Equity Dealers of America

September 11, 2017

Secretary Alex Acosta
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20549

RE: Uniform Impartial Conduct Standard for Retirement and Non-Retirement Accounts

Secretary Acosta:

The Equity Dealers of America (EDA) appreciates the opportunity to submit a comment letter to the U.S. Department of Labor (DOL) and the U.S. Securities Exchange Commission (SEC) in support of a solution proposed in a letter dated July 25, 2017, written by Stifel, Nicolaus & Co. Chairman and CEO, Ronald J. Kruszewski, which would create a uniform impartial conduct standard for retirement and non-retirement accounts (the Letter).

The EDA represents the retail and institutional equity capital markets interests of middle market financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to achieve financial independence. Our geographically diverse membership base spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States. The EDA's mission is to promote public trust and confidence in the U.S. equity capital markets. We believe fair, efficient, and competitively balanced equity capital markets are necessary to protect investors, advance financial independence, stimulate job creation, and increase prosperity.

The EDA strongly recommends that the DOL and the SEC adopt the principles set forth in the Letter, which is attached hereto as EXHIBIT A. We believe that the Letter proposes a reasonable and workable solution for retirement and non-retirement accounts that will protect investors, preserve investor choice, and maintain the brokerage and advisory business models.

Specifically, the EDA supports the Letter's view that investment professionals and financial institutions should be required to conduct their client relationships in brokerage and advisory accounts according to the uniform standard below:

- Always act in a prudent manner by addressing their personal financial conflicts;
- Receive no more than reasonable compensation; and

- Fairly disclose information regarding their advice, compensation, and material conflicts of interest.

The Letter supports a standard that requires investment professionals to act in prudent manner in light of the client's circumstances and place the client's interests ahead of their own. The Letter views the disclosure of conflicts of interest to clients as paramount, and we believe that this disclosure should be a pillar to any new standard when establishing a new brokerage or advisory account relationship.

The essence of client choice begins with having the information necessary to determine whether a brokerage account or an advisory account relationship is best for them. Whether a client wants incidental advice, the ability to provide their own investment ideas or to direct their own transactions as associated with a brokerage account or whether a client wants ongoing advice, monitoring, and a level fee as associated with an advisory account will determine the type of account they choose. We believe that the Letter eloquently illustrates how investment professionals will discuss each type of account with clients and why the preservation of this choice by the DOL and the SEC is so important for them.

We also support the Letter's view that adopting the principles above "would alleviate the need for, and confusion associated with, the additional provisions of the BICE, including the related warranties, the written disclosure requirements, and the private right of action. These conditions are far too prescriptive and expose financial institutions to significant class action risks. Eliminating these conditions will allow Brokerage models to continue to exist, while appropriately balancing consumer protections with investor choice."

We also believe that it is necessary for the DOL to issue guidance or Frequently Asked Questions to allow individuals who own retirement accounts to have the ability to purchase shares in initial public offerings. To remove an estimated $8 trillion of capital from the small business capital formation process severely limits the ability of those companies to grow and create good paying American jobs.

We strongly urge the DOL and the SEC to adopt al of the ideas set forth in the Letter and we look forward to working with each of you in this endeavor. Please do not hesitate to contact me as you work through the complexities of the issue.

Sincerely,

Christopher A, Iacovella
Chief Operating Officer
Equity Dealers of America

EXHIBIT A

[STIFEL LETTER, DATED JULY 25, 2017]

STIFEL

July 25, 2017

Secretary Alex Acosta
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20549

Chair Jay Clayton
U.S. Securities and Exchange Commission
100 First Street NE
Washington, D.C. 20210

RE: Uniform Impartial Conduct Standards for Retirement and Non-Retirement Accounts

Dear Secretary Acosta and Chair Clayton,

I am the Chairman and CEO of Stifel Financial, a position I have held for 20 years as part of my 35 years in financial services. I feel compelled to personally write to each of you today to identify, what I believe, is a constructive and practical solution to politically charged issues that you have both inherited:

- how to construct and implement a workable standard of care across different service models so that there is one, uniform standard for both brokerage accounts under the Securities Exchange Act of 1934 (Brokerage Accounts) and advisory accounts under the Investment Advisers Act of 1940 (Advisory Accounts); and
- how to harmonize such standard with the requirements of the Department of Labor's (DOL) new fiduciary rule for retail retirement assets.

To achieve these twin objectives, I believe that the Securities and Exchange Commission (SEC) should create a single standard of care applicable to both Brokerage and Advisory Accounts, while recognizing the inherent differences between the constructs of Brokerage and Advisory relationships.

In simple terms, Brokerage relationships are non-discretionary, commission-based accounts, through which a financial professional provides episodic investment advice incidental to each transaction. By contrast, in an Advisory relationship, a financial professional generally provides ongoing investment advice and monitoring and charges a level fee, generally based on assets.

In certain circumstances, due, in part, to the additional provision of continuous investment advice and monitoring, Advisory Accounts are generally more expensive for clients. In this regard, Brokerage Accounts may provide a more economical alternative for those clients who do not want ongoing advisory services, for example, those who do not wish to receive ongoing investment advice, who trade less frequently, or who prefer a less expensive account alternative.

Both models were developed for specific reasons and both models need to continue to exist. These models offer choice to consumers who participate in the markets and maximize the efficient and effective transfer of capital from savers to entrepreneurs. Ultimately, our capital markets thrive and consumers benefit because both the Brokerage and Advisory business models co-exist and are readily available in the marketplace. We hope that the regulators will continue to recognize the benefits of each service model and continue to support the consumers' access to both.

The approach outlined in this letter articulates a standard of conduct that provides consumers and financial professionals both clarity and consistency regardless of whether they have a Brokerage, Advisory or both types of relationships.

SEC Should Adopt the Concept of the "Impartial Conduct Standards" as a Universal Standard of Care Applicable to Both Brokerage and Advisory Relationships

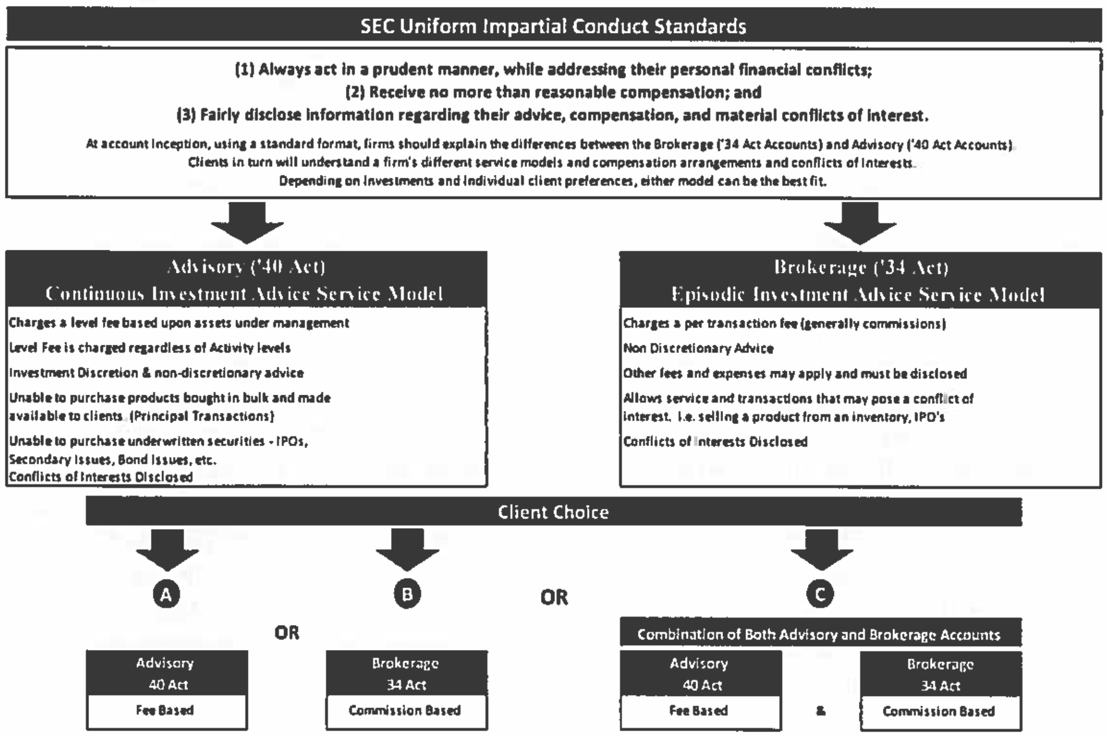
As the SEC and DOL consider and coordinate on developing appropriate standards of conduct for retail retirement and taxable accounts, I propose a simple solution: the SEC adopt a principles-based standard of care for Brokerage and Advisory Accounts that incorporates the "Impartial Conduct Standards" as set forth in the DOL's Best Interest Contract Exemption. The "Impartial Conduct Standards" require investment professionals and financial institutions to:

- Always act in a prudent manner, while addressing their personal financial conflicts;
- Receive no more than reasonable compensation; and
- Fairly disclose information regarding their advice, compensation, and material conflicts of interest.

Under this construct, consumers will easily understand that the "Impartial Conduct Standards," and the three principles thereof, apply to each and every one of their relationships with a financial professional and financial institution, notwithstanding the type of account the consumer maintains—namely, Brokerage or Advisory Accounts (or both).

Though this uniform standard should be largely principles-based, it would be in the interest of all parties to set forth and explain the differences between the Brokerage and Advisory models to the consumer at the inception of a relationship with financial professional, perhaps using a standard format. Through my long experience serving clients in this industry, it has become readily apparent that it is the individual circumstances of each individual consumer that are of ultimate consequence when ascertaining whether an Advisory or Brokerage account is the appropriate choice for such consumer. In some cases an Advisory Account may be best for the customer while, in others, a Brokerage Account may better serve the customers' needs.

The following visual depicts the overlay of a universal standard of care over both the Brokerage and Advisory service models.



I believe that, under the proposed approach, all consumers will know and understand that regardless of which service model is utilized, financial professionals and financial institutions will adhere to the universal standard of care—the Impartial Conduct Standards.

Implementation

Adopting the Impartial Conduct Standards as the new SEC standard of care will be less challenging than an alternative approach because:

1. The financial services industry is currently operating under the Impartial Conduct Standards for retail retirement accounts (including IRAs) under the Best Interest Contract Exemption. The DOL determined that adherence to these fundamental norms "helps ensure that investment recommendations are not driven by advisor conflicts, but by the best interest of the retirement investor." As such, the Impartial Conduct Standards may be an appropriate foundation for the SEC to consider in developing its standard of care.

2. With respect to non-retirement Brokerage Accounts, FINRA currently requires that "a broker's recommendations must be consistent with the customer's best interests" (see Addendum 1). The FINRA suitability rule ***already*** prohibits a Brokerage Account advisor from placing his or her interests ahead of the customer's interests. Additionally, current FINRA rules contain language requiring financial professionals to "*make no material misleading statements*" and "*charge no more than reasonable compensation*". Therefore, the adoption of a new SEC Impartial Conduct Standard will enhance the existing FINRA rule.

Under this approach, all relationships, Brokerage and Advisory, retirement and taxable accounts, would be subject to the Impartial Conduct Standards. Simply put, consumers will know that regardless of the type of account they maintain, their financial professional is acting impartially and in the consumer's financial interest.

As the SEC studies the impact of adopting the Impartial Conduct Standards for all Advisory and Brokerage Accounts, it is important that it also works with the DOL to harmonize the standards and requirements that apply to retirement accounts (including IRAs). Thus, with the Impartial Conduct Standards already in place for retirement accounts, the DOL and SEC should move together and conduct a proper and fulsome study of whether additional requirements are needed to achieve appropriate consumer protections while maintaining investor choice. As the DOL and SEC study these issues, and to prevent further disruption to Brokerage and Advisory business models, it is critical that the DOL delay the January 1, 2018 implementation date for the additional conditions of the Best Interest Contract Exemption, including the contractual warranties, until a solution is determined.

Further, I believe that, with respect to the DOL fiduciary rule, to achieve consistency between retirement and taxable accounts, the following should be done:

1. The DOL regulation defining an investment advice fiduciary should be changed such that financial professionals and institutions do not become fiduciaries simply by the act of providing a recommendation (defined by the DOL as a mere suggestion). This definition is far too broad as a threshold for fiduciary status. Rather, financial institutions and professionals should be able to define the limits of their fiduciary status and obligations through agreements with investors.

2. The additional provisions of the Best Interest Contract Exemption (BICE) should be eliminated. The implementation of the Impartial Conduct Standards would alleviate the need for, and confusion associated with, the additional provisions of the BICE, including the related warranties, the written disclosure requirements, and the private right of action. These conditions are far too prescriptive and expose financial institutions to significant class action risks. Eliminating these conditions will allow Brokerage models to continue to exist, while appropriately balancing consumer protections with investor choice.

3. Broad class exemptions from retirement account prohibited transactions (e.g., principal trades, IPO's, etc.) that require only compliance with the Impartial Conduct Standards should be promulgated. It is important to understand the negative implications the current DOL fiduciary rule has on investor choice and capital formation. Therefore, I would be remiss if I did not address the issue of the current prohibition on the ability of retirement accounts to invest in IPO's. I wrote an op-ed piece addressing this issue (see Addendum 2). I believe my op-ed speaks directly to this issue.

Section 913

Under Section 913 of the Dodd-Frank Act, the SEC was required to conduct a study to determine whether a uniform fiduciary standard that applies equally to Brokerage and Advisory Accounts when investment professionals provide personalized investment advice about securities to retail customers was needed (the "913 Study"). The 913 Study was issued in January 2011.

The statutory language in Section 913 indicates that the SEC may promulgate rules to implement a uniform fiduciary standard for Brokerage Accounts, and the standard shall be "no less stringent than" the general fiduciary duty implied under Section 206 of the Investment Advisers Act of 1940 ("Advisers Act"). Section 913 does not mandate implementation of a Section 206 fiduciary standard for Brokerage Accounts, and I believe adopting this standard would be a mistake.

It is important to recognize that Brokerage and Advisory Accounts serve different purposes and client needs and are governed by different regulatory regimes, each with unique requirements. Depending on whether the account is Brokerage or Advisory, the requirements of one could be viewed as "more stringent" when compared to the other. For example, the FINRA suitability rules and record-keeping requirements for Brokerage Accounts could be viewed as "more stringent" than the requirements of the '40 act while the prohibition on the sale of IPOs in Advisory Accounts could be viewed as more stringent than the requirements of the '34 act.

Given my experience, the SEC would not be able to implement a uniform fiduciary standard that is "no less stringent than" the Advisors Act standard without effectively eliminating the Brokerage Account business model. As outlined above, both Brokerage and Advisory accounts are needed. Creating artificial obstacles which effectively eliminate the ability to offer customers Brokerage Accounts would dramatically and unnecessarily limit the choice of business models available to investors (often resulting in higher fees) and it would have a significant negative impact on capital formation and jobs. In my view, it is not economically feasible to implement a uniform fiduciary standard following the suggested language in Section 913.

I believe the SEC should use its statutory authority to adopt a rule that creates a single Impartial Conduct Standard for Brokerage Accounts and Advisory Accounts, which incorporates the language in the DOL Impartial Conduct Standard. This solution would protect customers and be business model neutral.

Conclusion

As an industry leader, I look forward to continuing to engage in discussions with both of you as you study and address these issues. I believe establishing a single, uniform standard, as outlined above, will allow different business models to continue to exist, will give American businesses clear direction and simplicity in how they set up their compliance programs to adhere to that standard, and will protect Americans' abilities to meet their retirement objectives while preserving investor choice. I am eager to work with you to address these issues in a constructive and practical way so that we can continue our business of creating and preserving wealth for the American people.

I look forward to discussing this approach in more detail.

Sincerely,

Ronald J. Kruszewski
Chairman & CEO

Addendum 1

Acting in a Customer's Best Interests

Q7.1. Regulatory Notice 11-02 and a recent SEC staff study on investment adviser and broker-dealer sales-practice obligations cite cases holding that brokers' recommendations must be consistent with their customers' "best interests." What does it mean to act in a customer's best interests? [Notice 12-25 (FAQ 1)]

A7.1. In interpreting FINRA's suitability rule, numerous cases explicitly state that "a broker's recommendations 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 customer's interests. Examples of instances where FINRA and the SEC have found brokers in violation of the suitability rule by placing their interests ahead of customers' interests include the following:

- A broker whose motivation for recommending one product over another was to receive larger commissions.
- A broker whose mutual fund recommendations were "designed 'to maximize his commissions rather than to establish an appropriate portfolio' for his customers."
- A broker who recommended "that his customers purchase promissory notes to give him money to use in his business."
- A broker who sought to increase his commissions by recommending that customers use margin so that they could purchase larger numbers of securities.
- A broker who recommended new issues being pushed by his firm so that he could keep his job.
- A broker who recommended speculative securities that paid high commissions because he felt pressured by his firm to sell the securities.

The requirement that a broker's recommendation must be consistent with the customer's best interests does not obligate a broker to recommend the "least expensive" security or investment strategy (however "least expensive" may be quantified), as long as the recommendation is suitable and the broker is not placing his or her interests ahead of the customer's interests. Some of the cases in which FINRA and the SEC have found that brokers placed their interests ahead of their customers' interests involved cost-related issues. The cost associated with a recommendation, however, ordinarily is only one of many important factors to consider when determining whether the subject security or investment strategy involving a security or securities is suitable.

The customer's investment profile, for example, is critical to the assessment, as are a host of product- or strategy-related factors in addition to cost, such as 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. These are all important considerations in analyzing the suitability of a particular recommendation, which is why the suitability rule and the concept that a broker's recommendation must be consistent with the customer's best interests are inextricably intertwined.

Addendum 2

IRA Investors May Disappear from Initial Public Offerings

(As published in Investment News 10/27/2016)

Investors are speculating whether Snapchat will make an initial public offering (IPO) of its stock next year, but investors with individual retirement accounts ("IRAs") should be concerned that the Department of Labor's new fiduciary rule will not allow them to participate in this – or any other – IPO.

A basic tenet of capitalism is the effective and efficient transfer of capital, through investment, from savers to entrepreneurs. This investment fuels new ideas and creates jobs, supporting a vibrant and adaptive economy, while creating wealth opportunities for retirement investors. In a free society like ours, capital is allocated by choice: entrepreneurs want access to the public's ocean of savings to grow their businesses, yet each individual investor can choose to vote, in the marketplace, for the ideas he or she supports. IPOs have become a hallmark of American finance by connecting entrepreneurs on one side with investors on the other – in a forum to release the creativity of both.

However, the Department of Labor's recently enacted fiduciary rule covering IRAs creates major obstacles in this critical channel between investors and entrepreneurs, by prohibiting individual IRA investors from participating in IPOs with the assistance of their financial advisor. The rule does not affect hedge fund managers and other large institutional investors, who will still have access to IPOs. Only individual, main street investors will be prohibited from working with their financial advisors to make long-term, growth-oriented IPO investments with their retirement savings.

The Department of Labor's intention is to eliminate the potential conflict of interest between advisors and their customers in an IPO transaction. However, the Department of Labor has chosen to accomplish this goal by simply outlawing IPOs, no matter how fully informed, how sophisticated, or how willing to invest the particular investor may be.

To be sure, all investors should be fully informed, sophisticated, and willing before they invest in an IPO. The federal securities laws, including the Securities Act of 1933, provide a robust written prospectus regime, requiring ample disclosure of important matters relating to an IPO, including risks and conflicts. These rules are diligently followed, strictly enforced, and should be strengthened where necessary. The result should be a balance that mitigates potential conflicts of interest while preserving the tools investors use, together with their advisors, to shape their financial portfolios.

The Department of Labor's prohibition affords no balance: you simply may not work together with your financial advisor to invest your IRA in an IPO. This prohibition comes with a huge cost to the economy. IRA investable assets are enormous, estimated at approximately $8 trillion. The abrupt and arbitrary removal of those assets from the IPO marketplace will slow the engine of job creation and productivity growth. Yet the Department of Labor's absolutist stance prohibiting IPOs imposes another, more ominous cost on individual IRA investors. Those investors will lose their freedom to shape their own financial affairs as they see fit, but also the freedom to *vote*, through the allocation of capital, on the future direction of our nation's economy.

Our primary federal regulators, entrusted with protecting the integrity of our economy and financial markets, should study and weigh in on the potential ramifications of this rule, both on the capital formation process as well as the impact on wealth creation opportunities for retirement savings. At the very least, the Department of Labor's rule requires an exemption permitting qualified investors to continue to access IPOs with professional advice and the protections of the existing disclosure regime.

Snapchat's original idea generated excitement by embracing ephemeral moments as they occur, then letting them evaporate into the past. Unless the Department of Labor reconsiders its rule, the ability for IRAs to invest in IPOs may very well disappear – like a Snapchat photo.