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August 7, 2018

VIA ELECTRONIC SUBMISSION

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

Re: Proposed Regulation Best Interest; Proposed Form CRS; Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers

Dear Mr. Fields:

LPL Financial LLC ("LPL" or "we") appreciates the opportunity to respond to the U.S. Securities and Exchange Commission's ("Commission") solicitation of public comments regarding the proposed rulemakings and interpretation relating to the standards of conduct for broker-dealers and investment advisers (each a "Proposal" and, collectively, the "Proposals"). LPL is a diversified financial services company and is dually-registered with the Commission as a broker-dealer and an investment adviser. We provide proprietary technology, comprehensive clearing and compliance services, practice management programs and training, and independent research to more than 16,000 independent financial professionals and over 700 banks and credit unions. LPL has been the nation's largest independent broker-dealer since 1996. LPL also supports a network of over 400 independent registered investment advisers ("RIAs") throughout the country by providing them with access to a range of products, platforms, and services.

As a dual registrant and because of the breadth of its service offerings, LPL is uniquely impacted by the Proposals. In one of LPL's business models, dual-hatted financial professionals may either (i) provide brokerage and advisory services on behalf of LPL, or (ii) provide brokerage services on behalf of LPL while providing advisory services on behalf of an unaffiliated RIA that is separately registered with the Commission or one or more States. As discussed further below, we believe certain aspects of the Proposal are unintentionally cumbersome with respect to this business model (*e.g.*, Form CRS and the proposed titling restrictions), and we appreciate the opportunity to address these nuances for the Commission.

LPL generally supports the Proposals and commends the Commission's efforts to propose a comprehensive set of standards that should apply when a financial institution or professional provides investment advice or recommendations to retail investors. Subject to the recommendations and enhancements noted below, we urge the Commission to adopt the Proposals as expeditiously as possible to prevent continued industry uncertainty and disruption regarding the scope of those standards.

Throughout the public debate on these issues, LPL has consistently voiced its strong support for a regulatory regime that protects investors by ensuring they receive advice or recommendations that serve their best interests based on particular investment, savings, and financial objectives and needs.[1] Indeed, in commenting on the Department of Labor's Fiduciary Rule we expressly advocated that all financial professionals should act in their clients' best interests.[2] We also believe financial institutions and professionals should provide clear disclosures regarding the nature of their services, costs and fees, compensation, and material conflicts of interest so that investors can make informed choices about investment services and products.

At the same time, the standards and requirements governing advice and recommendations (i) must preserve investor choice and access to a wide range of investment products and financial services, (ii) must be clearly conveyed and consistently applied, and (iii) must be practically designed to support compliance by the financial services industry. We continue to have concerns that financial services firms face divergent standards under various regulatory regimes – not only from the Commission, but also from self-regulatory organizations and the 50 States.[3] As the industry's principal regulator, and in the wake of the Fifth Circuit's opinion vacating the Department of Labor's Fiduciary Rule,[4] we believe the Commission is best situated to propose a comprehensive set of standards regarding retail financial services, and we applaud the Commission for doing so.

The Proposals were published in three separate but related releases: Regulation Best Interest ("Regulation BI"); Form CRS Relationship Summary ("Form CRS"); and Proposed Commission Interpretation Regarding Standard of Conduct of Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation ("Proposed Interpretation").[5] We detail our views with respect to each Proposal below.

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1 *See, e.g.*, Letter from Michelle B. Oroschakoff, Chief Legal and Risk Officer, LPL Financial, to Jay Clayton, Chairman, U.S. Sec. and Exch. Comm'n (Feb. 22, 2018) (addressing Commission's consideration of rulemakings related to standards of conduct for investment advisers and broker-dealers); Letter from David P. Bergers, General Counsel, LPL Financial to U.S. Dep't of Labor (Mar. 17, 2017) (addressing Proposed Extension of Fiduciary Rule Applicability Date); Letter from David P. Bergers, General Counsel, LPL Financial to U.S. Dep't of Labor (July 21, 2015) (addressing Proposed Definition of the Term "Fiduciary" and Related Proposed Prohibited Transaction Exemptions); Letter from Stephanie L. Brown, Managing Director, General Counsel, LPL Financial to Elizabeth M. Murphy, Sec'y, U.S. Sec. and Exch. Comm'n (Aug. 30, 2010) (addressing comments on File No. 4-606; Study Regarding Obligations of Brokers, Dealers, and Investment Advisers).

2 Letter from David P. Bergers, General Counsel, LPL Financial to U.S. Dep't of Labor (July 21, 2015).

3 A number of States have adopted or are presently considering legislation that imposes general fiduciary obligations upon investment activities or require disclosures for non-fiduciary investment recommendation and financial planning relationships. *See, e.g.*, Act Protecting the Interests of Consumers Doing Business with Financial Planners, 2017 Conn. Legis. Serv. P.A.17-120 (H.B. 6992) (enacted July 5, 2017); Financial Planners – Investments – Fiduciary Duties, 2017 Nevada Laws Ch. 322 (S.B. 383) (enacted July 1, 2017); 2017 New York Assembly Bill 2464 (introduced Jan. 20, 2017; amended May 3, 2018; advanced to third reading May 10, 2018) (relating to mandating greater levels of disclosure by non-fiduciaries that provide investment advice); 2018 New Jersey Senate S735 (introduced Jan. 9, 2018) (requiring certain disclosures by non-fiduciary investment advisers).

4 U.S. Chamber of Congress v. U.S. Dep't of Labor, No. 17-10238, 2018 WL 1325019 (5th Cir. Mar. 15, 2018).

5 *See* Exchange Act Release No. 83062 (Apr. 18, 2018), 83 Fed. Reg. 21,574 (May 9, 2018) ("Regulation BI Proposing Release"); Exchange Act Release No. 83063 (Apr. 18, 2018), 83 Fed. Reg. 21,416 (May 9, 2018)

Regulation Best Interest

LPL appreciates and generally supports the Commission's efforts in proposing Regulation BI. We believe that each of the four component obligations identified in Regulation BI[6] generally rests on a "prudence" standard that is the foundation of the common law principles and the Federal law that have governed the activities of financial services providers for decades. The obligation to provide prudent recommendations that are appropriate for an investor's circumstances is a principal component of the suitability obligations that apply to investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act").[7] Similarly, FINRA Rule 2111 requires broker-dealers and their associated persons to act in an investor's best interest by having a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the investor based on information obtained through "reasonable diligence" to ascertain that investor's investment profile.[8]

("Form CRS Proposing Release"); Advisers Act Release No. 4889 (Apr. 18, 2018), 83 Fed. Reg. 21,203 (May 9, 2018) ("Proposed Interpretation").

6 These consist of the care obligation (the "Care Obligation"), the disclosure obligation (the "Disclosure Obligation"), and the two conflict of interest obligations (the "Conflicts of Interest Obligations" and collectively with the Care Obligation and the Disclosure Obligations, the "Obligations").

7 The Supreme Court has interpreted Sections 206(1) and (2) of the Advisers Act as establishing a federal standard of care for investment advisers. Investment advisers have an affirmative duty under the Advisers Act to act in their client's best interests by exercising their responsibilities with the utmost good faith, making full and fair disclosure of all material facts, and employing reasonable care to avoid misleading clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194-95 (1963); *see also* Proposed Interpretive Release. Similarly, under the common law of trusts, the duty of prudence requires trustees to exercise reasonable care, skill, and caution by considering the circumstances, objectives, and plan of administration of the trust, the assets of which the trustee has been entrusted. *See* Uniform Trust Code § 804 (Jan. 2013) ("A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution"). Similarly, under the Employee Retirement Income Security Act of 1974 ("ERISA"), the duty of prudence requires fiduciaries to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person "acting in a like capacity and familiar with such matters would use," and based on the investment objectives, risk tolerance, financial circumstances and needs of the investor. ERISA Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); *see also* 29 C.F.R. § 2550.404a-1. The ERISA prudence rule is based on common law principles. *See, e.g.*, Fink v. National Sav. & Trust Co., 772 F.2d 951, 955 (D.C. Cir. 1985).

8 FINRA has emphasized that: "In interpreting FINRA's suitability rule, numerous cases explicitly state that a broker's recommendation must be consistent with his customers' best interests. The suitability requirement that a broker make only those recommendations that are consistent with the customer's best interests prohibits a broker from placing his or her interests ahead of the customers' interests…" FINRA Suitability FAQ at Q7.1 (internal quotations omitted) (citing Raghavan Sathianathan, Exchange Act Rel. No. 54722, 2006 SEC LEXIS 2572, at *21 (Nov. 8, 2006), aff'd, 304 F. App'x 883 (D.C. Cir. 2008); Scott Epstein, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *40 n. 24 (Jan. 30, 2009) ("In interpreting the suitability rule, we have stated that a [broker's] 'recommendations must be consistent with his customer's best interests."), aff'd, 416 F. App'x 142 (3d Cir. 2010)]; Dane S. Faber, 57 S.E.C. 297, 310, 2004 SEC LEXIS 277, at *23-24 (2004) (stating that a "broker's recommendations must be consistent with his customer's best interests" and are "not suitable merely because the customer acquiesces in [them]")); *see also* FINRA Regulatory Notice 11-02, Know Your Customer and Suitability (January 2011) at n. 11.

The industry is well-accustomed to operating under a prudence framework. Thus, LPL supports the principle reflected in the Proposal that the "best interests" of an investor are met when that investor receives recommendations that are prudent and based on the investor's investment objectives, risk tolerance and financial interests.[9] LPL believes that each of the suggested modifications to Regulation BI that follows will result in Obligations that are consistent with the standard of prudence. In response to the Commission's request for comments, we respectfully submit that the Proposal should be modified in the following ways:

I. Care Obligation

The Commission indicated that the Care Obligation would require a broker-dealer generally to "consider reasonably available alternatives offered by the broker-dealer as part of having a reasonable basis for making the recommendation."[10] The Commission stated that "a broker-dealer could not have a reasonable basis to believe that a recommended security is in the best interest of a retail customer if it is more costly than a reasonably available alternative offered by the broker-dealer and the characteristics of the securities are otherwise identical, including any special or unusual features, liquidity, risks and potential benefits, volatility and likely performance."[11]

The Care Obligation would have the effect of placing significant importance on the relative costs (*e.g.*, brokerage charges, fees, and expenses) associated with available product offerings. For example, the Commission noted that when a broker-dealer recommends a more expensive security or investment strategy over another reasonably available alternative, the broker-dealer would need to have a reasonable basis to believe that the higher cost is justified based on other factors.[12] In addition, when a broker-dealer recommends a more remunerative security or investment strategy over another reasonably available alternative, the broker-dealer would need to have a reasonable basis to believe that the recommendation was in the best interest of the retail customer.[13] We do not believe the Commission intends to require financial professionals to have a detailed understanding, and make comparative judgments, of the costs associated with every comparable investment product available through their broker-dealer's platform. In light of the challenges that would be presented by such requirements, the Care Obligation should in our view, focus on disclosure and reasonableness as well as on comparative costs.

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9 This standard is consistent with the recommendations LPL previously made to Chairman Clayton in response to his request for comments regarding a uniform standard for investment advisers and broker-dealers and also incorporates the principles underlying an alternative proposal outlined in Commissioner Stein's public statement regarding the Proposals. *See* Letter from Michelle B. Oroschakoff, Chief Legal and Risk Officer, LPL Financial, to Jay Clayton, Chairman, U.S. Sec. and Exch. Comm'n (Feb. 22, 2018); Commissioner Kara M. Stein, 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 (Apr. 18, 2018).

10 Regulation BI Proposing Release, 83 Fed. Reg., at 21,588.

11 *Id.*

12 *Id.*

13 *Id.*

A. *The Care Obligation should be satisfied when a broker-dealer makes a recommendation of a product involving costs and charges within a range of reasonableness that is disclosed to the investor in advance and the recommendation is otherwise in the investor's best interest.*

LPL believes that the least or less expensive alternative is not an appropriate measure of whether the Care Obligation has been met. As discussed above, to avoid the misapprehension that the Commission is narrowly focused on costs alone, we believe that the Commission should specifically state that the Care Obligation should be satisfied when: (i) a broker-dealer makes a recommendation of a product involving costs and charges that are within a range of reasonableness that has been disclosed to the investor in advance (*e.g.*, through disclosures required by the Disclosure Obligation or through Form CRS), and (ii) the recommendation is otherwise in the investor's best interest. In fulfilling its obligation to recommend a product that is in an investor's best interest, we agree that a broker-dealer and its financial professionals should consider the multitude of factors that the Commission noted: the product's or strategy's investment objectives, characteristics (including any special or unusual features), liquidity, risks and potential benefits, volatility and likely performance in a variety of market and economic conditions, as well as costs.

The standard we propose departs from the Commission's view that it "do[es] not believe a broker-dealer could meet its Care Obligation through disclosure alone."[14] For example, the Commission noted that where a broker-dealer is choosing among identical securities with different cost structures, "it would be inconsistent with the best interest obligation for the broker-dealer to recommend the more expensive alternative for the customer, *even if the broker-dealer had disclosed that the product was higher cost and had policies and procedures reasonably designed to mitigate the conflict under the Conflict of Interest Obligations*."[15]

While we appreciate the Commission's concerns, we submit that a broker-dealer's inability to rely on disclosure in fulfilling the Care Obligation effectively imposes a standard of dealing that is more stringent than what is required of investment advisers under the Advisers Act. As we discuss below, Supreme Court precedent holds that an investment adviser can adequately mitigate conflicts of interest and satisfy its fiduciary duties through disclosure alone.[16] If, as the Commission concedes, broker-dealers generally should not be viewed as fiduciaries because, among other things, "[b]roker-dealers and registered representatives generally provide financial advice at the transactional level, and the nature of the relationship between customers and broker-dealers and the level of monitoring by broker-dealers tends to be episodic, rather than

14 *Id.*, at 21,612.

15 *Id.*, at 21,613 (emphasis supplied).

16 *See* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92, 194 (1963), (stating that as part of its fiduciary duty, an adviser must "fully and fairly" disclose to its clients all material information in accordance with Congress's intent "to eliminate, *or at least expose*, all conflicts of interest which might incline an investment adviser— consciously or unconsciously—to render advice which was not disinterested" (emphasis supplied)); *see also* discussion *infra* regarding the Proposed IA Interpretation.

ongoing,"[17] then broker-dealers should not be held to a higher standard than fiduciaries when making investment recommendations. In that regard, the standard proposed under the Care Obligation could be construed as conflicting with existing law.

Moreover, to the extent that the Commission has concerns about the relative costs associated with investment products, the Commission must acknowledge, and any final rule in this area must take into account, that the wide range of sales charge structures, share classes, waivers, deferred charges, and other payments to intermediaries – all of which have been approved by the Commission through the registration process under the Securities Act of 1933 (the "Securities Act") and the Investment Company Act of 1940 (the "Investment Company Act") – make it challenging for any broker-dealer or financial professional to make comparative judgments about a given investment product's costs. In our view, the Commission's approval of a product's registration statement should indicate that the payments and expenses associated with a product are *presumptively* reasonable and suitable for the retail investing public without the need for a broker-dealer or a financial professional to make those complex comparative judgments. In addition, in the case of investment companies, the Investment Company Act sets forth a comprehensive governance structure under which a fund's independent directors are obligated to oversee the reasonableness of fees paid out of fund assets and the relationships between funds and intermediaries.[18] This oversight generally includes board approval of contracts for, among other things, adviser and principal underwriter services, as well as approval of any 12b-1 plan pursuant to which an open-end fund may bear its own distribution expenses, which are paid to broker-dealers.[19] This independent governance structure acts as an additional control in ensuring that investors pay no more than reasonable compensation to intermediaries in connection with their investments.

Based on our reading of the Proposal, we are concerned that the current commentary might be misconstrued to suggest that broker-dealers and their financial professionals are required to conduct a comprehensive comparison across all similar, rather than "otherwise identical" products to identify the lowest cost alternative. For avoidance of doubt, we request the

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[17] Regulation BI Proposing Release, 83 Fed. Reg., at 21,662; *see also*, n. 519, and accompanying text ("We preliminarily believe that a uniform fiduciary standard that would attempt to fit a single approach to retail customer protection to two different business models is unlikely to provide a tailored solution to the conflicts that uniquely arise for either broker-dealers or investment advisers. Moreover, such an alternative would likely undermine efforts to preserve the ability of broker-dealers to employ business models that are distinct from investment advisers', and could thereby limit retail customer choice with respect to investment advice.").

[18] Unlike the potential for investor confusion from titles used by financial professionals, the nomenclature of mutual fund share classes and sales loads is actually confusing, and thus would be an appropriate subject of regulatory action. Mutual fund share classes that are labeled the same by different fund complexes often have different cost structures and sales arrangements. For example, a Class I share of a fund sponsored by one complex may not charge 12b-1 fees, while a Class I fund sponsored by another complex may charge a 0.25% 12b-1 fee. The inconsistent labeling causes confusion for investors and financial professionals alike. We encourage the Commission to address uniformity in mutual fund cost structures and labeling (although not costs, themselves) among certain share classes that are commonly sold through financial intermediaries.

[19] *See* Sections 15(c) and 36(b) of the Investment Company Act; Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980); Mutual Fund Distribution and Sub-Accounting Fees, IM Guidance Update No. 2016-01 (Jan. 2016).

Commission to clarify that the Care Obligation can be satisfied when a broker-dealer or financial professional recommends an investment product that may carry higher costs and expenses than other similar available alternatives, so long as those costs and expenses are within a range of reasonableness that has been disclosed to the investor and the recommendation is otherwise in the investor's best interest.

Any other interpretation would be exceedingly challenging to implement. Like other independent broker-dealers and wire houses, LPL offers investors access to a wide variety of investment products; in LPL's case, thousands of different investment products are available. Each of those products may in turn have a variety of scheduled sales load waivers, breakpoints, rights of accumulation (including pursuant to letters of intent) and exchange privileges. In addition, product availability, relative costs, and investment performance are constantly in flux and can change on a daily basis. A product that today is comparatively more expensive than another may outperform the less expensive alternative in the long term or may become less expensive than the alternative at any given time. Conversely, a comparatively less expensive alternative that is available today may not be available tomorrow or may be merged out of existence at any time. Indeed, according to Standard & Poor's, during the 15-year period ending 2017, 58% of domestic equity funds, 55% of international equity funds, and an average of 48% of all fixed income funds were merged or liquidated.[20] The Commission's guidance does not appear to take into account this changing universe of available products, which presents a risk that a financial professional's recommendation of a comparatively less expensive product on the basis of its cost may be second-guessed if the product is merged away or liquidated following the recommendation.

Finally, under such an interpretation, it would be difficult for any broker-dealer to demonstrate that it had satisfied its Care Obligation in the face of a hindsight challenge, absent an impractical requirement – not included in the Proposal itself and not current industry practice – to maintain detailed contemporaneous written comparisons of all recommendations against all other potential alternatives.

B. *The Care Obligation should not discourage financial professionals from gaining a deep understanding of product offerings.*

Even though broker-dealers make a wide array of products available to meet the needs of investors, it is common practice for financial professionals to focus their practice on a selected number of products and product sponsors, which allows them to gain a deep understanding of product offerings and thereby provide clients with the thoughtful analysis that they expect and deserve. Investors seek out financial professionals who have a firm grasp of a product's portfolio, historical performance, depth and tenure of a portfolio management team, anticipated near and long-term changes in portfolio composition and management, credit-worthiness, and

[20] *See* S&P Dow Jones Indices, SPIVA U.S. Scorecard, Year-End 2017, *available at* https://us.spindices.com/search/?ContentType=SPIVA; *see also* John Wagoner, "Mutual Funds and ETF Closures Mount Despite Hot Markets, InvestmentNews (Apr. 5, 2018), *available at* http://www.investmentnews.com/article/20180405/FREE/180409956/mutual-funds-and-etf-closures-mount-despite-hot-markets.

numerous other factors. Despite the Commission's confirmation that Regulation BI would not prohibit recommendations from a limited range of products,[21] LPL is concerned that without further clarification, financial professionals participating on large platforms may, in practice, be discouraged from conducting focused analysis of product offerings, instead opting for a more cursory review of a few high-level cost, risk, and performance metrics across all available products. This could ultimately be inconsistent with the Commission's objectives and could harm investors, who expect financial professionals to provide an in-depth and detailed understanding of the products they sell.

We would therefore urge the Commission to clarify that a financial professional can satisfy his or her obligations under Regulation BI, even if he or she limits recommendations to a smaller number of product sponsors.

C. *The Care Obligation should not have the unintended consequence of limiting investor choice by encouraging broker-dealers to limit the products that are available on their platforms.*

Without further clarification, broker-dealers that are concerned about their financial professionals' ability to make comparative judgments among products with different cost structures may be encouraged to abandon brokerage offerings for an investment advisory model, which runs counter to the Commission's objectives of preserving retail investor choice and access to the brokerage "pay as you go" advice model.[22] Alternatively, broker-dealers might opt simply to limit the universe of different fund families they make available to their financial professionals, particularly in the case of proprietary products that present unique conflicts of interest. As the Commission indicated, it "share[s] concerns raised by commenters about retail customers losing access to advice they receive through recommendations from broker-dealers, or if advice from broker-dealers is effectively eliminated, particularly as not all such customers have the option to move to fee-based accounts."[23] By the same token, the Commission's suggestion that broker-dealers should "eliminate[e] compensation incentives within comparable product lines" indicates a favoritism toward a level-fee model that, if implemented, could encourage financial professionals to move to investment advisory services, rather than incur the compliance risks associated with the brokerage model.[24] We share Commissioner Peirce's concern that Regulation BI, as currently proposed, "risk[s] exacerbating a long-term decline in the number of broker-dealers" and "to the extent that lack of clarity in the proposed standard creates compliance uncertainty for broker-dealers,…it may intensify the decline of the broker-dealer model….[]that has served many investors so well for so many decades."[25]

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[21] Regulation BI Proposing Release, 83 Fed. Reg., at 21,587.

[22] The Commission "recognize[d] the importance of the brokerage model as a potentially cost-effective (and sometimes, a less costly) option for investors to pay for investment advice." Regulation BI Proposing Release, 83 Fed. Reg., at 21,620.

[23] Regulation BI Proposing Release, 83 Fed. Reg., at 21,584.

[24] *Id*., at 21,621.

[25] Commissioner Hester M. Peirce, Statement at the Open Meeting on Standards of Conduct for Investment Professionals (Apr. 18, 2018).

II. Disclosure Obligation

The Disclosure Obligation under proposed Rule 15*l*-1 would require a broker-dealer or an associated person of a broker-dealer, prior to or at the time of a recommendation, "reasonably" to disclose to a retail investor, in writing, "the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest that are associated with the recommendation."[26] As the Commission recognized in the Regulation BI Proposing Release, LPL has consistently advocated for a standard of conduct that, among other things, requires broker-dealers to provide clear and comprehensive disclosure to retail investors explaining material information about their services, including the nature of their services, investment products, compensation and material conflicts of interest.[27] In that regard, we strongly support the Disclosure Obligation, but we urge the Commission to provide certain clarifications as to its scope and the manner in which a broker-dealer can satisfy its requirements.

A. *The Commission should confirm that a "layered" approach to satisfying the Disclosure Obligation may include reliance on electronic delivery and hyperlinks to secondary disclosures and offering documents.*

The guidance in the Regulation BI Proposing Release is unclear as to whether and how a broker-dealer would be required to make product-specific disclosures and the extent to which a broker-dealer would be able to rely on layered disclosure. For example, the Commission stated that certain disclosures may need to be tailored to a particular recommendation, for example, if a standardized disclosure document does not sufficiently identify the material conflicts presented by the recommendation.[28] In addition, the Commission noted that a broker-dealer could satisfy the Disclosure Obligation if an initial disclosure explains when and how a broker-dealer would provide additional more specific information regarding the material fact or conflict in a subsequent disclosure (*e.g.*, disclosures in a trade confirmation concerning when the broker-dealer effects recommended transactions in a principal capacity).[29] Finally, the Commission noted that disclosure after a recommendation, such as in a trade confirmation for a particular recommended transaction would not, by itself, satisfy the Disclosure Obligation because the disclosure would not be "prior to, or at the time of the recommendation." These statements appear somewhat inconsistent and, without clarification, could lead to differing compliance efforts.

LPL believes that all investors should be provided with general disclosures somewhat akin to those contained in Form ADV Part 2A – *e.g.*, which set forth the ranges of remuneration payable

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26 Proposed Rule 15*l*-1(a)(2)(i); Regulation BI Proposing Release, 83 Fed. Reg., at 21,665.

27 *See* Regulation BI Proposing Release, 83 Fed. Reg., at 21,599; *see also*, n. 172 (citing Letter from Michelle B. Oroschakoff, Chief Legal and Risk Officer, LPL Financial, to Jay Clayton, Chairman, U.S. Sec. and Exch. Comm'n (Feb 22, 2018).

28 *Id.*, at 21,605.

29 *Id.*

to a broker-dealer in connection with its recommendations of different products.[30] At the same time – and in furtherance of the Commission's approach to layered disclosure – we believe that detailed product-specific disclosures should be required prior to or at the time of a recommendation only in instances where the remuneration associated with the recommendation exceeds the previously disclosed range or where the recommendation implicates a conflict of interest that has not previously been disclosed. In all other cases, a broker-dealer should be permitted to satisfy its Disclosure Obligation by directing an investor in writing to review the recommended product's offering documents and providing hyperlinks to those documents (or providing a hyperlink to a central page on the broker-dealer's website that contains hyperlinks to the product documents), either prior to the recommendation via a general Form ADV Part 2A-like disclosure document or shortly thereafter via a trade confirmation.[31] As noted above, LPL offers thousands of investment products. Requiring LPL and similarly situated broker-dealers to deliver detailed product-specific disclosures prior to or at the time of a recommendation carries significant administrative burdens and does not further investor-protection goals if investors are already on notice about the types and remuneration their broker-dealers stand to gain. In short, LPL is in favor of better disclosure, but not unnecessary or redundant disclosures that detract from the effectiveness of clear and concise disclosure.

As a separate matter, LPL appreciates the Commission confirming that broker-dealers would be able to deliver the disclosures required under Regulation BI in compliance with the Commission's guidance regarding electronic delivery of documents.[32] Nevertheless, as discussed below in our discussion of Form CRS, we encourage the Commission to update that guidance and provide more flexibility to broker-dealers and investment advisers to account for investors' typical preference to communicate electronically in today's digital age.

B. *The Commission should provide additional guidance with respect to the updating and amendment requirements that apply to the Disclosure Obligation.*

The Commission only briefly addressed the updating and amendment requirements that would apply to the Disclosure Obligation. The Commission noted that additional disclosure may be needed beyond any standardized disclosure when any previously provided information becomes materially inaccurate, or when there is new relevant material information (*e.g.*, a new material conflict of interest has arisen that is not addressed by the standardized disclosure). The Commission also noted that where a significant amount of time passes between the initial disclosure and a recommendation, the broker-dealer generally should determine whether the retail customer should reasonably be expected to be on notice of the prior disclosure; if not, the broker-dealer generally should not rely on such disclosure.[33]

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30 *See id*., at 21,602 ("[W]e would generally expect broker-dealers to build upon the Relationship Summary, by disclosing additional detail (including quantitative information, such as amounts, percentages, or <u>ranges</u>) regarding the types of fees and charges described in the Relationship Summary.") (emphasis supplied).

31 In many cases, the investor would be provided a copy of those documents in accordance with the broker-dealer's prospectus-delivery obligations under Section 5 of the Securities Act.

32 Regulation BI Proposing Release, 83 Fed. Reg., at n. 214 and accompanying text.

33 *Id*., at 21,605-21,606.

In light of the fact that the Commission has not proposed a specific form of disclosure document and the Regulation BI Proposing Release indicates that disclosure could be accomplished (i) at the beginning of a relationship; (ii) on a regular or periodic basis; (iii) at other points, such as before making a particular recommendation or at the point of sale; and/or (iv) at multiple points in the relationship, LPL requests that the Commission provide clearer guidance with respect to the updating and amendment obligations and how they would apply in the case of broker-dealers who opt for periodic disclosure versus those who opt for disclosure at the beginning of a client relationship. In addition, the Commission should confirm that amendments and updates required in satisfaction of the Disclosure Obligation can be made through electronic delivery, including by notifying an investor that additional information that is relevant to a recommendation is available on a broker-dealer's website and providing a link to that website. In short, the guidance that is provided in the Regulation BI Proposing Release would benefit from additional clarification to permit broker-dealers to design an adequate compliance infrastructure.

III. Conflict of Interest Obligations

A. *The Commission should adopt a principles-based approach to the Conflict of Interest Obligations rather than proscribe specific conflicts.*

LPL generally agrees with the proposed requirement for firms to: (1) establish, maintain, and enforce written policies and procedures reasonably designed to identify, and disclose, or eliminate, all material conflicts of interest that are associated with recommendations covered by Regulation BI; and (2) establish, maintain, and enforce written policies and procedures reasonably designed to identify, and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations. Nevertheless, we strongly encourage the Commission to adopt a *principles-based* approach to identifying material conflicts of interest, rather than proscribing specific conflicts. A prohibition on specific conflicts would be duplicative of existing compliance obligations and would frustrate the Commission's goal of "minimiz[ing] redundancies."[34] For example, the receipt of non-cash compensation – financial incentives with which the Commission appears particularly concerned – is already regulated through a series of FINRA rules regarding the sale and distribution of mutual funds, variable annuities, direct participation program securities, public offerings of debt and equity securities, and real estate investment trust programs.[35]

B. *The Commission should preserve a broker-dealer's ability to offer sales incentives that are tied to the accumulation of assets under management or total fee revenue across all securities sold.*

If the Commission deems it appropriate to proscribe specific conflicts or identify certain conflicts as examples of those that must be eliminated (which, for the avoidance of doubt, we believe conflicts with existing legal standards), we believe the Commission should focus on sales contests, quotas trips, prizes, bonuses and other similar incentives that are based *on sales of specific securities*. By contrast, broker-dealers and investment advisers should continue to have

[34] *Id.*, at 21,585.

[35] *See* FINRA Rules 2310, 2320, 2341, and 5110.

the ability to offer sales incentives that are tied to the accumulation of assets under management or total fee revenue across all securities sold. The notion that a financial professional, whether a representative of a broker-dealer or an investment adviser, should not be presented with financial incentives to seek out additional customers and clients and grow a successful business practice is fundamentally at odds with principles of American commerce. To the extent that broad-based sales incentives present conflicts of interests, they can be sufficiently mitigated through disclosure and consent in accordance with the Disclosure Obligation, Form CRS, and Form ADV.

We also have particular concerns about the Commission's use of the term "self-promotion" in stating that "[w]e believe that a broker-dealer would violate proposed Regulation Best Interest's Care Obligation and Conflict of Interest Obligations, if any recommendation was predominantly motivated by the broker-dealer's self-interest (*e.g.*, self-enrichment, self-dealing, or *self-promotion*), and not the customer's best interest."[36] In one sense, all recommendations made by a financial professional—even those made in the context of a level-fee advisory relationship—are motivated, at least to a degree, by the professional's desire to grow his or her business practice. Every financial professional hopes that his or her expertise and advice will lead to satisfied clients, client referrals, an ever-expanding book of business, more management authority and responsibility, and, ultimately, more personal financial resources. Accordingly, the Commission should confirm that a financial professional can satisfy Regulation BI's best interest standard even if recommendations are influenced in part by "self-promotion."

IV. Enforcement

The Commission should be more explicit in confirming that Regulation BI does not confer a private right of action.

The Commission indicated that it does "not believe proposed Regulation Best Interest would create any new private right of action or right of rescission, nor do we intend such a result." For support, the Commission noted that Regulation BI was proposed, in part, pursuant to the authority provided by Section 913(f) of the Dodd-Frank Act and Section 15(l) of the Exchange Act, and neither of those provisions, by its terms, creates a new private right of action or right of rescission.[37] We agree. The fact that the statutes are silent as to private rights of action is determinative that private rights of action cannot be pursued under any rules promulgated thereunder.[38] We encourage the Commission, if proposed Rule 15*l*-1 is adopted, to state expressly that the Rule does not confer a private right of action.

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[36] Regulation BI Proposing Release, 83 Fed. Reg., at 21,588 (emphasis supplied).

[37] *Id*., at n. 88 and accompanying text.

[38] *See* Turbeville v. Financial Industry Regulatory Authority, 874 F.3d 1268, 1276 (11th Cir. 2017) (citing Touche Ross & Co. v. Redington, 442 U.S. 560, 571 (1979) ("The [Securities] Act's silence regarding the existence of a private right of action speaks volumes, because Congress can simply say it is creating a private right of action if it wants to do so."); *see also* Alexander v. Sandoval, 532 U.S. 275, 286 (2001) ("Like substantive Federal law itself, private rights of action to enforce Federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. Statutory intent on this latter point is determinative. Without it, a cause of action

Form CRS

LPL supports proposed Form CRS to the extent it brings about enhanced disclosures to retail investors. Nevertheless, we believe the Form could benefit from certain modifications, as discussed below.

I. Format

The content mandated by Form CRS should be shortened. The relationship summary should serve as a high-level reference document that identifies key information about the investor's advisory or brokerage relationship and directs the investor to refer to additional documents and resources.

While LPL supports a short form disclosure document consistent with the Commission's intent in proposing Form CRS, we are concerned that the length constraints, when combined with the level of detail required, do not provide sufficient space for meaningful disclosures that investors need to make informed decisions about their investments.[39] We are particularly concerned that the conflicts of interest disclosure requirements are overly broad and will pose challenges for firms in picking and choosing which conflicts to disclose (and the level of detail associated with each) in light of the page limits. In this regard, we are also concerned that the proposed Form raises the risk of liability for material omissions.[40] Moreover, although the Commission considers the proposed Form to be brief, the length of the relationship summary must be considered in light of the other account opening materials that investors receive upon an initiating a relationship with a broker-dealer or investment adviser, including disclosures contained in Form ADV Parts 2A and 2B.

To resolve the inherent tension between concision and the concept of meaningful disclosure, we believe the content mandated by Form CRS should be shortened. The relationship summary should serve as a high-level reference tool rather than a primary disclosure document. The document should identify key information about the differences between brokerage and advisory

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does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.") (internal quotations and citations omitted).

39 As proposed, Form CRS would require a broker-dealer or investment adviser to provide a mix of tabular and narrative information concerning, among other things, the relationships and services the firm offers to retail investors; the standard of conduct applicable to those services; the fees and costs that retail investors will pay; comparisons of brokerage and investment advisory services (for standalone broker-dealers and investment advisers); conflicts of interest; where to find additional information, including whether the firm and its financial professionals currently have reportable legal or disciplinary events and who to contact about complaints; and key questions for investors to ask of the firm's financial professionals. Form CRS Proposing Release, 83 Fed. Reg., at 21,419.

40 As the Commission noted, "[b]roker-dealers and their natural associated persons can face liability for intentionally, recklessly, or negligently misleading investors about the nature of the services they are providing through, among other things, materially misleading advertisements or other communications that include statements or omissions, or deceptive practices or courses of business." *See* Form CRS Proposing Release, 83 Fed. Reg., at n. 428 and accompanying text (citing Rule 10b-5 under the Securities Exchange Act of 1934 and Section 17(c) of the Securities Act).

services, applicable fees and the existence of conflicts of interests, and should direct investors, via hyperlinks, to refer to additional documents and resources concerning each of these categories of information and others.

Appendices A and B contain alternative versions of the Form that incorporate our proposed modifications. Appendix A contains a two-page document with text only, while Appendix B contains a longer version of the same document with graphic enhancements to facilitate readability. Our proposed alternative versions describe information in a high-level, open-ended narrative format that directs investors, via hyperlinks, to more complete disclosures located on our website. This layered approach to disclosure is consistent with the Commission's goal of "encourage[ing] firms to use innovative technology to create a relationship summary that is user-friendly, concise, easy-to-read, and more interactive than paper."[41] The approach is also consistent with the Commission's other disclosure regimes, including the summary prospectus rules that apply to open-end mutual funds under the Securities Act and the Investment Company Act. Those rules require open-end mutual funds to provide key information in plain English in a standardized order at the front of a fund's statutory prospectus and permit a person to satisfy its mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act by giving the key information directly to an investor in the form of a summary prospectus and providing the statutory prospectus on a website.[42]

II. Electronic Delivery

The Commission should update its electronic delivery guidance to account for current investor communication preferences and to facilitate layered disclosure.

The Commission confirmed that firms would be permitted to deliver the relationship summary, as well as updates, electronically consistent with the Commission's prior guidance regarding electronic delivery. While we appreciate the Commission's commitment to technological advancements in communications,[43] and we applaud its efforts in recently adopting Rule 30e-3 under the Investment Company Act,[44] we urge the Commission to update its guidance regarding electronic delivery, which was last issued in 2000.[45]

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41 Form CRS Proposing Release, 83 Fed. Reg., at 21,420.

42 *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Securities Act Release No. 8998 (Jan. 13, 2009); *see also* Form CRS Proposing Release, 83 Fed. Reg., at n. 37 and accompanying text.

43 *See, e.g.,* Request for Comment on Fund Retail Investor Experience and Disclosure, Securities Act Release No. 10503 (June 5, 2018).

44 Optional Internet Availability of Investment Company Shareholder Reports, Investment Company Act No. 33115 (June 5, 2018).

45 *See* Use of Electronic Media for Delivery Purposes, Exchange Act Release No. 36345 (Oct. 6, 1995) ("1995 Release"); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Exchange Act Release No. 37182 (May 9, 1996) ("1996 Release"); Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) ("2000 Release").

The guidance indicates that a firm seeking to deliver documents electronically must, among other things, have reason to believe that an investor has actually received the information. One method of obtaining evidence of delivery—and the method most frequently used by regulated entities—is obtaining an investor's "informed consent" to receive information through a particular electronic medium coupled with assuring appropriate notice and access.[46] The 1996 Release states that informed consent should be made by written or electronic means, while the 2000 Release indicates that an issuer or market intermediary may obtain informed consent telephonically, as long as a detailed record of that consent (including whether the consent obtained is global and what electronic media will be used) is retained. These methods of obtaining consent do not account for the way that investors access and receive information today. The internet of today is virtually unrecognizable from the internet of 2000 when the Commission last issued its guidance. Indeed, use of the internet has become so ubiquitous that many investors interact with financial professionals exclusively through electronic means.[47] A 2014 Investment Company Institute ("ICI") survey found that 94% of U.S. households owning mutual funds had internet access (up from 68% in 2000), with widespread use among various age groups, education levels and income levels.[48] Unfortunately, while proposed Form CRS contemplates that investors may be provided with required disclosures electronically, the practical effect of the existing electronic delivery guidance is that broker-dealers and investment advisers will be limited in their ability to satisfy their Form CRS delivery obligations through electronic means.

Proposed Form CRS would require that a firm deliver the relationship summary to each investor, in the case of an investment adviser, before or at the time the firm enters into an investment advisory agreement or, in the case of a broker-dealer, before or at the time the investor first engages the firm's services. A dual registrant would be required to deliver the relationship summary at the earlier of entering into an investment advisory agreement with the retail investor or the retail investor engaging the firm's services. The Commission explicitly "encourage[d] delivery of the relationship summary *far enough in advance of a final decision* to engage the firm to allow for meaningful discussion between the financial professional and retail investor, including by using the Key Questions, and for the retail investor to understand the information and weigh the available options."[49]Although we appreciate the need for prospective clients and customers to have a detailed understanding of a firm's service relationship in advance of engaging a broker-dealer or investment adviser, we believe that the proposed delivery requirements do not take account of how prospective customers and financial professionals actually interact. It simply is not feasible to obtain an investor's affirmative consent to electronic delivery before the investor makes a final decision about the engagement. It would be unusual to request that an investor sign any formal documentation with a financial services firm or provide

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[46] 1995 Release.

[47] Form CRS Proposing Release, 83 Fed. Reg., at 21,450 (discussing robo-advisers).

[48] *See* 2015 Investment Company Fact Book, 55th edition, Investment Company Institute, at 129, *available at* https://www.ici.org/pdf/2015_factbook.pdf. The study found the following with respect to internet access in mutual fund owning households: (1) head of household age 65 or older, 86% have access, (2) education level of high school diploma or less, 84% have access, and (3) household income of less than $50,000, 84% have access.

[49] Form CRS Proposing Release, 83 Fed. Reg., at 21,452 (emphasis supplied).

detailed verbal affirmations as to his or her personal preferences before making a decision to engage a firm for services; moreover, any system for tracking and maintaining evidence of such affirmations would be difficult to effectuate given that some potential investors will choose not to open accounts and will therefore not have account numbers or other unique identifiers available for the firm to use in retaining such documentation. The upshot of the Form CRS delivery requirement, as currently proposed, is that most investment advisers and broker-dealers will be required to deliver paper copies of their relationship summaries to prospective investors. To the extent a prospective investor has only interacted with a firm or financial professional through email or telephone, the requirement to deliver paper copies would further delay the account opening process and would be inconsistent with investor preferences. Indeed a 2013 ICI study found that 82% of U.S. households owning mutual funds used the internet for financial purposes.[50]

Modern communication practices underscore the need for the Commission to provide more flexibility to broker-dealers and investment advisers to satisfy their document delivery obligations by delivering materials to customers and clients who have *implicitly* consented to electronic delivery as well as to current customers and clients who have *affirmatively* consented to electronic delivery in a manner contemplated by the existing guidance. Implicit consent should be deemed given when an investor contacts or interacts with an investment adviser, broker-dealer or financial professional through email or via a website portal, or provides the investment adviser, broker-dealer or financial professional with an email address as a point of contact. An investor's use of email and/or a web portal provides near certain assurance that the investor views electronic communications (through email or a web portal) as effective as paper mailings. Use of email and/or a web portal also provides sufficient confirmation that any documents and other materials transmitted to the investor via email or the portal would in fact be delivered.

Separately, the Commission should make clear that providing hyperlinks within a document used to satisfy proposed Form CRS and Regulation BI (subject to the investor having provided its consent to electronic delivery—whether affirmatively or implicitly, as discussed above) would constitute delivery of the hyperlinked information. In the 2000 Release, the Commission noted its belief that, with respect to issuers, "the inclusion of a hyperlink to an external web site or document demonstrates the hyperlinking party's intent to make the information part of its communication with investors, security holders and the markets" but then stated that "simply embedding a hyperlink within a document does not satisfy the line item disclosure requirement for the incorporation of certain information by reference as provided under the Commission's rules."[51] The Commission noted throughout the Form CRS Proposing Release its commitment to a layered approach to disclosure[52] and explicitly "encourage[d] the use of methods, such as embedded hyperlinks, to direct retail investors to additional disclosures."[53] In furtherance of

[50] *See* 2014 Investment Company Fact Book, 54th edition, Investment Company Institute, at 115-117, *available at* https://www.ici.org/pdf/2014_factbook.pdf.

[51] 2000 Release, at n. 41 and 42.

[52] Form CRS Proposing Release, 83 Fed. Reg., at n. 37, 48-50 and 139-141, and accompanying text.

[53] *Id*., at 21,421.

those objectives, the Commission should confirm that providing hyperlinks equates to delivery for purposes of Form CRS and Regulation BI.

III. Key Questions

A. The "Key Questions to Ask" Section should be removed from the Form and incorporated by reference via a hyperlink to the Commission's website or the firm's website.

LPL supports the general policy objectives underlying the *Key Questions to Ask* section of proposed Form CRS. Nevertheless, consistent with our proposal to convert Form CRS to a short-form reference document, we believe the section should be removed from the Form and incorporated by reference via a hyperlink to the Commission's Investor Publications website, which currently includes similar questions in addition to offering a wealth of other helpful investment education and information.[54] Alternatively, the questions could be incorporated by reference via a hyperlink to an "FAQ" page hosted on the website of the investment adviser or broker-dealer. Here we note that the Commission proposed to permit robo-advisers and online-only brokers to include a section or page on their website that answers each of the questions and provides a hyperlink in the relationship summary to that section or page.[55] We also believe all firms should be given the option to provide initial answers to the questions in writing, in which case investors could also be directed to contact a central call center with follow-up questions. This approach would mitigate the risk of investor confusion by ensuring consistency in messaging.

In addition, although we believe certain of questions elicit important detail about an investor's relationships with a firm and are consistent with LPL's goals of encouraging frank discussions between financial professionals and investors, Question 2 ("Do the math for me . . . .") poses particular challenges for LPL and similarly situated firms. LPL has service offerings in which we do not control all investment decisions and fees. For those offerings and others, any system designed to estimate costs and expenses would be subject to numerous variables and would rely on numerous assumptions, all of which would undermine its intended utility. Other Questions, including Question 4 ("Tell me how you and your firm make money in connection with my account"), Question 5 ("What are the most common conflicts of interest in your advisory and brokerage accounts?"), and Question 8 ("Do you or your firm have a disciplinary history?") would already be answered in the disclosure sections within the relationship summary itself (or in materials to which the relationship summary is linked under our proposed modifications).

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[54] We note that three of the questions provided for in this section already appear on the Commission's Investment Publications website The Commission's Investor Publications webpage contains the same questions that are found in "Key Questions to Ask" numbers 4, 8, and 9. *See Investment Advisers: What You Need to Know Before Choosing One*, https://www.sec.gov/reportspubs/investor-publications/investorpubsinvadvisershtm.html.

[55] Form CRS Proposing Release, 83 Fed. Reg., at 21,450.

B. The SEC should confirm that the "Key Questions to Ask" Section does not create new supervisory, recordkeeping, or disclosure requirements.

LPL encourages our financial professionals to have frank discussions with clients and customers regarding key aspects of their LPL relationship. While the *Key Questions to Ask* could facilitate such discussions, any requirements to adopt supervisory and recordkeeping policies and procedures to address and monitor how financial professionals respond to such questions would be extremely costly and would present significant administrative challenges. LPL's systems are not designed to monitor and record dates of sporadic interactions between financial professionals and investors, so new systems would have to be designed, tested, and implemented. The threat of repercussions for non-compliance with policies could also stifle interactions between financial professionals and investors—the very opposite of what the questions are designed to so. The Commission should make clear that the Key Questions are designed to be prompts for conversations and that they do not create new supervisory or recordkeeping requirements. The Commission should also make clear that the Key Questions are designed to prompt discussions and are not mandatory disclosures.

IV. Application to Dual-Registrants

Dual-registrants should be permitted to prepare different versions of relationship summaries corresponding to different service offerings.

Form CRS would require a dual registrant to discuss all of its advisory and brokerage services in a single relationship summary.[56] For firms that offer multiple service arrangements, like LPL, the proposed Form could create investor confusion. As noted above, dual-hatted financial professionals may either (i) provide brokerage and advisory services on behalf of LPL or (ii) provide brokerage services on behalf of LPL while providing advisory services on behalf of an unaffiliated RIA that is separately registered with the Commission or one or more States. As proposed, in the case of the arrangement described in (ii) above, a prospective client of the financial professional would receive a dual registrant relationship summary from LPL and a standalone investment adviser relationship summary from the RIA. In these circumstances, it is unclear how the investor will know by reviewing the relationship summaries whether advisory services are being offered or provided by the RIA or by LPL since both summaries would describe advisory services, yet only the RIA would be offering and providing those services. To reduce customer confusion and better implement the goals of Form CRS, the Proposal should be amended to allow firms such as LPL to prepare different relationship summaries that correspond to different service offerings, each with embedded hyperlinks to documents and resources containing additional disclosures that are relevant to the service offering for which an investor is subscribing. At a minimum, depending on their service offerings, dual-registrants should have the option to provide either (i) a dual-registrant relationship summary to all or certain investors or (ii) a standalone brokerage relationship summary to investors who have a brokerage

[56] *See* Proposed Form CRS, Instruction 5 ("If you are a dual registrant and are required to give a relationship summary to one or more retail investor clients or customers of both your advisory and brokerage businesses, you must prepare only one relationship summary and file it on IARD and EDGAR.").

relationship and a standalone investment adviser relationship summary to investors who have an advisory relationship.

V. Re-Delivery Requirements

The Commission should not require firms to re-deliver relationship summaries upon the occurrence of certain events.

As proposed, a firm would be required to deliver its relationship summary to each investor, in the case of an investment adviser, before or at the time the firm enters into an investment advisory agreement or, in the case of a broker-dealer, before or at the time the investor first engages the firm's services. In addition, a firm would be required to re-deliver a relationship summary to an existing client or customer before or at the time a new account is opened or changes are made to the account that would materially change the nature and scope of the firm's relationship with the investor or client. Such changes would include a recommendation that the retail investor transfer from an investment advisory account to a brokerage account or from a brokerage account to an investment advisory account, or move assets from one type of account to another in a transaction that is not in the normal, customary, or already agreed course of dealing. A move of assets from one type of account to another in a transaction not in the normal, customary, or already agreed course of dealing would include, for example, asset transfers due to an IRA rollover; deposits or the investment of monies based on infrequent events or unusual size, such as an inheritance or receipt from a property sale; or a significant migration of funds from savings to an investment account.[57] In our view, a firm should not be required to re-deliver a relationship summary upon the occurrence of certain events affecting an investor because the investor, at the time of such events, will have been on notice about the legal contours of both the advisory and brokerage relationships that the firm offers. It is not clear what additional benefits obtain from delivering an identical copy of a document an investor has already received. The only circumstances in which we believe an investor would benefit from receiving a new relationship summary is upon the occurrence of material changes *affecting the broker-dealer or investment adviser*, but those circumstances are addressed by the amendment requirements (discussed below), which ultimately render the re-delivery requirements superfluous.

In the alternative, if the Commission determines to adopt a re-delivery requirement, the Commission should, at a minimum, limit the scope of events that trigger a re-delivery obligation. While most of the proposed delivery and re-delivery triggering events (*e.g.*, new account opening, when a brokerage account is converted to an investment advisory account and *vice versa*) would be relatively easy to identify and address through existing processes, certain of the proposed re-delivery triggering events would not be easily identifiable (*e.g.*, investments of inheritances or proceeds of a property sale, significant migration from savings to investment) and would present operational challenges and compliance costs. Of course, firms trace the source of account contributions for anti-money laundering compliance; however, systems are not designed either to monitor and record dates of non-ordinary course events or to distinguish those events from routine account changes, such as the addition of a beneficiary, or a change of address. As a result, the Commission should, at a minimum, limit the re-delivery requirements to

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[57] Form CRS Proposing Release, 83 Fed. Reg., at 21,453.

circumstances in which a brokerage account is converted to an investment advisory account and *vice versa*—the two scenarios in which the standards that apply to an investor's relationship with a firm change.

VI. Amendment Requirements

The Commission should extend the deadline to communicate the information in an amended relationship summary to existing clients and customers to 60 days after the amendments are required to be made.

As proposed, Form CRS would require a firm to amend its relationship summary within 30 days if it becomes materially inaccurate and to communicate the information in the amended relationship summary to existing clients and customers within 30 days after the amendments are required to be made.[58] The proposed timeline for communicating amendments to existing clients and customers would pose operational challenges for many large financial services firms, like LPL, which deliver scheduled investor communications and account reports to investors on a quarterly basis (*i.e.*, every 90 days). Under the proposed times, firms would be required to effect an inter-quarter investor mailing following an amendment to a relationship summary, which would carry significant costs. As an alternative, we recommend that the Commission extend the deadline to communicate the information in an amended relationship summary to existing clients and customers to 60 days after the amendments are required to be made (*i.e.*, 90 days after a relationship summary becomes materially inaccurate). This would permit firms to communicate changes on a quarterly basis as part of scheduled reporting.

<u>Titling Restrictions</u>

I. Restrictions on the Use of "Adviser" and "Advisor"

Restricting the use of specific words in titles is unlikely to advance the Commission's goals of investor protection and could contribute to increased investor confusion.

Proposed rule 15*l*-2 would restrict any broker-dealer, and any associated person of such broker-dealer, when communicating with a retail investor, from using as part of its name or title the words "adviser" or "advisor" unless such broker-dealer is registered as an investment adviser under the Advisers Act or with a State, or such associated person of a broker-dealer is a supervised person of an investment adviser registered under the Advisers Act or with a State and such person provides investment advice on behalf of such investment adviser.[59]

Although we appreciate the Commission's general concerns regarding customer confusion as it relates to the role and level of services provided, we believe that restricting the use of "advisor" or "adviser" while allowing similar descriptors, such as "financial consultant" or "wealth manager," would be unlikely to advance investor protection in the way the Commission intends. Prohibiting specific titles would inevitably spawn a proliferation of new titles that would

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[58] *Id.*, at 21,455.

[59] *Id.*, at 21,461.

contribute equally to investor confusion. As Commissioner Stein noted in her public statement, "restricting the use of only two words presents an obvious 'whack-a-mole' problem."[60] The Commission itself acknowledged this risk when it adopted former Rule 202(a)(11)-1 under the Advisers Act, noting that "we are concerned that any list of proscribed names we develop could lead to the development of new ones with similar connotations."[61]

We also believe that restricting use of "advisor" and "adviser" is contrary to the plain English meaning the average investor associates with those terms and ignores the fact that investors have become accustomed to referring to the individuals who provide them with financial services as their "advisors" or "advisers," regardless of the legal contours of the service relationship. An average investor would be unlikely to understand the legal implications of the proposed restrictions and will be particularly confused when a brokerage representative suddenly informs him or her that although the investor's services relationship with the representative has not changed, the representative is no longer the investor's "financial advisor" or "adviser." In addition, legal entities with so-called "doing business as" (d/b/a) names containing the term "advisor" or "adviser" – through which many securities professionals operate their business practices – will be required to rename their businesses and incur significant costs and disruption in updating all marketing materials with the prior name.

In our view, proposed Form CRS would resolve the investor confusion that the proposed restrictions are designed to address and would avoid the inevitable investor confusion and significant administrate burdens and expenses that would result from the restrictions themselves. Separately, we note again that several States are considering or have enacted regulations or legislation concerning the manner in which financial professionals interact with the investing public. To the extent that more States follow suit, LPL has serious concerns that the adoption of specific Federal titling restrictions will bring about a patchwork of conflicting regulations.[62]

II. Alternative "Holding Out" Standard

The Commission should adopt a "holding out" standard instead of prohibiting specific titles.

Instead of prohibiting specific titles, LPL strongly believes that a final rule addressing the use of titles should focus on persons who "hold themselves out" as providing investment advice, with the result being that firms and individuals who imply through any communication or sales practice that they are offering investment advice that is anything more than solely incidental to their brokerage services should be not be permitted to rely on the broker-dealer exclusion to the definition of "investment adviser" under the Advisers Act. Under a holding out standard, retail investors receiving advice from such firms and individuals would receive the protections of the

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[60] *See* Commissioner Kara M. Stein, 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 (Apr. 18, 2018).

[61] Certain Broker-Dealers Deemed not to be Investment Advisers, Exchange Act Release No. 51523 (Apr. 12, 2005), at 59.

[62] *See supra* note 3.

fiduciary standards applicable under the Advisers Act.[63] Moreover, a broker-dealer or financial professional should not be deemed to be holding itself or herself out as a result of using specific titles, alone. The Commission took that approach when it adopted former Rule 202(a)(11)-1, which, among other things, provided that a broker-dealer that holds itself out generally to the public as a financial planner or as providing financial planning services must register as an investment adviser. In adopting the Rule, the Commission expressly determined not to include any limitations on the titles a broker-dealer may employ without complying with the Advisers Act. In support of its position, the Commission noted:

> [t]he terms "financial advisor" and "financial consultant," for example, are descriptive of such services provided by broker-dealers. As part of their ongoing business, full service broker-dealers consult with or advise customers as to their finances. Indeed, terms such as "financial advisor" and "financial consultant" are among the many generic terms that describe what various persons in the financial services industry do, including banks, trust companies, insurance companies, and commodity professionals.[64]

We see no reason why the Commission should not employ the same approach today as it did when it last considered these issues through a formal rulemaking process.

In our view, a holding out standard would reduce the risk that potentially misleading titles would proliferate in the wake of specific titling restrictions. A reiteration of the holding out standard would also address the Commission's concerns about investor confusion, since investors who are led to believe they are receiving advice within the contours of the regulatory regime that applies to investment advisers would in fact be receiving such advice.[65]

III. Application to Dual Hatted Financial Professionals

Although LPL strongly believes that a "holding out" standard is a more effective means to mitigate investor confusion, if the Commission adopts titling restrictions, certain clarifications are necessary to account for dual hatted financial professionals who provide investment advice on behalf of one investment adviser and brokerage services on behalf of a separate, unaffiliated

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[63] The Commission considered a holding out standard but opted for the titling restrictions instead. *See* Form CRS Proposing Release, 83 Fed. Reg., at 21,464.

[64] Certain Broker-Dealers Deemed not to be Investment Advisers, Exchange Act Release No. 51523 (Apr. 12, 2005), at 59.

[65] In their public statements accompanying the Form CRS Proposing Release, Commissioner Stein endorsed a holding out standard as a more viable alternative to the proposed restrictions, and Commissioner Jackson noted that "[a] robust final rule in this area should address brokers' ability to hold themselves out as advisors in a misleading manner." *See* Commissioner Kara M. Stein, 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 (Apr. 18, 2018) ("It seems to me that a broader, more principles-based approach would prove far more effective. For example, we could preclude a broker-dealer from 'holding itself out' as an investment adviser to the extent it is not an investment adviser or acting in an advisory capacity."); Commissioner Robert J. Jackson Jr., Proposed Rulemakings and Interpretations Relating to Retail Investor Relationships with Investment Professionals (April 18, 2018).

broker-dealer that is a dual registrant. In the Form CRS Proposing Release the Commission noted:

> [W]e recognize that some financial professionals of dually registered firms only provide brokerage services. We are concerned that if these financial professionals use "adviser" or "advisor" in their names or titles, retail investors may be misled about the nature of services they are receiving, and may incorrectly believe that such person would provide them investment advisory services rather than brokerage services. Therefore, we believe that a financial professional who does not provide investment advice to retail investors on behalf of the investment adviser, *i.e.*, a financial professional that only offers brokerage services to retail investors, should be restricted from using the title "adviser" or "advisor" despite such person's association with a dually registered firm.[66]

Separately, proposed Rule 15*l*-2 would provide, in relevant part, that "a natural person who is an associated person of a broker or dealer shall be restricted, when communicating with a retail investor, from using as part of a name or title the term "adviser" or "advisor" unless any such… [n]atural person who is an associated person of a broker or dealer is a supervised person of an investment adviser registered under Section 203 of the [Advisers Act] or with a State, and such person provides investment advice on behalf of *such* investment adviser."[67]

This limitation would appear to prohibit a financial professional who provides investment advice on behalf of one investment adviser and brokerage services on behalf of a separate, unaffiliated broker-dealer that is a dual registrant from referring to himself or herself as an advisor when providing brokerage services. If the Commission intends to bring about this restriction, we believe it would have unusual consequences and contribute to increased investor confusion with respect to a large subset of dual hatted financial professionals.

For example, as noted above, LPL supports dual-hatted financial professionals who either (i) may provide brokerage and advisory services on behalf of LPL, or (ii) may provide brokerage services on behalf of LPL while providing advisory services on behalf of an unaffiliated RIA. In the case of arrangements described in (ii), because these individuals do not provide investment advice on behalf of LPL, under the Proposal, they seemingly would be prohibited from referring to themselves as financial "advisors" or "advisers" when offering or providing brokerage services to investors but could make use of those titles when offering or providing investment advice to the same investors. If this were the result, even though these individuals are dual-hatted, LPL and RIAs would incur significant costs to amend existing marketing materials and client-facing forms, letterhead, business cards, websites, fixtures and signage located on real property, and other materials. Faced with these costs and the potential for investor confusion, affected RIAs and financial professionals may choose instead to abandon their brokerage registrations and licenses and move exclusively to an advisory model, which, as noted above, would be inconsistent with the Commission's objectives.

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66 Form CRS Proposing Release, 83 Fed. Reg., at 21,463.

67 Proposed Rule 15*l*-3(a)(2) (emphasis supplied).

The Commission stated that it "believe[s] it is appropriate for financial professionals that provide services as an investment adviser to retail investors to be permitted to use names or titles which include 'adviser' and 'advisor,' even if, as a part of their business, they also provide brokerage services." Thus, the Commission should confirm, if it elects to impose titling restrictions, that dual-hatted financial professionals can make use of the term "advisor" or "adviser" so long as they are investment adviser representatives of, and provide investment advice on behalf of, *a* registered investment adviser, regardless of whether they also provide brokerage services (and not investment advice) on behalf of a separate dual-registrant.

IV. Regulatory Status Disclosure Requirements

The Commission proposed to require registered broker-dealers investment advisers and their financial professionals to disclose prominently their registration statuses in print and electronic communications with retail investors, including business cards, social media profiles, and signature blocks on paper or electronic correspondence.[68] These requirements are duplicative of the disclosures mandated by proposed Form CRS, Form ADV Parts 2A and 2B, and the Disclosure Obligation under proposed Regulation BI. Each of those requires firms and their personnel to communicate to investors the capacity in which they are acting on behalf of the investor and the material facts related to the investor's relationship with the firm and its financial professionals. The theoretical benefits obtained from disclosing through yet another medium a firm's or an individual's regulatory status are outweighed by the significant financial costs that large financial services firms would incur in connection with amending numerous electronic and print marketing materials, business cards, and other retail customer communications.

The model disclosure would be particularly difficult to fit on business cards and would undermine their utility. A business card serves as a means of communicating basic contact information, rather a disclosure document. Business cards are exchanged either casually when a financial professional is introduced to a potential retail investor or formally in the course of an introductory meeting. In the former case, LPL believes that a financial professional's regulatory status is not important to an investor when being casually introduced for the first time. In the latter case, the investor will receive contemporaneously or will have already received a relationship summary mandated by Form CRS, which will denote the regulatory framework governing the investor's relationship with the financial professional's firm.[69] To the extent the Commission deems it appropriate to adopt regulatory status disclosure requirements, the requirements should, at a minimum, be limited to communications that make investment recommendations or promote a service.

Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers

LPL appreciates the Commission's efforts to state, and invite public comments on, its views concerning the application of the fiduciary principles that apply to investment advisers, and we

[68] Form CRS Proposing Release, 83 Fed. Reg., at 21,467, 21,512.

[69] *See* Proposed Form CRS, Item 1.A.

agree that the positions expressed in the Proposed Interpretation, "are generally consistent with investment advisers' current understanding of the practices necessary to comply with their fiduciary duty under the Advisers Act."[70] Nevertheless, we have serious concerns that certain statements in the Proposed Interpretation conflict with established Supreme Court precedent and centuries of common law doctrine. Our concerns center on the Commission's discussion of the investment adviser's duty of loyalty and, more specifically (i) an adviser's ability to rely on disclosure and consent as a means of satisfying the adviser's duty of loyalty; (ii) the Commission's use of the term "informed" when describing a client's consent to conflicts of interest; and (iii) an adviser's ability to obtain a client's consent and shape the contours of a client relationship through contract.

I. Mitigation of Conflicts through Disclosure and Consent

The Commission should revise the Proposed Interpretation to confirm that an investment adviser can fulfill its duty of loyalty to clients through disclosure and consent, without the additional need to eliminate conflicts.

The Proposed Interpretation stresses that an investment adviser must not favor its own interests over those of a client or favor one client at the expense of another. It goes on to note that "in seeking to meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship."[71] In addition, it states that an "adviser must seek to avoid conflicts of interest with its clients, and, at a minimum, make full and fair disclosure of all material conflicts of interest that could affect the advisory relationship. The disclosure should be sufficiently specific so that a client is able to decide whether to provide informed consent to the conflict of interest."[72] Those principles are consistent with *SEC v. Capital Gains Research Bureau, Inc.*, in which the Supreme Court held that that the Advisers Act "empowers the courts ... to require an adviser *to make full and frank disclosure* of his practice of trading on the effect of his recommendation."[73] The principles are also consistent with the common law of agency, which the Commission cited in its release.[74]

Where the Proposed Interpretation departs from *Capital Gains* is in its suggestion that "disclosure of a conflict alone is not always sufficient to satisfy the adviser's duty of loyalty and Section 206 of the Advisers Act,"[75] with the result being that in "th[e] cases where full and fair disclosure and informed consent is insufficient, [the Commission] expect[s] an adviser to

[70] Proposed Interpretation, 83 Fed. Reg., at 21,210.

[71] *Id.*, at 21,208.

[72] *Id.*

[73] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 197 (1963) ("*Capital Gains*") (emphasis supplied).

[74] Proposed Interpretation, 83 Fed. Reg., at n. 24 and accompanying text, at 21,206 (citing Restatement (Third) of Agency § 8.06).

[75] *Id.*, at 21,208 (citing *Capital Gains*).

eliminate the conflict or adequately mitigate the conflict so that it can be more readily disclosed."[76]

Although the Commission cited *Capital Gains* for the principle that disclosure of a conflict alone is not always sufficient to satisfy the adviser's duty of loyalty, a close review reveals that that principle is not supported by the Court's opinion. To the contrary, the Court specifically acknowledged that disclosure of conflicts could be sufficient, finding that the duties to which advisers are subject reflects a Congressional recognition "of the delicate fiduciary nature of an investment advisory relationship as well as a Congressional intent to "eliminate, *or at least to expose,* all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice that was not disinterested."[77] The Court also made clear that the concept of "eliminating" conflicts of interests was not an issue it needed to address "since ... the Commission [sought] only disclosure of a conflict…."[78] Accordingly, in holding that the Advisers Act "empowers the courts ... to require an adviser *to make full and frank disclosure* of" conflicts of interest, the Court confirmed that an adviser could fulfill the fiduciary duties that the Advisers Act demands, even when faced with a material conflict of interest, if that conflict is disclosed.

Chairman Clayton has himself recognized in recent testimony that disclosure is the hallmark of the investment advisory relationship, noting that

> [w]ith respect to an investment adviser's fiduciary duty, let me be clear, because I believe there is substantial confusion in the marketplace. An investment adviser must seek to avoid conflicts of interest and at a minimum make full and fair disclosure of material conflicts. *But it misstates the law and could mislead investors to suggest that investors currently have a legal right to conflict-free advice from an investment adviser*.[79]

For the foregoing reasons, the Proposed Interpretation departs significantly from prevailing Supreme Court precedent and common law doctrine. LPL urges the Commission to confirm that an adviser can fulfill its duty of loyalty by providing full and frank disclosure of any conflicts of interest, and obtaining clients' consent thereto, without the additional need to eliminate such conflicts.

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76 *Id*., at 21,209.

77 *Capital Gains*, at 191-192 (emphasis supplied).

78 *Capital Gains*, at 196.

79 Chairman Jay Clayton, Testimony before the Financial Services and General Government Subcommittee of the House Committee on Appropriations (Apr. 26, 2018).

II. Use of the Phrase "Informed Consent"

The Commission should reconsider its use of the term "informed" when discussing a client's consent to conflicts of interest or, at a minimum, provide guidance as to how an adviser can assess whether a client's consent is "informed."

At various points in the Proposed Interpretation, the Commission states that an adviser must obtain a client's "*informed* consent" to conflicts of interest. The term "*informed* consent" is not found in the Advisers Act, nor any of the rules thereunder, and use of the modifier "informed" injects an element of subjectivity that raises the specter of Commission enforcement and litigation. The threat of liability is particularly acute in the case of large retail financial services firms like LPL, which manage millions of client relationships. A large adviser's ability to make a case-by-case assessment of whether a client's consent meets the subjective "informed" standard would be administratively impossible and, in any case, would carry significant compliance costs.

The ability of an adviser to rely on a client's verbal or written affirmation to a set of disclosures, or infer a client's consent through its continued retention of the adviser after disclosures are provided, should be sufficient. Those mechanisms of obtaining consent are consistent with current rules under the Advisers Act and Commission-endorsed practices that have evolved over the past 78 years of experience working under the Advisers Act regulatory scheme. In this regard, Rule 204-3 under the Advisers Act merely requires that an adviser *deliver* its brochure and brochure supplements to clients. There is no supplemental requirement for an adviser to confirm through some means that clients have read and fully understand all the disclosures contained in those documents. Rather, that understanding is implied by the adviser's compliance with the disclosure standards applicable to Form ADV Part 2, and the client's decision, after having received those disclosures, not to terminate the adviser's engagement and take its business elsewhere, which the client is freely permitted to do.[80] We urge the Commission to reconsider its use of the term "informed" when discussing a client's consent. At the very least, the Commission should provide guidance as to how an adviser can assess whether a client's consent is "informed."

III. Modification of an Advisory Relationship through Contract

The Commission should confirm that a client's consent can be obtained, and an advisory relationship can be modified, through contract.

As noted above, the Proposed Interpretation states that "disclosure of a conflict alone is not always sufficient to satisfy the adviser's duty of loyalty and Section 206 of the Advisers Act,"[81] yet also notes that an adviser's fiduciary duty "follows the contours of the relationship between the adviser and its client, and the adviser and its client *may shape that relationship through*

[80] *See* Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Advisers Act Release No. 1862 (Apr. 5, 2000), at n. 116 ("It is our view that an advisory client has a right at any time to terminate the advisory relationship and receive a refund of any prepaid advisory fees that the adviser has not yet earned.").

[81] Proposed Interpretation, 83 Fed. Reg., at 21,208.

contract when the client receives full and fair disclosure and provides informed consent."[82] For all of the reasons discussed above in relation to an adviser's ability to satisfy its duty of loyalty through disclosure and consent, we urge the Commission to confirm that a client's consent can be obtained, and an advisory relationship can be modified, through contract.

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[82] *Id*., at 21,205 (emphasis supplied).

Thank you for considering our comments and suggestions. We look forward to working collaboratively with the Commission to serve and protect American investors. Please do not hesitate to contact me should you wish to discuss any of the matters discussed in this letter.

Sincerely,

Michelle Bryan Oroschakoff
Chief Legal Officer

Enclosures

cc: Hon. Jay Clayton, Chairman, U.S. Securities and Exchange Commission
Hon. Kara M. Stein, Commissioner, U.S. Securities and Exchange Commission
Hon. Robert J. Jackson, Jr., Commissioner, U.S. Securities and Exchange Commission
Hon. Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission

<u>APPENDIX A</u>

Sample Alternative Relationship Summary – Text Only

Which Type of Investment Account is Right for You?

You have a number of options to discuss with your financial advisor when determining which type of investment account will help you confidently pursue your goals. For some investors, brokerage is the right solution. For others it's advisory. Many times, it's even a combination of the two. You're encouraged to learn the differences and benefits of these investment accounts, and the below guide will get you started.

Your independent financial advisor is a licensed securities professional who provides investment services through LPL Financial LLC (referred to jointly as "we", "us" or "our").

What is the difference between brokerage and advisory investment accounts?

Broker-Dealer Services *Brokerage Accounts*	**Investment Adviser Services** *Advisory Accounts*
▪ We provide investment recommendations to you, but you make the final investment decisions for your account.	▪ Typically, you grant us discretion to buy and sell investments in your account without asking you in advance. In a less common non-discretionary account, you pre-approve each investment transaction (This is not an option in most of our advisory programs).
▪ We are required to act in your best interest by not placing our interests ahead of yours when making investment recommendations. If our interests conflict with yours when making recommendations, we will eliminate, reduce or tell you about them.	▪ We are held to an ongoing fiduciary standard of care which requires us to act in your best interest at all times. If our interests conflict with yours, we will eliminate or tell you about them so you can decide whether to agree to them.
▪ We offer investment recommendation assistance, but we do not provide active ongoing investment management.	▪ Typically, our advisory services involve ongoing management and monitoring of your advisory account investments. We also offer financial planning or limited consulting services where there is no ongoing relationship.

If you would like to learn more about the choice between brokerage and advisory, please visit Working with an LPL Advisor: The Choice Between Advisory Services and Brokerage Services.

How do we charge for our account services? What other fees and costs apply?

Broker-Dealer Services *Brokerage Accounts*	**Investment Adviser Services** *Advisory Accounts*
▪ We charge a **transaction-based fee** (a "commission") every time you buy or sell an investment, **and we may also receive ongoing compensation** (a "trail payment") from fees charged and paid to us by an investment product sponsor, based on the amount invested and how long you hold the investment.	▪ We typically charge an ongoing **asset-based fee**, which is based on the value of cash and investments in the account. You pay this fee even if you do not buy or sell any investments. A flat or hourly fee may be charged for financial planning or consulting services of a limited duration or nature.
▪ The amount you pay as commissions and that we receive as trail payments varies according to the particular investment and amount invested. ▪ More frequent trading activity results in our earning more commissions.	▪ The fee you pay to your financial advisor is generally negotiated with them directly, and subject to different maximums depending upon the advisory program selected.
▪ With stocks or exchange-traded funds, the transaction-based fee is usually a separate	▪ For "wrap fee program" accounts, the asset-based fee will include most transaction and custody fees, and as a

(continued on next page)

How do we charge for our account services? What other fees and costs apply? *(continued)*

commission. With other investments, such as bonds, this fee might be part of the price you pay for the investment (called a "mark-up" or "mark-down").	result "wrap fees" are typically higher than non-wrap fee advisory program fees (where these others fees are charged separately). If you will be trading securities infrequently, a wrap fee program might cost more than separately paying for advice, transactions and custody services.
▪ It may be cheaper to have a brokerage account if you: • do not trade often • plan to buy and hold investments for longer periods of time • prefer to manage your own portfolio; or • prefer point-in-time advice.	▪ You may prefer an advisory account if you want ongoing advice and management of your account, or want someone to make investment decisions for you without your pre-approval each time. You may prefer a wrap fee program if you prefer the certainty of a quarterly fee regardless of the number of trades in your account.

- Our fees vary and will depend, for example, on the account type, the program type, what investments are bought and sold, and/or the scope of services selected.
- Other firms may offer certain products and services not available through LPL, or the same or similar investment products and services at lower or higher cost.
- We charge additional fees for account maintenance and services. For a complete list of our account service fees, please reference our miscellaneous fee schedules at Service and Advisor Fee Schedules, or the investment product sponsor's fee schedule for direct accounts.
- Ask your financial professional for personalized information regarding the fees and costs that you will pay. Some investments (such as mutual funds or variable annuities) impose additional fees not listed on our fee schedule, including internal management and administrative expenses not reflected in your account statements. These fees are outlined in the investment sponsor offering documents. Fees and costs reduce the value of your account over time.

What conflicts of interest do we have?

- We receive indirect forms of compensation from certain investment product sponsors that is typically based on the amount of business we recommend and/or service through them. For more information about revenue sharing, other third-party compensation, and related conflicts of interest, please visit:

Broker-Dealer Services *Brokerage Accounts* ▪ Brokerage Compensation and Related Conflicts of Interest ▪ Legal Disclosures	**Investment Adviser Services** *Advisory Accounts* ▪ LPL Financial Firm Brochure and Program Forms for Advisory Services

What additional information should you consider?

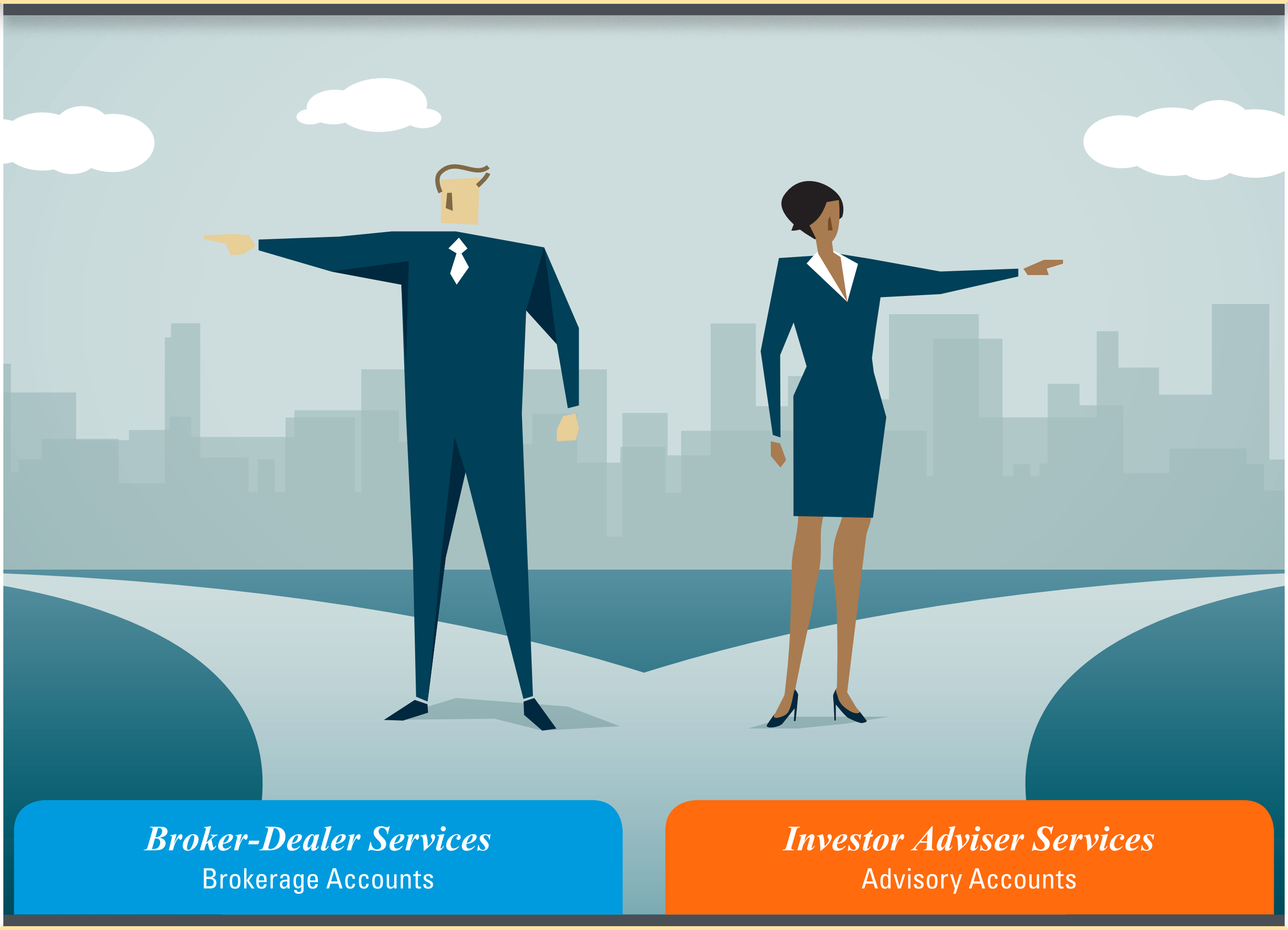
- Please visit the "Disclosures" page on lpl.com for additional information, including a copy of the agreement for the account and/or program you are considering.
- We also encourage you to review general information provided by the U.S. Securities and Exchange Commission regarding investing and related considerations, available by visiting http://www.investor.gov
- For free tools to research our firm, our financial advisors and other firms, including our disciplinary events, or to report a problem, please visit:

Broker-Dealer Services *Brokerage Accounts* ▪ BrokerCheck.Finra.org	**Investment Adviser Services** *Advisory Accounts* ▪ IAPD for a copy of our Form ADV disclosure brochure(s)

APPENDIX B

Sample Alternative Relationship Summary – Text with Graphic Enhancement

Which Type of Investment Account is Right for You?



You have a number of options to discuss with your financial advisor when determining which type of investment account will help you confidently pursue your goals. For some investors, brokerage is the right solution. For others it's advisory. Many times, it's even a combination of the two. You're encouraged to learn the differences and benefits of these investment accounts, and this guide will get you started.

Your independent financial advisor is a licensed securities professional who provides investment services through LPL Financial LLC (referred to jointly as "we", "us" or "our").

What is the difference between brokerage and advisory investment accounts?

Broker-Dealer Services Brokerage Accounts	***Investor Adviser Services*** Advisory Accounts
We provide investment recommendations to you, but you make the final investment decisions for your account.	Typically, you grant us discretion to buy and sell investments in your account without asking you in advance. In a less common non-discretionary account, you pre-approve each investment transaction (This is not an option in most of our advisory programs).
We are required to act in your best interest by not placing our interests ahead of yours when making investment recommendations. If our interests conflict with yours when making recommendations, we will eliminate, reduce or tell you about them.	We are held to an ongoing fiduciary standard of care which requires us to act in your best interest at all times. If our interests conflict with yours, we will eliminate or tell you about them so you can decide whether to agree to them.
We offer investment recommendation assistance, but we do not provide active ongoing investment management.	Typically, our advisory services involve ongoing management and monitoring of your advisory account investments. We also offer financial planning or limited consulting services where there is no ongoing relationship.

If you would like to learn more about the choice between brokerage and advisory, please visit Working with an LPL Advisor: The Choice Between Advisory Services and Brokerage Services.

How do we charge for our account services? What other fees and costs apply?

Broker-Dealer Services
Brokerage Accounts

We charge a **transaction-based fee** (a "commission") every time you buy or sell an investment, **and we may also receive ongoing compensation** (a "trail payment") from fees charged and paid to us by an investment product sponsor, based on the amount invested and how long you hold the investment.

The amount you pay as commissions and that we receive as trail payments varies according to the particular investment and amount invested.

More frequent trading activity results in our earning more commissions.

With stocks or exchange-traded funds, the transaction-based fee is usually a separate commission. With other investments, such as bonds, this fee might be part of the price you pay for the investment (called a "mark-up" or "mark-down").

It may be cheaper to have a brokerage account if you:

- do not trade often
- plan to buy and hold investments for longer periods of time
- prefer to manage your own portfolio; or
- prefer point-in-time advice.

Investor Adviser Services
Advisory Accounts

We typically charge an ongoing **asset-based fee**, which is based on the value of cash and investments in the account. You pay this fee even if you do not buy or sell any investments. A flat or hourly fee may be charged for financial planning or consulting services of a limited duration or nature.

The fee you pay to your financial advisor is generally negotiated with them directly, and subject to different maximums depending upon the advisory program selected.

For **"wrap fee program"** accounts, the asset-based fee will include most transaction and custody fees, and as a result "wrap fees" are typically higher than non-wrap fee advisory program fees (where these others fees are charged separately). If you will be trading securities infrequently, a wrap fee program might cost more than separately paying for advice, transactions and custody services.

You may prefer an advisory account if you want ongoing advice and management of your account, or want someone to make investment decisions for you without your pre-approval each time. You may prefer a wrap fee program if you prefer the certainty of a quarterly fee regardless of the number of trades in your account.

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Fees and Costs *continued*

- Our fees vary and will depend, for example, on the account type, the program type, what investments are bought and sold, and/or the scope of services selected.
- Other firms may offer certain products and services not available through LPL, or the same or similar investment products and services at lower or higher cost.
- We charge additional fees for account maintenance and services. For a complete list of our account service fees, please reference our miscellaneous fee schedules at Service and Advisor Fee Schedules, or the investment product sponsor's fee schedule for direct accounts.
- Ask your financial professional for personalized information regarding the fees and costs that you will pay. Some investments (such as mutual funds or variable annuities) impose additional fees not listed on our fee schedule, including internal management and administrative expenses not reflected in your account statements. These fees are outlined in the investment sponsor offering documents. Fees and costs reduce the value of your account over time.

What conflicts of interest do we have?

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- Brokerage Compensation and Related Conflicts of Interest
- Legal Disclosures

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- We also encourage you to review general information provided by the U.S. Securities and Exchange Commission regarding investing and related considerations, available by visiting http://www.investor.gov
- For free tools to research our firm, our financial advisors and other firms, including our disciplinary events, or to report a problem, please visit:

Broker-Dealer Services Brokerage Accounts	***Investor Adviser Services*** Advisory Accounts
BrokerCheck.Finra.org	IAPD for a copy of our Form ADV disclosure brochure(s)