

MEMORANDUM

To: File Nos. S7-07-18, S7-08-18, S7-09-18

From: Division of Investment Management, Division of Trading and Markets

Re: Roundtable on July 25, 2018 Regarding Standards of Conduct for Investment Professionals

Date: August 10, 2018

On July 25, 2018, SEC staff and Chairman Clayton held a roundtable at the Denver Regional Office. Approximately 27 individuals attended. The roundtable was intended to gather information from retail investors who will be directly impacted by the Commission's rulemaking regarding standards of conduct for investment professionals.

Attached is the entire transcript of the Denver roundtable discussions. The discussions at the roundtable were intended to be conversational, and the Chairman and SEC staff provided summary descriptions of the Commission rulemakings. To the extent that any descriptions contained in the transcript deviate from the Commission's proposed rule text and rulemaking releases, such descriptions do not supersede the proposed rule text and releases. In this regard, see proposed [Form CRS Relationship Summary](#), [Regulation Best Interest](#), and [Interpretation](#).

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

SEC INVESTMENT ADVISER/BROKER-DEALER ROUNDTABLE

July 25, 2018

10:08 a.m.

Vail Conference Room - 17th Floor
Denver Regional Office, 1961 Stout Street
Denver, Colorado 80294

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1 PARTICIPANTS:
2
3 SEC PARTICIPANTS:
4 Jay Clayton, Chairman
5 Sarah ten Siethoff
6 Lourdes Gonzalez
7 Julie Lutz
8 Eric Diamond
9 Parisa Haghshenas
10 Geeta Dhingra
11 Rick Fleming
12 Kurt Gottschall
13
14 INVESTORS:
15 Investor 1
16 Investor 2
17 Investor 3
18 Investor 4
19 Investor 5
20 Investor 6
21 Investor 7
22 Investor 8
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25 Investor 11

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1 PROCEEDINGS
2 CHAIRMAN CLAYTON: Welcome. Thank you
3 for coming. This is the sixth one of these we've
4 done, the fourth in which I've had the pleasure of
5 participating in. They've been terrific. What we
6 want to do is hear from you. We'll answer your
7 questions. I have lots of help here today. I'm
8 going to let them introduce themselves in a
9 minute.
10 But what we really want to talk about
11 is your expectations for your relationship with
12 investment professionals. What you expect from
13 that relationship, the terms of that
14 relationship, how you expect an investment
15 professional to conduct themselves. Happy to
16 talk about it in context. What we found in the
17 past is opening up conversation with some
18 experiences for people who have had -- that have
19 been either satisfactory or unsatisfactory is a
20 good way to get the discussion going.
21 Happy to answer questions about the
22 proposal that we put out to bring clarity to this
23 space, to bring some increased protection to the
24 space, but that's really the purpose. And why
25 don't we kick it off by having my colleagues

1 introduce themselves and then we'll just get
 2 right into it. So why don't we start down there
 3 with Rick Fleming at the end.
 4 MR. FLEMING: Hi, thank you all for
 5 coming this morning. I am Rick Fleming. I am the
 6 Investor Advocate at the Securities and Exchange
 7 Commission. So my job is basically to try to
 8 provide a voice for investors like you in the rule
 9 making process. So it's important for me to hear
 10 sort of what you all think so that I can try to
 11 help communicate that to folks in D.C. that are
 12 making important decisions that have an impact on
 13 you all.
 14 If you would like to know, I actually
 15 was raised in Kansas, went to D.C. just a few
 16 years ago, so I'm not a Beltway person. I like
 17 to think about how D.C. rulemakings will impact
 18 the folks like you that are not in Washington or
 19 New York.
 20 MS. LUTZ: I'm Julie Lutz, the Regional
 21 Director of the Denver Regional Office here. What
 22 we do in the Denver Regional Office is an
 23 Enforcement program, as well as an examination
 24 program. We have about a hundred people here
 25 doing both those things continuously, so welcome

1 to our Offices. We're grateful that you've taken
 2 the time to come and speak with us today, and
 3 we're very anxious to hear from you.
 4 CHAIRMAN CLAYTON: And Julie is retiring
 5 after 40 years.
 6 MS. LUTZ: I'm joining AARP.
 7 INVESTOR ONE: Are you using a broker or
 8 adviser?
 9 MS. LUTZ: Let me also introduce Kurt
 10 Gottschall back there. He's the Associate
 11 Regional Director, and he'll be acting until a new
 12 Regional Director is appointed.
 13 MS. HAGSHENAS: My name is Parisa
 14 Haghshenas. I work in one of the Divisions at the
 15 SEC that is part of the team for this rulemaking.
 16 I've been incredibly fortunate to accompany the
 17 Chairman and other individuals on this initiative.
 18 It's been an incredible ride, and I hope we
 19 continue it. It's so nice to hear from the
 20 investors.
 21 MS. SIETHOFF: I'm Sarah ten Siethoff.
 22 I'm an Associate Director in the Division of
 23 Investment Management, so I help lead from the
 24 investment adviser side of things this
 25 rulemaking. I'm so excited to hear your feedback on

1 this.
 2 MR. DIAMOND: I'm Eric Diamond. I am a
 3 Senior Adviser in the Chairman's Office
 4 responsible for Investment Management matters and
 5 I'll be spending a lot of time focusing on the
 6 rules that we're talking about today. So I'm very
 7 interested to hear from you all.
 8 MS. GONZALEZ: Hi, I'm Lourdes Gonzalez.
 9 I work on broker-dealer sales practice issues and
 10 I'm helping lead this discussion in consideration of
 11 these issues, on the broker-dealer side.
 12 MS. DHINGRA: And I'm Geeta Dhingra, and
 13 I'm Special Counsel in the Division of Trading and
 14 Markets, and I work on the broker-dealer side.
 15 CHAIRMAN CLAYTON: All right. Well,
 16 thank you all. And I got lots of help. So let's
 17 kick it off. Does anybody want to start with what
 18 you expect from a financial advisor or
 19 broker-dealer, investment professional, or any
 20 experiences, or the like? Or I'm happy to kick it
 21 off. Go ahead, INVESTOR 1.
 22 INVESTOR ONE: Actually, I've had such an
 23 experience. I've been dealing with this for nine
 24 years. So if you guys bear with me, I wrote just
 25 a three-page brief summary of how my experiences

1 correlate with what the best interest rule is
 2 proposing. So kind of, you can put it forth as a
 3 what if this rule was enacted prior. Although I
 4 have to caveat it with I was an investor in
 5 California, which -- my broker therefore was already
 6 a fiduciary. So hopefully this rule won't
 7 override rules in place in states that already
 8 have more significant rules. But if you take my
 9 context, and place it for an investor say like in
 10 Colorado or another state where they don't have
 11 such protections, I think you'll get a good gist
 12 of what's going on.
 13 So I'd like to start out by saying, at
 14 first I was an example of an American success
 15 story. I got a scholarship to Georgetown in D.C.
 16 I worked hard, started my own business, sold it
 17 and retired with millions at 37. Then my
 18 American dream turned into a nightmare, all
 19 thanks to REDACTED of REDACTED, formerly
 20 of REDACTED, and his co-conspirators, which
 21 unfortunately were FINRA, and an accountant named
 22 REDACTED.
 23 Just as everyone remembers where they
 24 were when the first plane hit the World Trade
 25 Tower on September 11th, my financial 9/11

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1 occurred in 2009, when I began to realize that
2 REDACTED had put nearly 100 percent of my
3 money into speculative private placements, that
4 have since then been exposed as fraud. And now
5 virtually every single one has no value.
6 But the nightmare didn't end there. In
7 fact, the nightmare returned, when I realized my
8 only option was FINRA arbitration, not the
9 judicial system. The arbitrators, including
10 REDACTED -- she slept through most of the
11 arbitration. They ruled, after ten days of
12 testimony, that my attorneys had failed to prove
13 the case.
14 To make this nightmare even worse, the
15 arbitrators awarded REDACTED, REDACTED, and
16 REDACTED -- remember that name -- \$136,000 in
17 costs that I had to pay. So this now meant that
18 not only had I lost everything, I paid over
19 \$200,000 in attorney's fees, which I had to
20 finance on my credit cards. But now because of
21 interest, I owe over \$200,000 to REDACTED,
22 the same broker who felt nothing was wrong with
23 putting me -- nearly 100 percent of my money into
24 speculative private placements.
25 To this day, he is still trying to find

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1 me. I cannot register to vote. I cannot even
2 register my dog. I cannot put anything in my
3 name, because he's trying to track me down to do
4 debtors' exams.
5 He has also put a lien on my house in
6 California, and everything else I own, so I can't
7 even live in the house I own. Consequently, I
8 haven't even made a mortgage payment in four
9 years, because I can't live there. I have no
10 money. And if I go back, he has people staked
11 out at my house, once a week, to find me. So in
12 reality, I live with the nightmare of FINRA's
13 actions on a daily basis. And by that, I mean the
14 arbitrators' ruling he did nothing wrong.
15 Additionally, I can't even get married,
16 because then my husband would be liable for the
17 debt. My credit has been ruined, not because of
18 just the house payment, but also because I have a
19 judgment lien against me for \$200,000. And I
20 cannot work, because REDACTED will just attach my
21 paycheck.
22 What makes this nightmare a true reality
23 is that several of the executives, including
24 REDACTED and REDACTED of REDACTED
25 were found by FINRA to have not done adequate

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1 suitability reviews of the investment, and
2 testified that they never did anything to make
3 sure my account was not over-concentrated in
4 private placements. Basically, they were proved
5 guilty by FINRA, and FINRA had the testimony
6 prior to me even suing.
7 As a result of this, REDACTED was
8 fined \$5,000 and suspended six months. I, like
9 many other investors, including my father, who was
10 a typical American who had just a few hundred
11 thousand in retirement, lost everything. REDACTED
12 REDACTED is still a practicing broker, with no
13 disciplinary actions on his record. FINRA did
14 not even seek disciplinary actions against him.
15 FINRA was aware of these actions I
16 have. And I'm going to give you, Mr. Chairman, a
17 copy of the on the record testimony of REDACTED
18 where he admits it. But of course he denied
19 everything in my arbitration. However, FINRA
20 would not give me the OTR testimony to use in my
21 arbitration. So he got away with it.
22 At the same time I was losing
23 everything, REDACTED was making nearly
24 \$600,000 a year as a broker. To make this
25 nightmare even worse, if you could think it

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1 wouldn't even get worse, the SEC did their job
2 and found REDACTED -- same name -- and REDACTED
3 guilty of defrauding investors, and ordered
4 140 million plus in restitution.
5 REDACTED, however, then proceeded to
6 take a solo voyage on his sailboat to the South
7 Pacific, where he is alleged to have faked his own
8 death. You might be thinking, how could this get
9 even worse? Well, because now I realize I owe
10 \$200,000 to a person who was found to owe the SEC
11 over 140 million in restitution. You'd think
12 that the SEC, or FINRA, at some point would step in
13 and assist -- assist me in making things right,
14 that they would somehow assist me in paying the
15 200,000, so my life is no longer held hostage by
16 this broker, who stole everything.
17 So what have I been doing for the past
18 nine years? Well, I have ve been continuing to fight
19 to get my money back. I have sued multiple
20 issuers of the Ponzi schemes, and ironically, I
21 have never lost. But then again, I've never had
22 to sue them in FINRA arbitration.
23 I am currently suing the accountant,
24 REDACTED, whose firm was bought by what is now
25 REDACTED, one of the largest accounting firms

1 in California. REDACTED had testified to FINRA in
 2 his on the record testimony that REDACTED would
 3 work with me as to how much I should invest with
 4 REDACTED.

5 Now, here's a good example of the best
 6 interest rule, how it would help. REDACTED and
 7 REDACTED failed to mention that they had been
 8 friends and business colleagues since the 1970s.
 9 If I had known I was not receiving unbiased
 10 recommendations, I would have not lost my life
 11 savings. And of course, you got to assume, would
 12 REDACTED have followed -- would he have followed the
 13 rule, or would he have not. But regardless, if
 14 the rule was in place, at least it would have
 15 been an example of a rule he broke.

16 Now here's the most ironic part.
 17 REDACTED is going to be the main witness in this
 18 trial in two months, and if I prove that REDACTED
 19 was in collusion with REDACTED, which I've already
 20 proven, because unfortunately -- I can't believe
 21 I'm saying this, but REDACTED has lost some of his
 22 mental capabilities, and he admitted everything
 23 in his deposition.

24 So when I win next month, the first
 25 \$200,000 I get awarded goes to REDACTED who is the

1 co-conspirator with REDACTED. So basically it is
 2 just crazy.

3 But recently I subpoenaed the OTR
 4 testimony of REDACTED from FINRA as evidence in the
 5 case against REDACTED in San Diego Superior
 6 Court, and this is what I discovered, and I
 7 brought a copy of the pertinent testimony.

8 CHAIRMAN CLAYTON: I'm going to have to
 9 ask you to go --

10 INVESTOR ONE: Yeah.

11 CHAIRMAN CLAYTON: Because other people
 12 have questions, but I do want to respond, so --

13 INVESTOR ONE: Yeah, I have a question for
 14 you. So basically this is how you avoid being
 15 responsible or held accountable to the best
 16 interest rule or any fiduciary rule; this is all a
 17 broker has to do is get around FINRA. All they
 18 have to do is say, he said that INVESTOR 1 told me she
 19 had over 4 million in assets, so 2.3 million in
 20 private placements is okay. Broker just has to
 21 say she told me she had more assets. I'm not --
 22 and didn't over concentrate her. Then he said,
 23 she demanded I sell them to her. She said if I
 24 didn't sell them to her, she was going to go buy
 25 them somewhere else. So I was just saving her the

1 hassle.

2 Then he said that I had extensive
 3 mutual fund holdings that I managed myself, so I
 4 was diversified in a very sophisticated investor,
 5 another lie. Then he also told FINRA I had the
 6 highest risk tolerance of any client he had ever
 7 seen when in fact that was the complete opposite.

8 CHAIRMAN CLAYTON: So I --

9 INVESTOR ONE: Let me give you my question.

10 CHAIRMAN CLAYTON: Yeah, please.

11 INVESTOR ONE: So my question is how would
 12 this best interest rule have prevented REDACTED from
 13 not -- from destroying not just my financial life,
 14 but also my personal life? And then the second
 15 part is, how would this best interest rule be
 16 interpreted and enforced by FINRA to make sure
 17 that what REDACTED and REDACTED did to me and to others
 18 would result in severe disciplinary action instead
 19 of no action?

20 CHAIRMAN CLAYTON: Right. So let me say
 21 this. It's -- it's terrible. Okay.

22 INVESTOR ONE: Yeah. It is what it is.

23 CHAIRMAN CLAYTON: No, it is what it is,
 24 but we hear -- in these roundtables we've heard
 25 bad stories. This is the worst.

1 INVESTOR ONE: It was on Reuters, it was on
 2 everything.

3 CHAIRMAN CLAYTON: What I'm going to do
 4 is, specifically with your story, I'm going to turn
 5 to Rick Fleming. I think we can have our
 6 ombudsman --

7 MR. FLEMING: Yeah.

8 CHAIRMAN CLAYTON: -- look into this.

9 INVESTOR ONE: I called them several times,
 10 but I appreciate that.

11 CHAIRMAN CLAYTON: You have my word.

12 INVESTOR ONE: Okay.

13 CHAIRMAN CLAYTON: You made the effort
 14 to get here.

15 INVESTOR ONE: Witnesses.

16 CHAIRMAN CLAYTON: Well, the court
 17 reporter. We will look into it.

18 INVESTOR ONE: Okay.

19 CHAIRMAN CLAYTON: But let me turn to
 20 the questions that you posed, which are really --
 21 let me get this. First of all, what are we doing
 22 with the standard, okay. The standard is the
 23 broker cannot put their interests ahead of the
 24 clients' interests.

25 INVESTOR ONE: Right.

1 CHAIRMAN CLAYTON: The broker cannot
2 pick investments based on the fact that they're
3 going to be paid money when that's putting their
4 interests ahead of the clients, clearly. That's
5 the standard. In fact, that's the same standard
6 that applies to investment advisers --

7 INVESTOR ONE: Right.

8 CHAIRMAN CLAYTON: -- that you can't put
9 your interest as an investment professional ahead
10 of the clients. We're going to put those on
11 parallel. You raise a more sophisticated issue
12 that we haven't discussed much, which is when
13 something goes wrong, what does the record look
14 like.

15 What we are doing here in terms of our
16 policies and procedures requirement and our care
17 requirement, which haven't gotten much press, is
18 addressing that record issue, so that it's not a
19 he said/she said situation.

20 INVESTOR ONE: Right.

21 CHAIRMAN CLAYTON: That when you have a
22 concentration of the type you're talking about in
23 what I would call low diversification, high fee
24 assets, was there -- is there a clear trail that
25 you -- that an investor made an informed decision,

1 money back from a provider or not. Right? Is
2 there some relationship that they haven't told
3 you, that is in their financial or other interest.

4 INVESTOR ONE: Right.

5 CHAIRMAN CLAYTON: And all -- and if you
6 can't put it in the four pages, then it doesn't
7 count.

8 INVESTOR ONE: Right.

9 CHAIRMAN CLAYTON: What happens today is,
10 you sign the last bit or -- so we're trying to
11 address that.

12 INVESTOR ONE: And the prior pages are
13 changed.

14 CHAIRMAN CLAYTON: That can happen.

15 INVESTOR ONE: Yeah.

16 CHAIRMAN CLAYTON: And that's -- so this
17 new four-page requirement for both broker-dealers
18 and investment advisers is a big deal.

19 INVESTOR ONE: I like it. I like it. I
20 wish it went further, but I understand it's a
21 political issue, and it's a very, very good start
22 and very good proposal.

23 CHAIRMAN CLAYTON: Okay. Well, thank
24 you. And you know what, I want to say thank you
25 for being willing to share what is clearly a tough

1 that the conflicts were completely disclosed, and
2 at the end of the day that it was appropriate.

3 INVESTOR ONE: Right.

4 CHAIRMAN CLAYTON: I think with our
5 standard and the facts that you articulated, you
6 would not be able to demonstrate that.

7 INVESTOR ONE: Well, this -- how he did it
8 was he had me sign the last page. The last page
9 was typically just the signature page.

10 CHAIRMAN CLAYTON: So this is something
11 also important.

12 INVESTOR ONE: Right.

13 CHAIRMAN CLAYTON: This is why we said
14 four pages or less --

15 INVESTOR ONE: Yes.

16 CHAIRMAN CLAYTON: I want everybody
17 to understand this. We say four pages or less.
18 We're not prescribing word by word what needs to
19 be in that four pages. We're not saying you have
20 to use "shall" instead of "may", or -- but what we are
21 saying is the key terms of the relationship need
22 to be in those four pages.

23 For the investment professional, how
24 are they getting compensated? All of how they're
25 getting compensated, whether they're getting

1 story.

2 INVESTOR ONE: Oh, I tell everyone. I'm
3 not embarrassed about being defrauded. I think
4 there's nothing to be embarrassed about, you know.

5 CHAIRMAN CLAYTON: Good.

6 INVESTOR ONE: The word needs to get out.
7 I know people who are defrauded and they're
8 embarrassed. People tell them, how did you fall
9 for that, you know.

10 CHAIRMAN CLAYTON: One of our problems
11 is getting people to come forward. We have a
12 tips, complaints and referral Office.

13 INVESTOR ONE: Oh, I've called them many
14 times. I've turned in so many Ponzi schemes.
15 They send me my money back, and I'd sign a
16 document saying I will never turn you in, I will
17 never expose the fraud I know about you, and then
18 I send it to you guys and then I call back and say
19 the blanking goat lady turned you in. Because they
20 think I'm stupid because I have a herd of goats,
21 so they think they can all screw with me, and I
22 just hear them all go, damn, goat lady. And they
23 all know me, and I turn them all in. So -- and
24 I'll keep doing it. I don't have nothing to lose.
25 I don't have anything at this point, so anything

1 you want to know.

2 CHAIRMAN CLAYTON: Thank you. Let me

3 see if there are other people who want to talk

4 about their relationship with investment

5 professionals or anything in this phase. INVESTOR 5?

6 INVESTOR FIVE: If you pass this fiduciary

7 rule, what are going to be the repercussions if

8 they don't -- what kind of trouble are they going to

9 be in.

10 INVESTOR ONE: Well, there is no fiduciary

11 rule.

12 INVESTOR FIVE: That's what he's talking

13 about here.

14 CHAIRMAN CLAYTON: What we're talking

15 about -- let me be clear on this, because I want

16 people to understand. We're talking about two

17 different types of investment professionals;

18 broker-dealers and investment advisers.

19 Investment advisers are subject to a fiduciary

20 duty today. Now, that fiduciary duty, I want to

21 be clear, it requires investment advisers not to

22 put their interests ahead of their clients.

23 But it's not an absolute fiduciary

24 duty. It's a fiduciary duty that can be modified

25 by disclosure and consent. So some investment

1 advisers seek a lot of disclosure and consent.

2 They say, you know what, I have to put my -- I

3 have to make sure I don't put my interests ahead

4 of yours, but I am allowed to take these fees and

5 I am allowed to do this and you consent to that.

6 One of the reasons we're requiring this

7 four page or less disclosure is they have to bring

8 that information to your attention, not on page

9 27. That's very important. On the broker-dealer

10 side, we're saying the same fiduciary -- you can

11 call it fiduciary, you can call it a standard of

12 conduct -- the same obligation not to put your

13 interests ahead of your clients applies, but it

14 is in the broker-dealer model.

15 Now, the investment adviser model and

16 the broker-dealer model are different. An

17 investment adviser model is a portfolio holistic

18 approach. You go to an investment adviser and

19 the advice you're contracting for is for your

20 portfolio. You say, here are my goals. I want

21 to save for retirement, I want you to be darn

22 sure that I don't run out of money. I have some

23 monthly expenses that I'd like to cover. Help me

24 manage a portfolio like that.

25 You go to your broker-dealer, and it's

1 a transaction-based approach. I would like to

2 invest in some stocks, I'd like to invest in some

3 mutual funds for the following. Please make some

4 recommendations. It's not a holistic financial

5 planning model. And you pay -- and it's a pay as

6 you go. You pay a commission versus for an

7 investment adviser you pay a monthly fee. Those

8 are the differences.

9 One of the problems we have had is

10 people don't know which model they're with. And

11 if you don't know which model is which, you can't

12 pick which model is best for you. So let me give

13 you an example of when a broker-dealer model

14 would be best for somebody.

15 Somebody who knows they want to have a

16 few stocks, they mostly want to be in ETFs, and

17 they're a long-term investor. You go to your

18 broker and you say, I'd like to have some stock,

19 ETFs, maybe 50 percent of my portfolio, I'd like

20 to have 30 percent in fixed income, and then I'm

21 going to buy a few stocks and we can talk about

22 those, and I'm not going to trade much. That

23 person is likely going to pay a lot less for that

24 kind of investment service than they would pay

25 for the same type of investment portfolio with an

1 investment adviser.

2 Now, somebody who wants regular

3 monitoring of their account and wants people to

4 trade for them and, you know, basically really

5 rely on the person to manage them, they're going

6 to be better off with an investment adviser in

7 most cases. That's the model. We're trying to

8 help investors understand that knowledge.

9 INVESTOR ONE: And I love that you're going

10 to clear up the fact that brokers can only call

11 themselves certain things. Because my broker on

12 all the paperwork wrote "investment adviser" --

13 CHAIRMAN CLAYTON: Yeah.

14 INVESTOR ONE: -- so I love that you're

15 going to clear up that.

16 CHAIRMAN CLAYTON: What we are

17 hearing -- so a couple things we're hearing loud

18 and clear. We're hearing that loud and clear.

19 INVESTOR TWO: Protection for other

20 people.

21 CHAIRMAN CLAYTON: We're also hearing

22 that, the four page or less, tailored to whether

23 it's a broker-dealer or investment adviser

24 and the types of services they provide. Because

25 some broker-dealers provide more services than

1 others. Some investment advisers -- you know.
 2 Tailored. But having to have the key information in
 3 it is something everybody says is a good idea. We put
 4 out a sample. People say, "It's okay, it's okay."
 5 INVESTOR ONE: Yeah.
 6 CHAIRMAN CLAYTON: It can get better,
 7 but it also can be tailored to the type of
 8 relationship that you have. I firmly believe this
 9 is a big step forward.
 10 INVESTOR ONE: Oh, yeah.
 11 CHAIRMAN CLAYTON: I don't like the
 12 27-page disclosure document.
 13 INVESTOR ONE: Although one thing that
 14 would be great if you added is if it's an
 15 investment adviser and something goes wrong, you
 16 go to the court. If it's a broker and something
 17 goes wrong, you go to FINRA arbitration. If you
 18 want to put full faith and trust in your adviser
 19 or your professional, you choose adviser. If you
 20 just want transactional services like a drive-thru
 21 at McDonald's, you go to a broker.
 22 I think, you know, those things -- I
 23 mean, the biggest shock of my life was someone
 24 stole my money and I can't even sue, you know.
 25 And no one knows that. Nobody believes me that

1 it's true when I tell them.
 2 CHAIRMAN CLAYTON: One thing that we've
 3 been told is that the explanation -- this kind of
 4 discussion that we're having and the explanation
 5 that I just gave, including your remedies where
 6 you can seek to address, is something we should do
 7 a video about.
 8 INVESTOR ONE: Oh, by far.
 9 CHAIRMAN CLAYTON: We the SEC should do
 10 a video just like what I said. I mean, I'd like
 11 your reaction, just like what I said, so people
 12 can see a video. Because reading it can be hard,
 13 but seeing a video can be a lot easier. So that's
 14 what -- I went on a little bit long. Let me take
 15 questions or comments from folks.
 16 INVESTOR TEN: Chairman Clayton and also
 17 the Office, thank you so much for the opportunity to
 18 speak. My -- I'm a founding partner of a local
 19 investment adviser. We have hedge funds as well
 20 as 1940 Act mutual funds, so a lot of my comments
 21 today are kind of from that perspective as a
 22 manager of a mutual fund.
 23 I did note in the open meeting notes
 24 also a component of care, where the broker-dealer is
 25 expected to understand the nature of the

1 investment, as well as if it's suitable for the
 2 client, as well as a series of transactions. I
 3 would offer that as an investment adviser, so in
 4 some cases we are considered to be an outside
 5 solution for them in terms of a mutual fund.
 6 From our perspective they're a third-party in
 7 terms of trying to get to our end adviser.
 8 We could perhaps as an industry be
 9 helpful to allowing the broker-dealers to be more
 10 educated in their product if we could have more
 11 clarity around rules or guidelines in terms of
 12 our ability to actually communicate some of our
 13 best investment thoughts and ideas. Oftentimes
 14 these communications are restricted for kind of
 15 the wealthiest or the qualified investors.
 16 Last night, for example, I was up late
 17 finishing my quarterly and annual commentary for
 18 the investor letters, which are published in
 19 accordance of guidelines. Oftentimes the pieces
 20 of content or the insight I'd like to write is
 21 not allowed to be published because it will not
 22 pass legal or compliance scrubbing.
 23 Again, if -- and especially in light of
 24 the spirit of I think educating retail investors,
 25 giving them the confidence to participate in the

1 power of compounding savings and wealth creation,
 2 I would suggest maybe a constructive step, again,
 3 if we could get some more rules around what we
 4 actually can do to try to be helpful, it will be
 5 just more pieces to, again --
 6 CHAIRMAN CLAYTON: Let me try to explain
 7 to the panel. Tell me if I've got it, and Lourdes
 8 is going to help me here -- actually, I got lots
 9 of help here. But what we are tackling in this
 10 proposal is the standard of conduct that applies.
 11 Again, I'll just say it again, making sure the
 12 investment professional doesn't put their
 13 interests ahead of the clients and better
 14 disclosure around fees and conflicts.
 15 What is being raised here is the level
 16 of discussion around performance and -- I mean,
 17 performance and strategy.
 18 INVESTOR TEN: Yes.
 19 CHAIRMAN CLAYTON: We have rules that
 20 are designed to protect investors that don't allow
 21 people to what I will say is overly puff their
 22 investment services. Some people say that those
 23 rules actually restrict communications and
 24 investor education. We're going to look at that,
 25 but we're not tackling that as part of this. Just

1 to be very thorough, we want to get through this first
2 and then we're going -- then we'll go on. But what we are
3 hearing from these roundtables is that investor
4 education in the country needs to improve. People
5 are -- let's face it. We're much more responsible
6 for saving for our own retirements than we were in
7 the past.

8 INVESTOR TWO: That's right.

9 CHAIRMAN CLAYTON: And if you're going
10 to do that effectively, you have to educate the
11 population on starting early, the fact that --
12 well, turn to my colleagues. Fees, fees, fees,
13 the most effective way to have a better return is
14 to manage your fees. Understand that
15 you shouldn't be paying high fees for low touch
16 products. That's --

17 INVESTOR ONE: That's a great statement. I
18 never heard anybody say it that way.

19 CHAIRMAN CLAYTON: Look, let me give you
20 a piece of advice. If you're investing \$100 a
21 month or \$200 a month, investing \$10,000, a
22 question that your investment professional should
23 be able to ask and answer -- and the good ones can
24 all answer this -- how much of that money is going
25 to work for me.

1 MS. SIETHOFF: And if I can just follow
2 on that. So all of you got this great little
3 document that we put out, and fees is a key part
4 of it that we were trying to get basic information
5 out there about what types of fees you're paying
6 and how it's going to differ if you hire an
7 adviser versus broker. And so one thing I'd love
8 to hear is -- following up on the Chairman's
9 comment -- when you read this, did that do the
10 trick for you, or did you read it and I'd be
11 looking for more, I'd be looking for examples how
12 this would impact me.

13 MS. GONZALEZ: And if I could follow up
14 on what Sarah was saying as well, is if you just
15 look at the first bullet, which is setting the
16 table between a broker and adviser, which is what
17 we've been talking about. If a person just says
18 if you open a brokerage account, you'll pay
19 transaction-based fee, or what we're referring to
20 a commission every time you buy or sell
21 investment. And versus if you open an adviser
22 account, you'll pay an ongoing asset-based fee for
23 services.

24 What do you think of seeing that as the
25 first bullet that you see in the brochure?

1 CHAIRMAN CLAYTON: I think INVESTOR 9 had a
2 comment. Let's go INVESTOR 9, then INVESTOR 8.

3 INVESTOR NINE: I think the key here is to
4 get the individual investor fully educated about
5 how investing works and so they can ask these
6 advisers key questions. And believe me, there's
7 nothing that will snap a guy faster than for the
8 investor to ask a few questions about what he's
9 doing and insisting that he explain it.

10 My only kind of concern about the
11 things I've read is that it seems like it's
12 putting the burden of invest -- of investor
13 education onto the adviser, and there's a world
14 of really good support organizations out there
15 that specialize in investor education.

16 And I'm with Better Investing, which is
17 a nonprofit organization whose mission is
18 investor education. And there's the American
19 Association of Independent Investors out there
20 that do the same thing. There's online sources
21 of unbelievable amount of information, like
22 Morningstar. You can get it free through your
23 library. There's Value Line. There's all kinds
24 of resources out there. And I'd like to say see
25 the SEC mention some of these organizations and

1 encourage the investors to get an education so
2 that they can ask those key questions of their
3 adviser.

4 MS. SIETHOFF: Yeah, so I think we would
5 have trouble picking out particular organizations,
6 but one fact that we did have links to
7 investor.gov here, where our Office of Investor
8 Education and Advocacy, which really does focus a
9 lot on investor education, trying to highlight
10 that.

11 INVESTOR NINE: Yeah, I went there, that's
12 good.

13 MS. SIETHOFF: Did you think that sort
14 of thing can be highlighted more?

15 INVESTOR NINE: More, yes. More.

16 MS. SIETHOFF: And the questions -- you
17 said one of the value is the questions.

18 INVESTOR NINE: It's one of the values is
19 the --

20 MS. SIETHOFF: What do you think of the
21 questions that were in here?

22 INVESTOR NINE: There were good questions,
23 but they're depending upon the adviser to be their
24 teacher and the adviser may have, you know --

25 CHAIRMAN CLAYTON: That's one thing

1 we're hearing from the industry is we're putting a
 2 lot of educational burden on them.
 3 INVESTOR NINE: On them.
 4 INVESTOR FIVE: They want the money.
 5 CHAIRMAN CLAYTON: That's the question.
 6 INVESTOR FIVE: So put out the education.
 7 CHAIRMAN CLAYTON: I like your idea. I said
 8 I'd go to INVESTOR 8. We'll go INVESTOR 8, then INVESTOR 2.
 9 INVESTOR EIGHT: So Chairman, we all think
 10 that -- I think the fiduciary statement here is a
 11 good thing. But I think -- I don't know what
 12 you've been encountering in the other roundtables,
 13 but this education thing, I think is so key,
 14 because before you even look at this fiduciary
 15 thing, I think you need to have some kind of basic
 16 understanding of financial investing, the holistic
 17 approach.
 18 And since the burden is being put on us
 19 extensively now, especially for some of our
 20 younger investors here, I think -- I don't know
 21 what you heard at the other roundtables, but --
 22 CHAIRMAN CLAYTON: We've heard this loud
 23 and clear.
 24 INVESTOR EIGHT: -- the education is just
 25 a key component before you even get to this. If I'm

1 fee-based or transaction-based, what does
 2 that mean? Do I need to invest in some mutual
 3 funds, or will stocks get me a better return? Or do
 4 I need bonds? You know, all those things we've
 5 heard. But then --
 6 CHAIRMAN CLAYTON: So we -- I just want
 7 to say, we've heard that everywhere we've gone. I
 8 do some AARP telephone town halls and answer
 9 questions from -- but what I say to the AARP
 10 members at the beginning of that is please tell
 11 your grandchildren about investing. Please get
 12 them started, just to understand that if you start
 13 at age 25, what a difference it makes versus
 14 starting at age 45 versus starting at age 65, but
 15 I'm sorry, INVESTOR 8. I cut you off.
 16 INVESTOR EIGHT: And, you know, based on
 17 my investment history over the last -- since the
 18 mid '80s, I remember the first time I came across
 19 something that I was not aware of was when I read
 20 my tax return and I was buying a house and there
 21 was something about investing \$2,000 a year,
 22 getting something back on my income taxes --
 23 CHAIRMAN CLAYTON: A credit.
 24 INVESTOR EIGHT: -- from the IRA. And I'm
 25 going, okay, so if I did that, what do I do with

1 that \$2,000, or where do I put it? And, you know,
 2 this goes way back. And over the years I've dealt
 3 with broker-dealers, but now I'm with an
 4 investment adviser, the more holistic reports, and
 5 I think it is really what most of us need.
 6 But anyway, I had a question. I
 7 wanted to ask this question: I was doing a
 8 little research here, and reading that the Fifth
 9 Circuit Court in March of this year voted two to
 10 one to disband the fiduciary ruling. I'm
 11 confused about that. Could you --
 12 CHAIRMAN CLAYTON: Yeah, let me explain
 13 that.
 14 INVESTOR EIGHT: -- expand on that and
 15 explain to everybody here what I read? It seems
 16 like what you're doing here is counter to what --
 17 CHAIRMAN CLAYTON: Well, no --
 18 INVESTOR EIGHT: I don't understand.
 19 CHAIRMAN CLAYTON: Let me explain. This
 20 space -- you probably know this pretty well. This
 21 space has a lot of regulators, so --
 22 INVESTOR ELEVEN: You got that right.
 23 CHAIRMAN CLAYTON: -- no less than five,
 24 right. So your relationship with your
 25 investment adviser -- like, let's say -- I'm just going to

1 say -- I don't know if you do or if you don't, but
 2 if you have an annuity in your portfolio -- you
 3 might. So if you have an annuity, you probably
 4 have an insurance regulator, a state insurance
 5 regulator, a state securities regulator, FINRA,
 6 the SEC, and Department of Labor, all have
 7 jurisdiction over that relationship. We haven't
 8 done the best job of coordinating.
 9 INVESTOR EIGHT: Or explaining.
 10 CHAIRMAN CLAYTON: Or explaining. So
 11 what the Department of Labor did was they said,
 12 we're going to apply a new fiduciary standard to
 13 broker-dealers in the retirement space, but not all
 14 of the investment space. I'm not going to go over
 15 the history of why it wasn't done in parallel with
 16 the SEC or why it wasn't -- when I got to the SEC,
 17 I said, look, we need to act as a focal point,
 18 because of all those regulators, we probably touch
 19 the most relationships. There's -- it's our job.
 20 So we started down this road saying,
 21 can we pull together a standard for
 22 broker-dealers and investment advisers that will
 23 act as a focal point and harmonize. And we did
 24 look at what the Department of Labor did. We
 25 were very much informed by that. Well, it turns

1 out that the Fifth Circuit said what the
 2 Department of Labor did was unconstitutional.
 3 They exceeded their authority. So that rule is
 4 gone. But that didn't stop us. We're just going
 5 to keep going. That's -- that's the story.
 6 INVESTOR EIGHT: Who has the final word
 7 then?
 8 INVESTOR ONE: The Supreme Court maybe.
 9 CHAIRMAN CLAYTON: Well, unless I do
 10 something unconstitutional, we do. But the
 11 idea -- no, the idea is this is a serious -- this
 12 is a serious part of this. The idea is investors
 13 will be better -- if we have a standard that the
 14 other regulators think is the right way to go,
 15 that it fulfills their regulatory needs, and we can
 16 gravitate towards a single standard, that will
 17 save people a lot of money, because compliance
 18 costs will go down. And it will pass on to
 19 investors, and it will reduce confusion.
 20 So that's -- that's another objective
 21 of what we're doing. And we've consulted with the
 22 Department of Labor and state securities
 23 regulators to try and say, you know, is this
 24 something we can all live with as a uniform
 25 approach.

1 INVESTOR EIGHT: So when I was reading
 2 some background information, I sense just the
 3 sincerity, the passion, to look out for what we
 4 would call a Main Street investor. So that's what
 5 I took from what I read about you, so I'm hoping
 6 that can be accomplished, yeah.
 7 CHAIRMAN CLAYTON: We'll try. We'll
 8 try. Let me go to INVESTOR 2.
 9 INVESTOR TWO: I just wanted to address
 10 some pieces around the importance and balance of
 11 education as well as just about the standards, how
 12 they're enforced as a team. My husband and I
 13 are a couple entering retirement, and I think
 14 we're going to actually be able to retire. And in
 15 the words of somebody, we are Mr. and Mrs. 401(k).
 16 We both spent our lives working; I
 17 always worked in health care nonprofits, my
 18 husband worked in usually small technology firms.
 19 No pensions, no defined benefit pensions. We
 20 knew Social Security wasn't going to be the
 21 answer, so very, very early on we did that.
 22 We've been savers in 401(k)s and 403(b)s, and
 23 we've done a good job of saving.
 24 But now we realize we have to do
 25 something to make sure that our savings is intact

1 enough that it's going to take us through the
 2 rest of our lives, and I think there's lots and
 3 lots of other people out there who are in the
 4 same position.
 5 When you talk about education, I think
 6 it's really important, and I do appreciate more
 7 clarification of terms and rules and requirements
 8 and standards, but I also think there's kind of a
 9 line that we not go to let the buyer beware,
 10 because I have a master's degree in my field, my
 11 husband has a master's degree in his field and
 12 I'm not a stupid person, but sometimes when I ask
 13 my investment adviser questions, after a while I
 14 can feel my eyes are wanting to roll back in my
 15 head and glaze over.
 16 And that's, I think -- I think you
 17 have -- you know, if you are good in that kind of
 18 a field and you have an interest in it, that's
 19 one thing, but there's a lot of us, and I will
 20 admit I am one of them, who -- that kind of
 21 reading can make good bedtime reading for me, and
 22 it works better than Ambien, and I'm sorry to say
 23 that.
 24 But so, you know, I think there is
 25 something here about consumer protection that's

1 really important. I guess in my field I was
 2 required to be licensed. My title had title
 3 protection. Other professionals who did similar
 4 things as I were not allowed to call themselves
 5 what I call myself, and I wonder if it would help
 6 if there could be some title protection for
 7 investment advisers so that the standards are
 8 very, very clear, and in order to -- to have that
 9 designation, you know, there's very publicly
 10 recognized hoops and things that they go through.
 11 And then the other side of that is what
 12 does the regulatory enforcement look like and
 13 what does the team do in there besides lawsuits. I
 14 guess that's my question. What is title
 15 protection?
 16 CHAIRMAN CLAYTON: Does someone else
 17 want to do titling? I've been talking a lot.
 18 MS. SIETHOFF: I mean, on titling, I
 19 think on your point that only certain people get to
 20 call themselves an adviser. That is part of the
 21 proposal. To call themselves an adviser, investment
 22 adviser or just anything with the word adviser --
 23 so financial advisor, wealth advisor, any flavor
 24 of an adviser -- they need to be registered as an
 25 adviser.

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1 INVESTOR TWO: But are all of those
 2 fiduciaries?
 3 MS. SIETHOFF: All investment advisers
 4 are fiduciaries.
 5 INVESTOR TWO: Investment advisers?
 6 INVESTOR ONE: Any word adviser, yeah.
 7 INVESTOR TWO: Adviser is fiduciary?
 8 MS. SIETHOFF: And you can't call
 9 yourself an adviser unless you're an investment
 10 adviser, so that would tie that together.
 11 INVESTOR THIRTEEN: You have to have a 63.
 12 MS. SIETHOFF: And advisers normally are
 13 required under state requirements to go through
 14 certain testing. That's a state -- normally a
 15 state requirement. There are no federal
 16 requirements, and brokers have different testing.
 17 Series 64, 65 advisers and 67 --
 18 CHAIRMAN CLAYTON: Just to be clear, our
 19 proposal is if you're going to use the term
 20 "adviser", you have to be registered as a
 21 fiduciary.
 22 MS. SIETHOFF: As an investment adviser
 23 and all investment advisers --
 24 INVESTOR TWO: Okay. So there is a
 25 registration; that is the regulatory part?

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1 MS. SIETHOFF: Yes.
 2 INVESTOR THIRTEEN: That's what I did as a
 3 living for 30 years. I was a registered
 4 investment adviser. I had series 7, series 6,
 5 series 24, 63, 65, 57, bunch of them.
 6 INVESTOR TWO: Good to know, INVESTOR 13.
 7 INVESTOR THIRTEEN: I'm retired. I'm
 8 retired. It's all past -- I gave my practice up
 9 three years ago, and I'm very glad I did by the
 10 way.
 11 What -- I see a paradox here, because I
 12 agree with most everything you've said. I think
 13 one of the -- one of the most important assets we
 14 had in our firm, which is we had a firm here in
 15 Denver, we had about 100 good clients. We
 16 managed 25 or more million of investments, but
 17 one of the assets that we had was the fact that
 18 we considered ourselves fiduciaries, and we told
 19 everybody that we worked with that that's what we
 20 did and that their interest came ahead of ours
 21 and we exemplified that.
 22 I see a paradox here, because I see
 23 that what -- the rules are fine. I think it's
 24 very important that anybody dealing with the
 25 public should consider themselves a fiduciary;

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1 they should put the interest of the client ahead
 2 of their own. I know there were times that I
 3 told a client I would not make that investment
 4 for them because I knew it was not in their best
 5 interest, and that client walked away to another
 6 adviser. That didn't happen very often. I tried
 7 not to let that happen.
 8 But -- and the key area that we've been
 9 talking about is one of education and that is
 10 extremely important, but you cannot put that
 11 whole burden on the adviser. We're at a point
 12 now when I was finally giving up my practice, I
 13 had an adviser that bought my practice that was
 14 about twice my size. He would not -- he would
 15 not entertain a client that had less than
 16 \$150,000 to invest.
 17 I can tell you other client -- other
 18 colleagues of mine in the Denver area that would
 19 not -- would not accept a new client that had
 20 less than a quarter of a million dollars, and
 21 there's a neighbor of mine who is the adviser in
 22 a firm that won't accept clients that have less
 23 than 5 million to invest.
 24 And that's the direction that this
 25 thing is going. We're seeing ourselves getting

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1 to the point where the very best talent out there
 2 for advising the public is restricting the number
 3 of people they're going to advise, especially
 4 since we're going with most of them on a
 5 fee-based approach. And if you're on a fee-based
 6 approach, you don't want a client that's going to
 7 invest \$10,000, you don't want a client that's
 8 going to put \$100 a month; you can't make a
 9 living with them. Your acquisition cost will
 10 kill you.
 11 CHAIRMAN CLAYTON: This is one of my big
 12 concerns is -- and going back to the Department of
 13 Labor rule, there were firms -- I want to go back
 14 to two things. There were firms implementing the
 15 Department of Labor rule, and as a result, they
 16 were raising their minimums.
 17 INVESTOR THIRTEEN: Yeah. Oh, boy.
 18 CHAIRMAN CLAYTON: And that's a problem,
 19 because you know, the people who often need
 20 investment advice most are the people who are
 21 starting out and are below --
 22 INVESTOR THIRTEEN: Absolutely.
 23 CHAIRMAN CLAYTON: -- 200,000, much yet
 24 5 million. And so we can't -- to your point, we
 25 can't make -- we can't make every investment

1 professional have to provide a class for every
2 client in investing. I'm hoping that what we're
3 requiring them to do, which is give them a class
4 in how they get compensated and be transparent
5 about that, is something that can be done
6 relatively inexpensively and have a big benefit.

7 It's kind of like starting with you
8 have to have -- you have to have this fiduciary
9 obligation, and you as my client need to know how
10 I'm getting paid and that I've gone through
11 procedures to make sure that what I'm
12 recommending is appropriate for you. We would
13 have thought that was already all there.
14 Probably the way you operated, but we need to do
15 that.

16 I want to go back to something that
17 INVESTOR 2 said, which is something we're really
18 trying to address. A lot of times you'll have
19 your 401(k), your 403(b), and then you come to
20 the end of your working life. And in that 401(k)
21 or 403(b), there's already a fiduciary there
22 who's kind of selecting the portfolio of
23 investments that are available, you know, you can
24 choose from these. And then you're done and it
25 gets into a self-directed IRA.

1 INVESTOR TWO: Correct.
2 CHAIRMAN CLAYTON: And you go, that is a
3 point where Secretary Acosta at the Department of
4 Labor has said that was key for us at Labor when
5 they wrote their rule, and we're looking at it --
6 I don't know if you guys want to comment, but that
7 is a point where we see a lot of problems, and we
8 want to make sure that that is addressed. So that
9 when you roll over your 401(k) and you choose an
10 investment adviser or a broker-dealer, that --

11 INVESTOR TWO: It's like a whole new
12 world.

13 CHAIRMAN CLAYTON: It's a whole new
14 world.

15 INVESTOR TWO: Yeah.

16 MS. GONZALEZ: And our examiners have
17 focused on that, the point of the rollover where
18 the conversation is going on. They've spoken
19 publicly about it and made it an exam priority in
20 the last few years; we've been involved in
21 discussions with the examiners about that. So it
22 is an important point for us as well as the
23 Department of Labor.

24 And if I could just make one point.
25 We've spoken a little bit about Enforcement.

1 I -- I have sat probably through every
2 suitability case in the last 15 years involving
3 broker-dealers with our Enforcement Division, and
4 I know the strengths of our capability of
5 bringing these cases and where the weaknesses
6 are. I believe that these proposals will improve
7 our Enforcement capabilities. We'll be able to
8 bring better cases or improve the toolbox that we
9 have.

10 That was part of what we were aiming
11 for by putting it in the SEC rulebook, by not
12 allowing disclosure to cure a recommendation that
13 is otherwise not in your best interest by
14 requiring policies and procedures. So we think
15 we're making a better path for Enforcement, a
16 clearer path for Enforcement, as well as a
17 clearer path for compliance professionals to do
18 the right thing.

19 CHAIRMAN CLAYTON: Yeah. Do you have
20 a -- INVESTOR 11?

21 INVESTOR ELEVEN: Yeah.

22 CHAIRMAN CLAYTON: And then I'll go to
23 INVESTOR 12 and -- yeah, okay.

24 INVESTOR ELEVEN: So thank you, Chairman. I
25 appreciate the opportunity to ask a couple of

1 questions. So just to clarify then, the best
2 interest rule would cover the clients' total
3 portfolio and all of their different types of
4 accounts; that is their personal portfolio, their
5 qualified plans such as 401(k), their -- their
6 nonqualified retirement assets, right, such as
7 IRAs --

8 CHAIRMAN CLAYTON: If they're at the
9 broker-dealer.

10 INVESTOR ELEVEN: -- IRA rollovers -- if
11 they're at a broker-dealer. Similarly, if they're
12 with an investment adviser, it would cover all of
13 those same registrations, correct?

14 MS. SIETHOFF: Yeah.

15 MS. GONZALEZ: The regulation best
16 interest is about the broker-dealer account
17 relationship that broker-dealer has with a
18 retail customer investing -- the way it's been
19 proposed is for personal or household purposes,
20 and there's a discussion about whether that should
21 actually just say retail investor as opposed to a
22 qualifier. There's a history to why that
23 qualifier is there. It's really about the
24 broker-dealer relationship.

25 Having said that, my colleagues in IM,

1 Investment Management, who deal with investment
2 advisers have also proposed -- the Commission has
3 proposed a rule to improve the quality and
4 clarify the quality of advice that investment
5 advisers provide, so the two things will go hand
6 in hand.

7 MS. SIETHOFF: Yeah, so we proposed --
8 the fiduciary duty of investment advisers has been
9 around for a long time --

10 INVESTOR ELEVEN: Right.

11 MS. SIETHOFF: -- but the Commission has
12 never really set forth one statement of what they
13 believe your fiduciary duty requires, so that was
14 something we put out at the same time. That does
15 things like clarify for rollovers, that of course
16 is covered by your fiduciary duty if you're an
17 adviser advising on that. And it clarifies that
18 diligence you need to do covers holistically what
19 the investment adviser is advising on.

20 Of course if they manage a certain
21 portion separately -- I think this is true across
22 the board, and I mean, a client can always say I
23 want to do these myself, and I'm not -- and
24 that's outside of where I'm seeking advice, and I
25 want advice from you on all of this. So, you

1 know, it covers what the client agrees it will
2 cover.

3 CHAIRMAN CLAYTON: But to INVESTOR 11's
4 question, what we want to do is have it cover
5 those accounts at the broker-dealer so that there
6 can be regulatory harmony --

7 INVESTOR ELEVEN: Yep.

8 CHAIRMAN CLAYTON: -- and it will --
9 hopefully the Department of Labor will say, yes,
10 that's -- we're going to follow the SEC's lead.

11 INVESTOR ELEVEN: Right. And really, you
12 know, unify the experience.

13 CHAIRMAN CLAYTON: And unify, yeah.

14 MS. SIETHOFF: Yeah, the heart of the
15 proposal is meant to be at the time advice is
16 given, the standard is the same, whether you're in
17 a brokerage or an advisory account. For a brokerage
18 it's transactional. So once they give the
19 recommendation, it's over until they give another
20 one. Whereas advisory is ongoing, so the duration
21 of that duty, if you will, is longer. But we
22 intend that when they're giving advice, they're
23 held to the exact same best interest standard.

24 INVESTOR ELEVEN: Now, let's say I'm a
25 registered investment adviser and I'm advising a

1 401(k) plan sponsor on all the assets in their
2 401(k) plan. And I'm also advising the plan
3 participants. Do I fall under the best interest
4 rule for --

5 CHAIRMAN CLAYTON: I think if you're an
6 investment --

7 MS. SIETHOFF: If you're investment
8 adviser, or if you're a fiduciary --

9 CHAIRMAN CLAYTON: If you're an
10 investment adviser, you have the same fiduciary duty.

11 INVESTOR ELEVEN: The same.

12 CHAIRMAN CLAYTON: Yeah.

13 INVESTOR ELEVEN: Yeah. Okay.

14 CHAIRMAN CLAYTON: I think INVESTOR 12 was
15 next and then INVESTOR 6.

16 INVESTOR TWELVE: Thank you, Mr. Chairman. I
17 wanted to follow up on INVESTOR 9's comments. Those of
18 us here from the Rocky Mountain Chapter of Better
19 Investing, INVESTOR 5 and [Non-speaking investor] and
20 and [Non-speaking investor] and INVESTOR 9 and
21 myself, we're really on the front lines of the
22 education that everybody's talking about.

23 We have partnered with a local Federal
24 NC3 organization called the Colorado Free
25 University, and we do a series of classes for

1 them in the spring -- well, actually in January
2 and February and also in the fall, repeat the
3 same classes. And the first ones are basically
4 an introduction to investing.

5 So we see everybody. That's what we're
6 talking about here. We see the people who are
7 rolling over their 401(k)s, or they are looking
8 for understanding of what's going on in all these
9 things. I mean, we have to start with what is a
10 stock? I mean, that's how basic we're talking
11 about the education having to be.

12 So, you know, I don't know how we
13 integrate or partner with the SEC on this, but I
14 mean, it's not just, you know, one of these
15 pieces of paper, somebody comes in and says,
16 okay, we are held to a fiduciary standard. Well,
17 what is that? I mean, there's -- and I have
18 specific comments on a lot of this stuff that I'm
19 happy to go through with you, whoever, but, you
20 know, it's really much more basic than I think
21 we're addressing here is the problem.

22 And then shifting over then from my
23 educational role to my lawyer hat, I'm an SEC
24 alum, so years ago I spent some -- I spent about
25 five years in the brokerage business as a general

1 counsel and I practiced securities law and about
2 20 years ago, I guess, I started specializing in
3 investment fraud. So I hear a lot of stories and
4 have represented a lot of people and have a
5 pretty good track record on all that, but I have
6 two concerns.

7 First of all, you know, how many of us
8 when we go on to a website and there's a privacy
9 disclosure and you have to check the box that I
10 agree to all these conditions; how many people
11 read that? Nobody, right?

12 CHAIRMAN CLAYTON: Nobody.

13 INVESTOR TWELVE: Right. So why do you think
14 that this is going to be any different?

15 CHAIRMAN CLAYTON: Well, let me say
16 this. I hope it's a step in the right direction.

17 INVESTOR TWELVE: Agreed. But I just don't
18 know, you know, unless there's something --

19 CHAIRMAN CLAYTON: Right now it's -- I
20 mean, you go online and you look at -- I've done
21 this. I've looked at the various agreements you
22 enter with, and they go on forever. You know. And
23 what we're trying to do is enforce it so -- I mean,
24 on this, you know, the key stuff -- is right up
25 front. How are you getting paid?

1 And the fact that you guys go
2 through -- I always say 27 pages, because that's
3 kind of on all the forms -- the fact that you have
4 to go through 27 pages to find out how somebody's
5 getting paid, that we can fix. And I want to fix
6 that.

7 INVESTOR TWELVE: Yeah. No, I agree. I think
8 it's a good start. Again, I do have specific
9 comments on it. But just putting -- again, putting
10 on my hat as an investment fraud lawyer, if I'm
11 representing a client who signed one of these
12 things, I'm concerned that this is going to be a
13 defense document.

14 INVESTOR THIRTEEN: What did she say?

15 CHAIRMAN CLAYTON: She's concerned this
16 is a defense document.

17 INVESTOR TWELVE: In other words, if the
18 client has signed it, saying "I didn't know all this
19 stuff" --

20 CHAIRMAN CLAYTON: INVESTOR 1 was talking
21 about the defense documents we have today. I can
22 tell you that we sat with Enforcement, and we sat
23 with Inspections, and what we want this to be is a
24 clarity of relationship document, not a -- not a,
25 you know, caveat document.

1 I mean, let's be clear. What we want
2 is if you're -- if you don't tell us how you're
3 getting paid in this document and you're getting
4 paid some other way, that's a problem. That's
5 not a defense document; that is an offense
6 document, right? Right here you said I'm getting
7 a commission and I'm not getting paid any other
8 way and somebody's kicking money back to you, I
9 think that -- I think that is pretty powerful
10 evidence.

11 INVESTOR TWELVE: You know, on cases I've
12 handled, that's not really been the problem. I
13 mean, I think that back in the '80s that when
14 there were sponsors or the stock of the day that
15 were being pushed by brokers, that was a problem.
16 But today, that's not necessarily the problems
17 that we're seeing.

18 But, you know, the other thing I have
19 to say is if you're going to have a dishonest
20 broker or a dishonest adviser, in my experience
21 there's not a lot you can do about it.

22 MS. SIETHOFF: And INVESTOR 12, if I can add
23 one thing, though, I think there is a point about
24 your -- they're going to point to this and say I
25 disclosed it, that we are trying to address

1 through this rulemaking. So both on the
2 regulation best interest where that care
3 obligation, that is there regardless of what they
4 disclose. They have to act in the best interest, and
5 disclosure's not a defense.

6 INVESTOR TWELVE: Right.

7 MS. SIETHOFF: And similarly on the
8 adviser side, I know we've definitely heard over
9 the years, I disclosed it, and you can disclose
10 away your fiduciary duty, and that's one of the
11 things we tried to clarify in the fiduciary
12 interpretation we put out is again, you have a
13 separate obligation to act in the best interest.
14 You do have to disclose your conflicts, but that
15 is not a cure. They can't point and say I
16 disclosed on page 57 I had this conflict and so
17 you can't bring a case. That's meant to clarify
18 you have a flat obligation.

19 INVESTOR TWELVE: No, I understand. It's just
20 that if somebody is going to say, well, I wasn't
21 told this or I didn't understand it, then I think
22 it's a difficult -- it makes it harder to
23 overcome.

24 CHAIRMAN CLAYTON: One of the reasons
25 for the page limit, though, is it's hard to bury

1 stuff --

2 INVESTOR TWELVE: Yeah.

3 CHAIRMAN CLAYTON: -- in a shorter
4 document.

5 INVESTOR FIVE: But I think you're
6 underestimating the lack of knowledge that's out
7 there. I mean, you have no concept of how little
8 people know.

9 INVESTOR TWO: Sometimes you have to
10 explain --

11 INVESTOR FIVE: You want to shake them
12 and -- well, I almost have -- and say, it's money,
13 it's real money, and it's your money. You got to
14 be careful.

15 INVESTOR TWELVE: Come to our introduction
16 class. It's open invitation.

17 CHAIRMAN CLAYTON: This is something
18 that I actually do know a little bit about,
19 because I've helped people, and I can't say
20 anything other than I agree with you completely.

21 One of the things that I want to do out
22 of this is say, hey, we went to these roundtables
23 and here are the things we heard that affect what
24 we're doing. Here are the things we heard that
25 are much bigger, which there is a -- there's a

1 need for investor education in a country where
2 we've put such a significant responsibility on
3 the individual to take care of their retirement.
4 Now, I'm probably going to make a very simple
5 statement like that. It's a little bit out of my
6 lane, but I think it needs to be done.

7 INVESTOR TWELVE: Well, and if I could follow
8 that up on a different thought, but in May I
9 taught a class at a local high school on student
10 financial planning. And these kids, I mean, some
11 of them had summer jobs and some of them were
12 savvy, but a lot of them, you know, didn't
13 understand -- and were scared of money -- what to
14 do. And actually, there's an article in today's
15 USA Today about teaching children about money,
16 and it's about savings by 12.

17 So I mean, I know this is not part of
18 this, but you know, as part of your initiatives,
19 I mean, if you could start trying to get the word
20 out that people need to start talking to their
21 kids about saving and what that means.

22 CHAIRMAN CLAYTON: All right. Okay.
23 Let me go here, and I know we had some down here.

24 INVESTOR SIX: So I have a question and
25 then sort of an observation. So my question is,

1 you know, where you talk about the term
2 "fiduciary" and then you're talking about "best
3 interest", and we're using two different terms for
4 what I'm hearing you guys say is very similar, if
5 not identical concepts.

6 And so it's kind of a two-fold
7 question. First is what is the difference, if
8 there is, and second is, why use two different
9 terms?

10 Because I find this industry is just
11 bombarded with these terms, and I think that's
12 part of the problem with investors is if there
13 was just one terminology that people can just
14 rely on and this is it, it would make things a
15 lot simpler versus, you know, having to be a
16 compliance expert or a regulator or -- and I hate
17 to say even people in the industry don't even
18 know the terms.

19 And that sort of leads to my
20 observation about education. So I'm in
21 compliance.

22 I'm part of the mass unloved. And
23 I -- I find that even in conversing with people
24 in the industry who are investment advisers -- I
25 spoke to an individual just the other day who has

1 over a million followers, he's very well-known,
2 has his own TV show, and I was helping him sort
3 of find a compliance consultant. And he made an
4 observation to me that I felt very -- I thought
5 was very odd. I had said, so would you ever want
6 to start a private fund? And he goes no, no, we
7 would never do that, we're a fee-only adviser.
8 It wouldn't be in our fiduciary standard. And I
9 said -- exactly. That's the face I made on the
10 other end of the phone call. And I think that's
11 the problem, right? The -- there's so much in
12 the investing space --

13 CHAIRMAN CLAYTON: Well, this is what's
14 happened. People have confused the model, the
15 relationship model with the term, and what we're
16 trying to do is clarify that there is a different
17 type of relationship with a financial advisor and
18 a broker-dealer, and one of our clear objectives
19 is to make sure people understand that
20 distinction, that they're compensated differently
21 and that the role is different.

22 And that's why -- that's why we could
23 have called this a fiduciary duty for
24 broker-dealer. We could have called it
25 broker-dealer fiduciary duty and said it's the

1 same as investment adviser fiduciary duty,
2 because it's the same words. But as Sarah said,
3 it's not the same relationship, so it doesn't
4 have the same effect. And we -- and we need to
5 make that clear. It has not been clear.

6 And to add to that, all these other
7 regulators with their own views, that's -- but we
8 need to make that -- and that's what we're trying
9 to do. We're going to make a video. We're going
10 to have a disclosure. We're going to pick terms
11 for it. You're not going to be able to call
12 yourself an adviser if you're a broker-dealer,
13 unless you're acting as an adviser. You know,
14 we're going to make it clear. We're going to try
15 to bring clarity to this, because it's --
16 obviously it needs it.

17 INVESTOR SIX: Yeah, and I guess like, to
18 my observation point about the education, I didn't
19 get to touch on it, but I think the story that I
20 told about the investment adviser who thought
21 having a private fund would somehow make him no
22 longer a fiduciary, I think that when you push
23 education onto the investment adviser, you risk --
24 especially when I think about the way as an
25 investment relationship develops is you go, in

1 right, and you say, hey, tell me more about your
2 firm. And they sit down and they might talk you
3 through some of their Investment Management
4 agreements, they might even talk you through the
5 CRS Form, but I know like when I even sign my
6 mortgage, the guy was so unprofessional. He just
7 kind of skated through the terms, and when I asked
8 him to identify, he told me completely incorrect
9 things.

10 And it was only because I knew better
11 that I knew it was incorrect, but these are people
12 who know nothing, and they don't understand. And
13 if the first line of defense is merely a document
14 or relying on someone to, you know, to do right, I
15 think --

16 CHAIRMAN CLAYTON: So another general
17 theme that people should understand is if you're
18 not dealing with a registered broker-dealer or a
19 registered investment adviser, the likelihood that
20 you are at risk goes up astronomically. Another
21 general theme that we are trying to get out there.

22 The cases -- we do over 500 cases a
23 year, you know, of bad actors. The likelihood
24 that somebody is a bad actor when they're not
25 registered just goes way up and the behavior is

1 bad.

2 But also going to remedies. You know,
3 what good -- to INVESTOR 12's point, what good is a
4 standard if somebody's just going to rip you off.
5 One of the things that we're asking about is how
6 much capital do people have. If you do get
7 ripped off, are there any assets there to go
8 after. It's an -- it should be an important
9 consideration for somebody in selecting an
10 investment adviser.

11 INVESTOR ONE: That's huge. REDACTED
12 had like 300,000, and they only had enough
13 insurance to pay their defense costs. And they do
14 that on purpose, because if you have high -- you
15 know, so then most of the contingency attorneys
16 wouldn't take the cases, because there's no
17 insurance to pay.

18 CHAIRMAN CLAYTON: Yeah. INVESTOR 3, I
19 know you wanted to go.

20 INVESTOR THREE: Yeah, thank you. I feel like
21 I'm speaking as a sandwich person, even though I'm
22 in my late 60s.

23 My older sister who -- I'm the
24 only one in my family who went to college and that
25 doesn't qualify me for financial investment. I

1 was in biomedical sciences, so -- and -- and my
2 sister's still working, she's pushing 70. She's
3 been a hairdresser, it's been hard to save, she
4 didn't really have any retirement savings until my
5 dad died and we sold the farm and she was able to
6 have some money.

7 And the reason she's still
8 working is because she can put away part of her
9 Social Security now to add to her financial --
10 meager financial security.

11 My daughter works in the National Park
12 Service, at least for now, until we destroy our
13 parks, but she's pushing 40. She has money to
14 invest, but to INVESTOR 13's earlier point, it's really
15 hard to find anyone, other than maybe a
16 brokerage, that would take her money, and she
17 doesn't want to do that. She doesn't trust them.

18 My experience over some 40 years has
19 been that I had two firms that were good and it
20 turns out I learned too late in life that they
21 were advisory firms, and three that absolutely
22 weren't.

23 So my impression of a fiduciary
24 relationship is number one, the definition's
25 fuzzy.

1 Number two, firms will go to the bare
2 minimum to meet that relationship. So if you
3 come in and say, I'm saving up this money for my
4 retirement, well, they'll say to you, is it
5 sufficient to you to earn 5 percent a year or
6 6 percent a year or just trending with the
7 market, and if you say yes, that's all they're
8 going to give you, if you're lucky.

9 The last firm I fired it was because I
10 had supposedly a vanilla account that would get
11 me that 5 percent, and it kept losing it as the
12 market was coming back up. And when I finally
13 confronted them, it's like, well, we're not paid
14 to manage your account. Sell your house and go
15 back to work; you'll be fine. So of course I
16 changed firms.

17 But you shouldn't have to have that
18 experience as a senior, you know, number one, and
19 so, you know, the educational folks that are here
20 today, I never heard of them before. As a
21 retiree, I'd have time to come learn from you,
22 but I was working 80 to 100 hours a week when I
23 was working, and there is no time to go to a
24 class.

25 And my daughter isn't going to have time to

1 come to a class.

2 So please, put something on social
3 media. If they can find on YouTube, they will
4 look.

5 And right now, I mean, you know, she's
6 trying to hold onto that money, but where is she
7 going to invest it to INVESTOR 13's point. You know,
8 we've tried to pass Colorado Secure Savings here.
9 She has a lot more than that minimum and can't
10 put it in.

11 But I guess as a question to you, what
12 are you going to do to really describe this
13 fiduciary relationship and keep it out of the
14 basement possibility. I look at a holistic
15 approach as it includes your healthcare costs, it
16 includes long-term care savings. Those may be
17 what you're paying for out of your investments.
18 I've had one adviser in over 40 years talk to me
19 about that, and it's because I brought it up.

20 And right now even with all I've done,
21 given the money I lost at brokerage firms is I
22 only have \$100,000 to meet medical costs in the
23 future. So if they take away my Medicare and
24 they cut my Social Security, I'm homeless, I'm
25 done. And what am I going to do with all that

1 savings.

2 So please protect it. I thank you for
3 holding these types of meetings so that we can,
4 you know, ask our questions and --

5 CHAIRMAN CLAYTON: No, and look, I am
6 going to put out a summary of the -- of these
7 meetings, and it's not going to include -- it's
8 going to include more than just this rule. It's
9 going to include things like education, things
10 like the importance of a baseline of Medicare and
11 Social Security, that this is what we think.

12 INVESTOR THREE: And just one question to
13 clarify, my daughter being a U.S. government
14 service employee. I know she has a 401(k) through
15 her agency.

16 Are they going to be held to the same
17 standards you're talking about in this proposal,
18 the advisers that are within the government
19 agencies?

20 CHAIRMAN CLAYTON: I'm going to -- my
21 lawyers can correct me here if I'm wrong, but they
22 are already held to the investment advisers' standard
23 and are as part of the 401(k). That's why --

24 INVESTOR THREE: Okay. That would be good for
25 her to know.

1 CHAIRMAN CLAYTON: That's why one of the
2 key things is, though, when people retire and
3 change accounts, things can change. And we -- we
4 really want to cover that. I know INVESTOR 4 has a
5 question and INVESTOR 7 has a question.

6 INVESTOR FOUR: Go ahead, INVESTOR 7.

7 INVESTOR SEVEN: I'd like to speak to
8 INVESTOR 13's point, and given what he observed in his
9 30 years as a financial advisor, that the financial
10 advisers, and I assume the broker-dealers, too,
11 can limit their clientele by the amount of
12 investment. So how do those who have small
13 investments actually get the best investment
14 advice, aside from going out and educating
15 themselves?

16 But like INVESTOR 3 said, when you're
17 working -- and it was the same for me when I was
18 working.

19 There was no time. And your mind was
20 caught up in exercising the things that you had
21 to do to get your job done, so there was very
22 little space left to actually learn a whole new
23 discipline.

24 So how can these people get the best
25 advice?

1 CHAIRMAN CLAYTON: Well, I'm -- I'm
2 going to give them my advice, which INVESTOR 13 can --
3 INVESTOR 13 and you guys can all chime in, but let me
4 just say this. I don't believe all my -- I'm the
5 type of person, I don't believe all my money
6 should be indexed, all my investments. But I do
7 believe that indexing is appropriate for a fair
8 amount of people's investments, generally. But
9 it's -- I think it's most appropriate for people
10 getting started.

11 And my -- my advice to young people is
12 to pick a few funds, put money away monthly,
13 don't look at it, don't borrow against it. Just
14 keep putting it away to get started so that you
15 can get to a level of investment where you can
16 start to think about other things. That's my --
17 that's my own view. Different people have
18 different views, but the earlier you start -- and
19 the reason I say that is it's relatively easy and
20 inexpensive to do that.

21 INVESTOR THIRTEEN: I don't know how you're
22 going to do it, but I think the answer is that
23 we've got to expand the number of advisers.
24 There's got to be some inducement to bring a lot
25 more people into this industry and bring qualified

1 people into this industry. And I'm not sure
2 exactly what the motivation will be to bring them
3 in, but that's what you need to do. Because --
4 because right now the ones that are good, ones
5 that are qualified, they've done what we just
6 talked about. They've limited the number of
7 clients they're going to have.

8 If you're going to be a good, solid
9 financial planner and registered investment
10 adviser, you're not just looking at their
11 investments, you're looking at their kids'
12 educational needs, you're looking at their
13 long-term care. You're looking at so many other
14 things.

15 You're looking at whether they have a
16 will, whether they have a buy-sell agreement on
17 their business. You're looking at the whole
18 financial picture of that individual.

19 And if you're doing that, how many
20 clients can you do that for? You've got to have
21 more people doing that. And I'm not exactly sure
22 what the inducement will be to bring those people
23 into the industry, but that's where -- that's one
24 of the solutions, I think

25 CHAIRMAN CLAYTON: Yeah, INVESTOR 4?

1 INVESTOR FOUR: So I'm an individual
2 investor with several different brokerage
3 accounts, all self-directed because of some
4 stories that -- I had some things happen to me
5 back in the '80s you've heard about around the
6 table. So I kind of, I guess all of that doesn't
7 add up to the point we've heard from many here to
8 really qualify to be of interest to some of these
9 investment advisers. So I'm kind of focusing on
10 the broker-dealer category here.

11 And I look at, when I see, our
12 obligations to you, we must act in your best
13 interest, what does that mean? What is the
14 definition of that?

15 CHAIRMAN CLAYTON: Yeah, let me say the
16 definition of that encompasses what I talked
17 about. It's the fiduciary obligation not to put
18 your interests ahead of the clients', and it's the
19 care obligation to have a series of policies and
20 procedures such that you are exercising care in
21 the recommendations you're making. You know the
22 product -- you know the product you're
23 recommending, you know its attributes, and you've
24 made an assessment about whether it is appropriate
25 for INVESTOR 4. That's what it means.

1 INVESTOR FOUR: Okay. I didn't see that in
2 here.

3 MS. SIETHOFF: And if I can add a little
4 bit on that. I think some of this is, it's going
5 to be defined the way the advisers act in your
6 best interest over time, which is -- it's a principal
7 standard. That gets developed through individual
8 cases, looking over time, of "That was not acting in
9 that person's best interest."

10 And that -- there was no definition up
11 front, and I actually wouldn't want one on the
12 advisers fiduciary duty, because you would end up
13 with people trying to line up just outside of
14 that line. I think it's a good obligation that
15 they have to act in the best interest. At least
16 on the advisers who are fiduciaries, we've found that
17 that's held people, in all sorts of cases, to a lot
18 of high standards, over time. So I think our hope
19 is that happens on the brokers' side as well.

20 INVESTOR FOUR: So the best interest
21 standard will evolve?

22 MS. SIETHOFF: It's got to. It's got to
23 be applied to facts and circumstances. You can't
24 anticipate --

25 INVESTOR FOUR: So it doesn't really exist

1 now, but it will evolve over time?
 2 MS. SIETHOFF: It will evolve over time.
 3 That's why --
 4 CHAIRMAN CLAYTON: No, but it hasn't --
 5 INVESTOR FOUR: That's a little different
 6 than what I just heard.
 7 MS. SIETHOFF: No, it's evolving over
 8 time from a high standard, right. It's not been
 9 articulated in the past that they have to act in
 10 the best interest.
 11 MS. GONZALEZ: We don't have a rule in
 12 our rulebook that said the broker-dealer must act
 13 in the customer's best interest, so there will be
 14 a rule if this is adopted by the Commission that
 15 says that.
 16 And there's three components to that
 17 rule -- we talked about that; one of them is you
 18 have to give competent advice, what is the care
 19 obligation.
 20 The other thing that's really important
 21 is the broker is going to have to manage,
 22 mitigate its conflicts, so that that
 23 recommendation is not tainted by the broker's
 24 financial incentive. Because everybody gets paid
 25 for advice.

1 Broker or adviser, they're getting
 2 paid one way or another. The key is that that
 3 payment should not taint the advice that has been
 4 given to you or anybody else around you. We've
 5 heard how those payments have tainted that
 6 advice, so that's a key component that we think
 7 would really be a big step forward in improving
 8 the quality of the relationship and the quality of
 9 advice that you get from a broker-dealer. And we
 10 do want to maintain the broker-dealer model
 11 because it's often cheapest for a lot of people.
 12 The broker-dealer numbers have shrunk.
 13 In the time I've been working on these issues,
 14 they've shrunk dramatically. Competition, having
 15 more numbers, having more competition, that's
 16 actually good.
 17 INVESTOR THIRTEEN: You bet.
 18 INVESTOR FOUR: So I just want to follow up
 19 on that. When you say the broker-dealer numbers
 20 have shrunk, the numbers of the actual brokers or
 21 the ratio, the percentage of broker-dealer.
 22 MS. GONZALEZ: The numbers of actual
 23 broker-dealers.
 24 When I started working, there was
 25 a key step that we took in 2011. There were around

1 5500 broker-dealers at that point. Right now I
 2 think the numbers are under 3300 or so. So
 3 they're shrinking.
 4 They're going away with the
 5 dodo bird, but we want to maintain that
 6 competition, and we want people who need, you
 7 know, smaller savers that we've talked about here,
 8 we want them to be able to receive advice. They
 9 need to be able to receive advice, as well as
 10 others who have more money.
 11 MS. SIETHOFF: We want them to get
 12 advice, but we want it to be high quality advice.
 13 If that's the best way, shrink the transactions,
 14 but raise the standard.
 15 CHAIRMAN CLAYTON: Let me see where we
 16 are here. Now, we're at the -- at the end of our
 17 time, but is there anybody who wanted to say
 18 something and didn't get the opportunity to say
 19 it?
 20 INVESTOR FOURTEEN: As an observer?
 21 CHAIRMAN CLAYTON: Sure.
 22 INVESTOR FOURTEEN: You asked the question
 23 about the word in the beginning, transaction-based
 24 fee versus asset-based fee. I think it's
 25 misleading on the investment adviser side saying

1 asset-based fee, because not all RIAs are
 2 asset-based.
 3 They could be hourly, they could be
 4 retainer, they could be flat fixed, so I think
 5 that's misleading.
 6 CHAIRMAN CLAYTON: Let me respond. I --
 7 there's a misconception that this form is the
 8 form. This is a sample.
 9 INVESTOR FOURTEEN: Yes.
 10 CHAIRMAN CLAYTON: So if you're an RIA
 11 that's hourly based, it would say I get paid by the hour.
 12 INVESTOR FOURTEEN: I see what you mean. Very
 13 good.
 14 Back to that then for clarification -- I
 15 appreciate that -- you want to talk about costs
 16 right up front.
 17 I think the word asset-based is
 18 misleading, and that could be different depending
 19 on the adviser.
 20 But the fact that the industry
 21 historically has used fee only, fee-based, how do
 22 you bridge the gap of the dually registered adviser
 23 that distinguishes them from the broker
 24 relationship that they have to the investment
 25 adviser relationship that they have?

1 CHAIRMAN CLAYTON: So the reason this is
 2 a template and example is because there are these
 3 different types of relationships. And so if you
 4 have somebody that has -- is a dual-hatted person
 5 and dual-hatted means they're an investment adviser
 6 and broker-dealer. They're going to have to say,
 7 you know, my investment advisory services are
 8 based on the assets you have, and it's a
 9 percentage of those paid, whether it's monthly or quarterly.

10 In addition, when I provide brokerage
 11 services to you, you will pay a commission, or
 12 you won't because it's a wrap fee account. But
 13 they have to make it clear when they're getting paid.

14 INVESTOR ELEVEN: And then can those hybrid
 15 advisers retain the title "adviser"?

16 CHAIRMAN CLAYTON: That -- they're going
 17 to have to disclose when I'm acting as your
 18 investment adviser, you know, it's here and if
 19 I'm acting as your broker-dealer, I'm going to tell you.

20 MS. SIETHOFF: So they can still call
 21 themselves an adviser, but for example, there's a
 22 lot of firms that are dually registered. That
 23 doesn't mean the person providing you advice is
 24 dually registered.

25 So if that person is only

1 registered as broker, that person can't call
 2 themselves an adviser.

3 INVESTOR ELEVEN: Right.

4 MS. SIETHOFF: So it does go down to
 5 that level. And then part of regulation best
 6 interest also requires that when there is that
 7 dual capacity, they have to be clear with you the
 8 capacity that they're acting when they make those
 9 recommendations, so you -- that should help
 10 alleviate that confusion, I have both types of
 11 accounts, how am I supposed to know. They would
 12 have to disclose that.

13 INVESTOR FOURTEEN: Thank you.

14 INVESTOR ONE: You know, have you guys ever
 15 thought of trying to make this subject more fun?
 16 I mean, if you think about it, if the SEC did
 17 something like the difference between investment
 18 adviser and a broker is a one-night stand or a
 19 girlfriend, or an unlicensed broker is the same as
 20 a unlicensed contractor. And then what if you
 21 guys did something like Doritos does, where they
 22 have a Super Bowl contest for the best commercial
 23 and everybody around the country could submit
 24 commercials on the best between an investment
 25 adviser or broker, everybody would have fun doing

1 it, and then -- this chart is great, but I look at
 2 it and my eyes glaze over, and I've been screwed
 3 out of two and a half million.

4 What if you did like a flowchart and
 5 you started, instead of how are they getting
 6 paid, what do you want? Like, when you buy a
 7 car, what options do you want? And you follow
 8 the flowchart, if you want these options --

9 CHAIRMAN CLAYTON: How do you choose?
 10 How do you choose, correct?

11 INVESTOR ONE: Well, you say, do you want
 12 someone to hold your hand, do you want to be able
 13 to call this person anytime and ask questions, do
 14 you want this -- and then you follow it down.
 15 Well, then yes, the best person for you is an
 16 investment adviser.

17 This is how they get paid.
 18 If you're not comfortable, go back to step 3.

19 And then you could say if you're
 20 completely lost, call Better Investing or -- you
 21 know, but it seems like the subject is so dull
 22 and so -- it has so much potential to be fun,
 23 because it's the most important thing besides
 24 family in people's lives, and it's just -- you
 25 know, if you had one department and just -- you

1 know, and to INVESTOR 13's point about not enough
 2 advisers, it seems to me that every time the
 3 markets are scared about anything, some
 4 entrepreneurial company steps in and picks up
 5 that void and takes care of the problem. I mean,
 6 that's what this whole country is about.

7 And so as far as poor people not being
 8 able to get advice, you know, there's already
 9 some technology firms who are stepping in and
 10 trying to solve that problem, and they're not the
 11 best, and they're not the greatest, but they're
 12 perfecting it. And I think if more people knew
 13 about that -- and they offer online classes for
 14 free. There's one specific just for women. You
 15 know, it -- I think we just got to bring it up to date.

16 CHAIRMAN CLAYTON: You -- we do not want
 17 to get in the way of innovations --

18 INVESTOR ONE: Yeah.

19 CHAIRMAN CLAYTON: -- because, you know,
 20 the people who we want to start investing are in
 21 their 20s and 30s and --

22 INVESTOR ONE: And that's the people it
 23 will help, because they're all on their tablets.

24 CHAIRMAN CLAYTON: And they're in an
 25 online world.

1 INVESTOR THREE: Speaking of online, do you
 2 have a place if we want to make any further
 3 comments or submit questions on this?
 4 MS. SIETHOFF: So that's a perfect
 5 entree. All of you have in front of you called a
 6 feedback flyer, a little one-pager. So this is to
 7 get feedback on that whole relationship summary
 8 that we've been talking about, ideas like this is
 9 boring can be something you can put, and we've got
 10 lots of comments --
 11 INVESTOR ONE: It just seems there's so
 12 much potential to make it fun at no cost.
 13 MS. SIETHOFF: We understand. This is
 14 what happens when lawyers create things.
 15 INVESTOR ONE: Exactly.
 16 MS. SIETHOFF: We would love to have
 17 something there, so suggestions on that are
 18 welcome. There are multiple ways you can fill it
 19 out; hand it to someone, you can go to the
 20 website, fill it out electronically, click the
 21 submit button, it goes right in. We would love to
 22 get your feedback on that.
 23 You also will be getting a separate
 24 little one-page feedback flyer for our investment
 25 experience disclosure in here. We're trying to

1 INVESTOR ONE: None. It's all gone. Let's
 2 ask REDACTED.
 3 CHAIRMAN CLAYTON: And Julie, do you
 4 have any final comments?
 5 MS. LUTZ: I just want to thank
 6 everybody for coming, and of course thank the
 7 Chairman for coming out to run these roundtables.
 8 A very unusual step in my experience in terms of
 9 proposed rules, so I just want everybody to give a
 10 round of applause.
 11 (Applause.)
 12 CHAIRMAN CLAYTON: Thank you all for
 13 coming. Thank you. These are really valuable,
 14 really valuable. It's not what we hear in Washington.
 15 INVESTOR FIVE: Really?
 16 CHAIRMAN CLAYTON: No. It's technical, it's --
 17 INVESTOR ONE: Political.
 18 CHAIRMAN CLAYTON: Political. And most
 19 of what I hear, the person saying it is being paid
 20 to say it.
 21 INVESTOR ONE: Can I join that?
 22 CHAIRMAN CLAYTON: Thank you.
 23 (Whereupon, at 11:38 a.m., the roundtable
 24 was concluded.)
 25 * * * * *

1 relook at the disclosures you get for funds and
 2 also make those, which some would say are boring
 3 as well, a little more investor friendly.
 4 Again, this is what a lot of retail
 5 investors invest in, mutual funds, ETFs, how can
 6 we make that more investment friendly
 7 disclosures. So please, we encourage you to take
 8 the time to fill out each of those.
 9 INVESTOR EIGHT: So at the bottom of this
 10 it is www.sec.gov/tellus, that's where we --
 11 MS. SIETHOFF: Yes, that is a separate
 12 website we set up. It has links to both of those
 13 feedback flyers; you can fill it out online, click
 14 a button, and you're done. And you can use --
 15 there's a little QR code if you want to do it on
 16 your phone, go for it.
 17 INVESTOR ONE: And which one of your
 18 departments does it go to?
 19 MS. SIETHOFF: It goes to each of
 20 Investment Management and Trading and Markets.
 21 MS. GONZALEZ: We'll read what you
 22 submit. Everything gets read.
 23 CHAIRMAN CLAYTON: Yeah, I just want to
 24 say thanks again. Remember the key question, how
 25 much of my money is going to work for me.