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Thank you for that very kind introduction. I thought I might take a few minutes today to share with you some of my thoughts and observations regarding regulatory developments affecting investment advisers and broker-dealers.

The broker-dealer and investment advisory professions have evolved along much different business and regulatory paths. Yet today it seems that those paths have merged in the retail securities marketplace. How did we get here? What are the business and regulatory ramifications? Let's explore these issues as they relate to your retail customers.

The broker-dealer profession has a rich history and it's regulatory framework was established by the Securities Exchange Act of 1934. As the broker-dealer business and regulatory regime evolved we saw the development of a business model where compensation was based largely on transaction based commissions, mark-ups, mark-downs, sales loads or similar fees related specific transactions. When I first started on Wall Street in 1975 the age of fixed commissions had just ended heralding in the era of negotiated commissions and discount brokerage. Boy how things have changed.

The regulation of broker-dealers has developed largely using a "rules based" approach. Now that should not be interpreted as meaning that there are not some significant principles that underlie those rules such as dealing fairly with clients and exhibiting just and equitable principles of trade. But the regime has developed with rules intended to address market practices and to protect investors. Broker-dealers are members of a self-regulatory body (FINRA) which has rule-making and examination responsibilities. The firms and their associated person are subject to regulatory standards, and to supervisory and capital requirements. SIPC coverage affords protection to clients for custody of their securities and funds at brokerage firms. The regulatory regime governing broker-dealers also affords remedies for customers that may be harmed by a firm or its associated persons. Broker-dealers have also, at times, been held to a "fiduciary" standard in their relations to customers especially where they have assumed a position of trrust and confidence based on their agency relationship with that customer. Beoker-dealers are an integral part of the securities markets and the SEC and FINRA have typically addressed regulatory concerns through the adoption of rules and related enforcement actions.

The investment advisory profession has taken a much different path. The Investment Advisers Act of 1940 (the "Advisers Act") was the last of the major securities laws passed in the aftermath of the market crash of 1929. Originally the Advisers Act was really a census of investment advisers and a general anti-fraud statute. The Advisers Act specifically recognized that broker-dealers provided a form of investment advice to their customers but that as long as such advice was "incidental" and there was "no special compensation" the Advisers Act would not apply to such activities by the broker-dealer. As an anti-fraud statute the Advisers Act essentially prohibits "fraud" whether it was intended or not. It was not until the 1960's that there was a record-keeping requirement for advisers or that a "fiduciary duty" was formally recognized as being owed by investment advisers to their clients. In *SEC v. Capital Gain Research Bureau, Inc.*, a "scalping" case, the Supreme Court applied a strict fiduciary standard to investment advisers. This duty includes a fundamental obligation to act in the best interest of your client and to provide investment advice that is in your client's best interest. A duty of undivided loyalty and utmost good faith is also owed as well as a duty to make full and fair disclosure of all material facts and to use reasonable care to avoid misleading clients. Avoidance of conflicts of interest or full disclosure and informed consent of the client are similarly included. The Advisers Act which governs investment advisers is viewed by many as "principles" based and has but a few rules. Investment advisers are not subject to any substantive qualification requirements, have no capital requirements and do not have a self-regulatory organization. Investment advisory client's cash and securities may generally not be custodied by advisers and thus are not afforded the protection of SIPC. Clients of investment advisers are provided no substantive remedies under the Advisers Act for misconduct by investment advisers. Investment advisers are, however, subject to SEC inspection and are required to have compliance programs, prepare and file certain reports with the SEC, provide clients and prospective clients with a written disclosure statement, adopt a code of ethics applicable to their employees, enforce insider trading procedures, maintain certain books and records, seek best price and execution for client's transactions, meet certain requirements regarding their contracts with clients, vote proxies of clients' securities, meet certain standards when advertising their services, and comply with certain conditions when using others to solicit clients.

There are now some 5,100 broker-dealers employing over 600,000 financial advisers and having over 100 million retail and institutional accounts. There are over 11,000 investment advisers registered with the SEC with 14 million accounts having about $40 trillion in assets. In addition, there are over 15,000 state registered investment advisers and some 275,000 investment advisory representatives registered with the states.

The majority of SEC registered investment advisers reported having six or fewer non-clerical employees and over 90% have 50 or fewer employees, The majority of broker-dealers employ ten or fewer registered individuals, another 29% employ 10 to 50 registered individuals and less than 10% employ over 150 registered individuals. Five percent of SEC registered advisers are also registered as broker-dealers, the so-called "dual registrants", and almost one quarter have a related broker-dealer. So the investment advisory and brokerage businesses are populated with predominantly smaller firms but the vast majority of personnel and assets reside with the larger firms. This is an important fact to remember as we consider the regulatory landscape and possible changes.

So now back to my tale. As the broker-dealer model continued to evolve, the "advice" part has taken on added importance and the "brokerage" component has become more commoditized, especially with the advent of "discount brokerage". In 1994 SEC Chairman Arthur Levitt sought input from an industry task force regarding certain "compensation practices" and conflicts of interest in the brokerage business. The resulting "Tully Report" recommended, among other things, that compensation practices at brokerage firms better align the interests of the firm, the registered representative and the client. And it suggested a "best practice" of payment for client assets in an account regardless of transactional activity.

The SEC thereafter proposed a rule under the Advisers Act in 1999, its reproposal and finally its adoption in 2005 permitting "fee based" brokerage accounts that would not be considered subject to the Advisers Act. The "fee-based" brokerage accounts thereafter accounted for only about 5% of all brokerage accounts and were offered by but a few of the brokerage firms. The rule was subsequently invalidated by the courts in 2007. After that judicial setback, the SEC retained the Rand Corporation to conduct a study regarding the understanding of retail customers regarding broker-dealers and investment advisers. In January, 2008 that report was released by the SEC and it found that customers of broker-dealers and clients of investment advisers were generally satisfied with their firms but were quite confused about whether they are dealing with a broker-dealer or investment adviser and what the differences meant.

Now before I get to the recent Dodd-Frank developments I wanted to provide my thoughts on the development of the broker-dealer model during this period. The value proposition for broker-dealer clients essentially went from the broker-dealer providing good research, good execution of trades and access to an inventory of securities to the broker-dealer will help you achieve your investment goals. Of course, for many customers access to a ready inventory of securities and investment ideas was still quite important, but good execution was now not really a differentiating factor. So the traditional broker-dealer model has really moved towards an advisory model, a move that I believe is beneficial to the firms and most importantly to their clients. Unfortunately, the current regulatory regime established by Congress as interpreted by the courts does not afford the SEC the regulatory flexibility necessary to accommodate that change.

Now the Dodd-Frank Act is enacted in 2010. The Dodd-Frank Act determined to address this difficult area not by providing the SEC with all the necessary regulatory tools to deal with it, but rather by requesting that the SEC conduct three studies relating to broker-dealers, investment advisers and their regulatory regimes and providing them with some authority to address the standard of care owed by investment advisers and broker-dealers to retail clients. One study was to review the frequency of inspections of registered investment advisers and whether an SRO for investment advisers might improve that frequency. A second study was to review the access investors have to information regarding broker-dealers and investment advisers. And the final one was a study of broker-dealers and investment advisers, the effectiveness of their current regulatory regimes, regulatory gaps and the regulatory standard of care for providing personalized investment advice and recommendations about securities to retail clients. These excellent studies were all completed and released by the SEC in a timely manner in January, 2011.

The study on access to information about broker-dealers and investment advisers recognized the cost and practical problems surrounding a re-architecture of systems and thus did not recommend combining the separate data bases that currently house the data for broker-dealers and investment advisers. Rather the staff recommended that searches conducted by investors automatically search both data bases and provide the combined results in a seamless manner to the public. The study regarding the investment adviser examination program recognized that the current state of affairs regarding the frequency of examinations was not acceptable and recommended that: (1) the SEC be authorized to assess user fees on registered investment advisers to fund the adviser exam program; (2) SRO(s) for federally registered investment advisers be permitted: or (3) FINRA be permitted to inspect duly registered firms for compliance with the Advisers Act.

The study on investment advisers and broker-dealers is a very well done interdisciplinary review of the broker-dealer and investment advisory landscape and the current regulatory regime applicable to them. This staff study provided a number of recommendations designed to increase investor protection and decrease investor confusion.

The staff recommended consideration by the SEC of rulemaking to implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers when they provide personalized investment advice about securities to retail customers. That uniform fiduciary standard of conduct would be to act in the best interest of the customer without regard to the financial or other interest of the broker-dealer, dealer or investment adviser providing the advice.

The staff recommended that the SEC engage in rulemaking and/or issue interpretative guidance addressing the components of the proposed uniform fiduciary standard. They suggested certain areas for possible action such as the duty of loyalty and conflicts of interest, the issues related to principal trading, the duty of care (including minimum baseline professionalism standards for making a recommendation) among others.

The staff also recommended that the Commission consider whether laws and regulations that apply where broker-dealers and investment advisers provide similar services to retail customers should be harmonized. In that regard some areas for consideration were:
advertising and other communication, the use of funders and solicitations, supervisory requirements, the licensing and registration of firms, licensing and continuing education requirements for associated persons, and books and records requirements

I believe the issues identified in this study are the correct ones for careful consideration by the Commission. I have heard from some that while they embrace the uniform fiduciary standard they are very concerned by the challenge of getting it right and implementing it in a way least disruptive to the firms and their clients. Most of those comments were from the broker-dealer side. The harmonization of regulation aspect of the recommendation of the report is, of course, of some concern to the investment advisers.

So we have the broker-dealer community concerned about the application of the uniform fiduciary duty and issues arising from its implementation and the investment advisers concerned about the impact of potential harmonization of regulatory requirements. These are legitimate concerns and ones we all need to remain mindful of.

Change is never easy but there is a benefit to stepping back and considering whether the regulatory framework established over seventy years ago needs some adjustments to properly address the current state of affairs. The markets, business models and practices evolve and the regulatory environment needs to adapt to properly meet the challenges that evolution presents.

Whether the regulatory changes are properly calculated to address the issues in the most cost effective and least disruptive manner for retail customers and their investment advisers and broker-dealers will be of great interest to us all. We need to get this right.

We all have a shared interest in assuring that retail clients of investment advisers and retail customers of broker-dealers benefit from a regulatory regime that affords them unbiased advice, clear and simple disclosures, access to investment products and opportunities, and appropriate regulatory safeguards. I recommend that you take the time to review your businesses, the interaction you have with your retail customers and clients and how the proposed changes may affect those relationships Focus on what those relationships should be and then share that vision and assessment with the SEC staff along with a recommended path for achieving that shared goal. I am highly confident that with appropriate input from the broker-dealer and investment advisory industries my former colleagues at the SEC are more than up to the formidable task ahead of them. With your assistance they will get it right.

Thank you for listening to me today and please enjoy the remainder of the forum.