otherwise, and stands between an asset manager and the client, the "best interest" obligations should attach to the intermediary and not the asset manager. The client is protected by the "best interest" obligations of the

¹³ Best Interest Proposal at 21595.

¹⁴ See April 18, 2018 Statement by Chairman Jay Clayton.

intermediary, who has a direct relationship with the client and has information regarding the investment profile of such client.

iii. Adviser Interpretation Proposal Should Reflect Differences Between Retail and Institutional Investors

While the Adviser Interpretation Proposal accurately portrays an adviser's fiduciary duty as a duty that "follows the contours of the relationship between the adviser and its client", we recommend the Commission make revisions to clearly distinguish the levels of responsibility an adviser may have depending on the type of client and the level of authority agreed upon between an adviser and its client. Since the principles within the Adviser Interpretation Proposal are meant to be of general applicability across all categories of advisory relationships, we urge the Commission to recognize the differences between the services an adviser provides to retail versus institutional clients, and the varying levels of responsibilities of an adviser in each relationship.

For example, notwithstanding the application of the Advisers Act to retail and institutional advisory relationships, the discussion of "investment profiles" within the Adviser Interpretation Proposal appears to contemplate retail clients only and does not appear to take into account advisory relationships with institutional clients. Because the term "investment profile" contains specific elements that do not fit all types of clients and client relationships, the term does not capture how advisers make suitability determinations across the spectrum of client types.¹⁵ The practice of providing and periodically updating an investment profile is commonplace in the context of the provision of investment advice to retail customers and serves to ensure that an adviser has information necessary to provide ongoing advice. But, this practice is inapt in the context of the provision of advice to institutional accounts where the adviser is hired for a particular mandate and provides investment management services in accordance with investment guidelines agreed upon during arms-length discussions with the client. An adviser to an institutional client, such as a private fund, pension plan or a registered mutual fund, still has a responsibilities arising out of its duty of care to such a client—the boundaries of those responsibilities are, however, defined by agreements and other offering materials which may or may not require the provision of, or periodic updates to, an investment profile.

Accordingly, we recommend that the Commission recognize that (i) the characteristics of an "investment profile" should be broadly interpreted to accommodate different types of client relationships and (ii) certain client relationships (e.g., institutional clients (including pooled investment funds)) do not require the review of or use of an "investment profile".

2. Focus on Investment Outcome

We generally support the Proposals as they collectively present a more consistent standard of care for investment professionals which could advance investor choice and encourage saving and investing in a way that is sensitive to investment outcomes for retail investors. Retail investors have investment needs driven by unique circumstances and financial service providers have myriad philosophies, methods, and strategies to solve those needs. When a financial service provider evaluates how to address a client's needs, it must consider many factors that vary from individual to individual, including age and expected retirement date, whether the individual has a defined benefit plan or only an IRA, and the individual's overall

¹⁵ Adviser Interpretation Proposal at 21206.

financial situation, investment goals, and risk tolerance. Although each factor may be weighted differently, each factor is important when a financial professional seeks to assist a retail investor in determining strategies to achieve their desired investment outcome.

We agree with the Commission that when a financial professional is seeking to determine whether a product or strategy is in the “best interest” of a retail client, cost is just one of many factors that should be considered.¹⁶ Similarly, we understand that the Care Obligation within the Best Interest Proposal is not synonymous with a lowest cost or least remuneration obligation. We think the “best interest” standard under the Best Interest Proposal promotes investor choice and allows financial advisors to select tailored solutions that best meet the needs of their clients. It also acknowledges that certain investment products that seek to provide a more complex investor outcome or manage unique risks (e.g., lifetime income products to manage longevity risk) may be higher priced than other retail products. But, we recommend that the Commission elaborate on the discussion of factors a financial professional may consider when undergoing a “best interest” review and acknowledge that in addition to the objective factors identified by the Commission (e.g., cost, volatility, etc.), there are subjective factors that can, and in some instances, should, also be considered.

For example, a broker-dealer recommending an investment strategy to a high-net worth client may be able to recommend substantially similar strategies offered by multiple managers. In this instance, the broker-dealer should consider the investor’s needs and desired outcomes relative to the service offerings of the several managers. Does the investor desire periodic consultations with a portfolio manager? Does the investor value tax-trading? While the investment strategies of the several managers may be substantially identical, service offerings and certain other subjective factors may differ. Notwithstanding similarities in investment strategy, if a broker-dealer knows that cost is not as important as service to its client, it may be inconsistent with the client’s best interest to recommend the lower cost strategy in this instance.

We recommend that the Commission acknowledge that there are situations where it may be in the best interest of an investor for a broker-dealer to recommend a higher cost security or strategy even when a lower cost “otherwise identical” security or strategy is available. The Commission should re-examine the narrative guidance regarding the Care Obligation and affirm an approach that encourages broker-dealer behavior that promotes recommendations that will deliver a client’s desired investment outcome and maximizes the potential for a secure financial future.

3. Adviser Conflicts of Interest

The principles of an investment adviser’s fiduciary duty are not easily articulated in an objective rule. To be sure, the fiduciary duty owed to a client by an adviser is an overarching standard, the contours of which differ depending on the facts.¹⁷ Because of this, we support the Commission’s provision of flexible guidance through an interpretation rather than through rulemaking.

The Adviser Interpretation Proposal seeks to articulate the fiduciary standard applicable to investment advisers—a standard borne out of decades of case law and other commentary.

¹⁶ Best Interest Proposal at 21593. The Commission states, “[w]hile cost and financial incentives would generally be important, they may be outweighed by [other] factors.”

¹⁷ Best Interest Proposal at 21594 stating that, “The duty follows the contours of the relationship between the adviser and its client, and the adviser and its client may shape that relationship through contract...”

While we generally agree with the articulation of the principles of an adviser's fiduciary duty, we think some aspects of the Commission's commentary on conflicts of interest deviate from historic guidance and require clarification. Specifically, we think that the Adviser Interpretation Proposal provides a new construct for determining when an adviser may infer or accept consent to a conflict after disclosing such conflicts, but does not provide meaningful guidance regarding how an adviser can evaluate whether the disclosure provided is enough to infer or obtain consent from a client to a potential conflict.

The Commission describes situations where "it would not be consistent with an adviser's fiduciary duty to infer or accept client consent to a conflict." These situations are (a) where the facts and circumstances indicate that the client did not understand the nature and import of the conflict, or (b) the material facts concerning the conflict could not be fully and fairly disclosed. It would seem that an adviser would not be satisfying its duty of care if either the adviser has reason to believe that a client did not understand the nature and import of the conflict or the adviser is unable to explain the related conflicts in a way that the investor can reasonably be expected to understand. In our view, it is not necessary for the Commission to articulate that certain conflicts cannot be fully and fairly disclosed or that advisers cannot receive consent in certain instances, because an adviser's fiduciary duty, which includes a duty of care, already encompasses those obligations. In other words, if an adviser has satisfied its duty of care by providing clear and accurate disclosure of conflicts and ensuring a product is suitable, as is currently required, these concerns would already be taken into account.

Without clarification, certain advisers may change investment practices in a manner that may negatively affect a client's investment outcomes. For instance, many advisers utilize affiliated products within advisory strategies. Generally, much like the inclusion of any security within an advisory strategy, affiliated products are included after research and analysis and are incorporated into a strategy or portfolio to benefit the client. The inclusion of affiliated products should not be presumed a conflict where disclosure and consent is insufficient or else advisers could begin uniformly excluding proprietary products from their strategies, potentially to the detriment of investors. Accordingly, we recommend that the Commission revise the Adviser Interpretation Proposal to align with common law principles regarding conflicts of interest and/or partner with the investment adviser industry to develop guidelines for clear and effective disclosure of conflicts of interest to retail clients.

4. Improving Access to Investment Technology for Retail Investors

Innovation within the financial services industry has led to technological advances that are transforming the way individual investors receive advisory services. Many new and emerging technologies offer solutions that provide services in an increasingly cost effective and consumer-focused way. With this in mind, we urge the Commission to use the Proposals as an avenue to support, not suppress, new methods of investor education or delivery of investment advice. To advance these efforts and avoid a chilling effect on the proliferation of digital tools and investor education, the Commission should take particular care to distinguish investment "education" from an investment "recommendation", the latter of which is more appropriately subject to the new "best interest" standard. The Commission should articulate the important differences between, on one hand, tools and other investor education services that seek to offer a starting point for consideration of investment options and, on the other hand, more prescriptive communications by advisers or broker-dealers advocating investment action (*i.e.*, the purchase of a security).

Digital advisors and other emerging technology-driven financial services tools and products are currently subject to a range of substantive obligations under the Advisers Act, FINRA rules, and other laws and regulations. We specifically note that the existing regulatory framework, including the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and FINRA rules, does not generally distinguish between “recommendations” made digitally or during an in-person consultation. However, since the term “recommendation” is “not susceptible to a bright line definition”, existing rules permit a “facts and circumstances” review to determine if a “recommendation” was made.¹⁸ Under current FINRA guidance, these facts and circumstances include the communication’s content, context, and manner of presentation, as well as the extent to which a communication about a security or a strategy involving securities is tailored to a specific customer or group of customers.¹⁹ In other words, the question is whether the facts and circumstances of communication is a “call to action” or an instruction to refrain from taking action for a particular client.²⁰

While the output of some digital tools may identify specific securities, such output is not always intended as a “call to action.” For example, consider an interactive digital tool that does not seek to recommend a specific course of action, but aims to provide analytical measures to help investors understand the differences between multiple options or decisions, such as selling an equity holding and replacing it with an index fund. Such a tool might be most impactful when applied to investors’ actual portfolios, empowering the investors, often in close conjunction with their advisors, to evaluate risks in his or her specific portfolio. And such a tool encourages investors to think about risk as measured across an entire portfolio, as opposed to focusing on the risk of individual securities. This is important because the latter may encourage an overly myopic approach to investing, as opposed to one that is holistic and recognizes trade-offs within a portfolio when viewed as a whole.

While the Commission has preserved an exclusion for certain investor education materials from the “best interest” obligations (*i.e.*, general investor education is not considered a “recommendation” subject to the requirements of the Best Interest Proposal)²¹, we urge the Commission to recognize that the concept of general investor education should be interpreted broadly to permit different methods of delivering education as a means of encouraging financial wellness. We think the Commission should consider an approach that appropriately balances the public benefit of broadening access to digital tools and investor education with the need to protect investors through regulation where the “facts and circumstances” of the digital experience support an expectation of a relationship subject to best interest or fiduciary standards. With the introduction of modern ways to deliver the benefits of these powerful analytical investment capabilities through the Internet and mobile devices, we are of the view that such a “facts and circumstances” approach, with suitable guidance as to how different fact patterns might be viewed by the Commission, could go a long way to encourage the availability of, and access to, technologies and analytical measures that can promote greater awareness, understanding and ultimately, protection, for investors.

¹⁸ *Id.*

¹⁹ See FINRA Regulatory Notice 11-02 (Jan. 2011), available at <http://www.finra.org/sites/default/files/NoticeDocument/p122778.pdf>.

²⁰ See NASD Notice to Members 01-23 (Apr. 2001), available at <https://www.finra.org/sites/default/files/NoticeDocument/p003887.pdf>.

²¹ Best Interest Proposal at 21593. The SEC generally notes that exclusions under existing regulations with respect to “investor education” and “limited investment analysis” would continue to apply to the obligations under the Best Interest Proposal.

5. Consistent and Tailored Disclosure

We support the Commission’s stated goal of “reducing investor confusion through disclosure” and enhancing the quality and clarity of investors’ relationships with their financial professionals through the introduction of new disclosure requirements in the Disclosure Proposal. We also agree that financial firms should provide their clients and prospective clients with plain English information on key aspects of their business practices and client relationships. The Disclosure Proposal presents a comprehensive set of disclosures for investment advisers and broker-dealers and is intended to promote a “layered” disclosure regime that discloses certain information in summary form and other information in a more detailed fashion.

While we agree with the objectives of the Disclosure Proposal, we urge the Commission to consider whether certain disclosure requirements will present a client with excessive and/or duplicative disclosure, rather than “layered” disclosure. For example, the Disclosure Proposal requires that firms provide an overview of specified types of fees for advisory services, but the Form ADV Part 2 brochure already requires firms to disclose how firms are compensated for advisory services.²² Indeed, the introduction of duplicative disclosure requirements could create a risk of confusion for the client and/or disclosure fatigue.

In addition, similar to the Adviser Interpretation Proposal and the Best Interest Proposal, the narrative of the Disclosure Proposal is centered on relationships between advisers, broker-dealers, and retail clients. However, the actual requirements of the Disclosure Proposal are not limited only to retail relationships, which presents certain issues in practical application. For example, to the extent a firm is acting as an adviser to a pooled vehicle, the client of the adviser is the pooled vehicle itself, and not the investors in the fund. Accordingly, requirements of the Disclosure Proposal should not apply to investors in the pooled vehicles, especially because pooled investment vehicles already include extensive disclosures in their offering materials and the Form ADV of their sponsor. To this end, we urge the Commission to more specifically recognize varying structures of advisory relationships (e.g., adviser to a retail customer versus adviser to an institutional client) and associated client disclosure obligations.

Finally, as proposed, a firm would disclose all of its advisory and brokerage services in one relationship summary document.²³ In order to avoid investor confusion, we recommend that the Commission include flexibility within the disclosure regime to permit broker-dealers and investment advisers with multiple business lines to prepare separate relationship summaries, at their discretion. Absent such a framework, a retail investor may receive a disclosure document that does not clearly disclose the nature of the particular relationship that such investor has with their adviser.

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²² See Part 2 of Form ADV, Item 5 – Fees and Compensation.

²³ Disclosure Proposal at 21423.

We thank the Commission for providing BlackRock with the opportunity to comment on the Proposals. Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

Tom Clark
Managing Director

Sean Murphy
Vice President

cc:

The Honorable Jay Clayton, Chairman
Securities and Exchange Commission

The Honorable Robert J. Jackson, Jr., Commissioner
Securities and Exchange Commission

The Honorable Hester M. Pierce, Commissioner
Securities and Exchange Commission

The Honorable Kara M. Stein, Commissioner
Securities and Exchange Commission