



August 6, 2018

The Honorable Jay Clayton  
Chairman  
United States Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: S7-08-18 - comment

Dear Chairman Clayton:

The proposed template disclosure documents are disheartening, are not in the public interest and, I believe, will increase public confusion and distrust. As a Registered Investment Advisor (RIA), an investor, and as a citizen dependent on properly performing markets, I respectfully ask the SEC to go back to the drawing board.

Here's why:

- **RIAs are not the same as brokers and it is misleading and harmful to pretend that they are the same.**
  - a. RIAs choose to be regulated as fiduciaries, not sales people.

This is a critical difference: By our choice, we don't have inventory to sell, and therefore have no financial motivation to move inventory. By our choice, we work only for the client. We choose to be in a relationship of two not three, i.e. to be fiduciaries to clients, loyal at all times—with no hidden partners. In contrast, brokers are paid to distribute issuer's securities and proprietary products of their employer to investors. That's a relationship of three. It is a conflicted model unless the product is accurately described as sales. Business models matter.
  - b. RIAs sell advice, not product.

As we explain to clients, when you go to a Cadillac car dealership, you know you will be talking with a salesperson, and that's OK. If the transaction goes well, you'll drive home in your new Cadillac, a bit more knowledgeable about Cadillacs, and having enjoyed the sales experience. But you would not go to a Cadillac dealership to ask for transportation advice. The salesperson is not going to say:  
“Hmm, I wonder if a Subaru would be a better match for you, given your goals.” OR  
“You can't afford to buy a Cadillac, but I can show you how to save up effectively to buy one.” OR  
“I've known you for years. You hate driving! Can we talk about getting you a driver? OR  
“I noticed that you tripped when you came into the showroom, and you seem to

have trouble reading this document. Would it be OK if I get your [authorized legal agent] in the loop?” Sales and advice are different products.

c. RIA fees are fully disclosed. Broker compensation is not.

My company’s quarterly reports to clients show, as a matter of routine, the weighted average mutual fund expense of their portfolio (calculated personally for each individual client each quarter, with current individual data), plus brokerage transaction fees, and their advisory fee with us (shown in dollars and as a percentage of the client’s portfolio, and with an indication of whether the fee is calculated as a percentage of assets under management or as a flat fee). Our advisory fee pays for portfolio management and comprehensive financial planning. Our advisors are on salary, with fairly modest year-end merit bonus payments based on both firm and individual performance. They are paid for providing accurate, proactive service and advice to clients. New clients often ask us what we think they had been paying to their former broker. There is no way to help them see that information. Clients of brokers do not even have access to their broker’s compensation scheme, which if they saw it would allow them to judge for themselves the extent to which their broker could be influenced by his/her compensation model. Compensation models matter.

- **The proposed disclosure documents are confusing.**

The dot point about who has access to the widest variety of products is one of the most egregious examples. I’m in the business and I can only guess what your team is driving at in that section of the proposed disclosure documents. It sounds as if you are saying that having access to a full array of well-designed, low-cost investment solutions could be an issue whether you are working with an advisor or with a broker. But if so, then why is this listed as a key distinguishing feature for each? When a reader has to sort through and reread the text in order to discern the (alleged) true differences, exhaustion, exasperation, and distrust grows, a result that is counterproductive to the whole goal of the project. It would be more helpful to see a list of the key features relevant to investors in which brokers and advisors differ from each other, and then to specify the difference between brokers and advisors for each feature. Clarity is fundamental to trust.

- **Disclosure is not a remedy for conflicts. It is just one method of addressing them. Let’s not lull investors into thinking the opposite.**

With respect to conflicts of interest, it matters what you do, not just what you disclose. Researchers know that disclosures can also have paradoxical results:

- a. The investor can paradoxically feel reassured. “If someone is disclosing all these conflicts, gosh, they must be honest.”
- b. The discloser can paradoxically feel more comfortable responding to conflicts, because “well, after all, the conflicts were disclosed and not objected to, so... I have permission!”



Densely written, and not to-the-point, disclosure documents inadvertently feed into these natural human reactions, especially when these disclosures are hailed as central to investor protection. Disclosure done well is necessary, but not sufficient.

- **There are better ways to address helping people choose the right relationship when managing their investments.**
  - a. Have words mean something. Financial advisor means an RIA, a fiduciary, an advisor loyal to the client at all times. Broker means someone regulated as a sales person with a duty to make suitable sales recommendations, who is not licensed to give fiduciary investment or financial planning advice. Transportation Advisor OR Car Dealer Representative. Truth in labeling makes a difference.
  - b. Promote the idea that it is OK either to be a fiduciary or to be a salesperson, but you can't be both and it has to be clear what hat you are wearing.

If individual investors had any idea of how our industry really works, they would not vote for the required disclosures as proposed, and they would be shocked by the obfuscation about the true differences between brokers and advisors. They deserve better.

Sincerely,

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Founder & CEO

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