SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, 249, 275, and 279

[Release Nos. 34-86032; IA-5247; File No. S7-08-18]

RIN 3235-AL27

FORM CRS RELATIONSHIP SUMMARY; AMENDMENTS TO FORM ADV

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the "Commission" or the "SEC") is adopting new rules and forms as well as amendments to its rules and forms, under both the Investment Advisers Act of 1940 ("Advisers Act") and the Securities Exchange Act of 1934 ("Exchange Act") to require registered investment advisers and registered broker-dealers (together, "firms") to provide a brief relationship summary to retail investors. The relationship summary is intended to inform retail investors about: (i) the types of client and customer relationships and services the firm offers; (ii) the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; (iii) whether the firm and its financial professionals currently have reportable legal or disciplinary history; and (iv) how to obtain additional information about the firm. The relationship summary will also reference Investor.gov/CRS, a page on the Commission's investor education website, Investor.gov, which offers educational information to investors about investment advisers, broker-dealers, and individual financial professionals and other materials. Retail investors will receive a relationship summary at the beginning of a relationship with a firm, communications of updated information following a material change to the relationship summary, and an updated relationship summary upon certain events. The relationship summary is subject to Commission filing and recordkeeping requirements.

DATES:

Effective dates: The rules and form are effective [insert date 60 days after date of publication in the Federal Register].

Compliance dates: The applicable compliance dates are discussed in section II.D.

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SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 17 CFR 275.204-5 [rule 204-5] under the Investment Advisers Act of 1940 [15 U.S.C. 80b][1] and is adopting amendments to Form ADV to add a new Part 3: Form CRS [17 CFR 279.1] under the Advisers Act. The Commission is also adopting amendments to rules 17 CFR 275.203-1 [rule 203-1], 17 CFR 275.204-1 [rule 204-1], and 17 CFR 275.204-2 [rule 204-2] under the Advisers Act. The Commission is adopting new rule 17 CFR 240.17a-14 [rule 17a-14][2] under the

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[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b, at which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any paragraph of these rules, we are referring to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275], in which these rules are published.

[2] 15 U.S.C. 78a. Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the

Securities Exchange Act of 1934 and new Form CRS [17 CFR 249.640] under the Exchange Act. The Commission is also adopting amendments to rules 17 CFR 240.17a-3 [rule 17a-3] and 17 CFR 240.17a-4 [rule 17a-4] under the Exchange Act. The Commission is also adopting amendments to rule 17 CFR 200.800 [rule 800].

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Exchange Act, we are referring to 15 U.S.C. 78a, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to Title 17, Part 240 of the Code of Federal Regulations [17 CFR 240], in which these rules are published.

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I. INTRODUCTION

Individual investors rely on the services of broker-dealers and investment advisers when making and implementing investment decisions. Research continues to show that retail investors are confused about the services, fees, conflicts of interest, and the required standard of conduct for particular firms, and the differences between broker-dealers and investment advisers.[3] We are adopting a new set of disclosure requirements designed to reduce retail investor confusion in the marketplace for brokerage and investment advisory services and to assist retail investors with the process of deciding whether to engage, or to continue to engage, a particular firm[4] or financial professional and whether to establish, or to continue to maintain, an investment advisory or brokerage relationship.[5] Firms will deliver to retail investors a customer or client

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[3] Brian Scholl, *et al.*, SEC Office of the Investor Advocate and RAND Corporation, *The Retail Market for Investment Advice* (2018), *available at* https://www.sec.gov/comments/s7-07-18/s70718-4513005-176009.pdf ("OIAD/RAND") (finding that participant understanding of types of financial services and financial professionals continues to be low). The SEC's Office of Investor Advocate and the RAND Corporation prepared this research report regarding the retail market of investment advice prior to, and separate from, our rulemaking proposal. This report was included in the comment file at https://www.sec.gov/comments/s7-07-18/s70718-4513005-176009.pdf.

[4] For purposes of this release, the term "firm" includes sole proprietorships and other business organizations that are registered as (i) an investment adviser under section 203 of the Advisers Act; (ii) a broker-dealer under section 15 of the Exchange Act; or (iii) a broker-dealer under section 15 of the Exchange Act and as an investment adviser under section 203 of the Advisers Act.

[5] The requirements adopted here, with modifications as discussed in this release, were proposed in Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications

relationship summary ("relationship summary" or "Form CRS") that provides succinct information about the relationships and services the firm offers to retail investors, fees and costs that retail investors will pay, specified conflicts of interest and standards of conduct, and disciplinary history, among other things.[6] The relationship summary will also link to Investor.gov/CRS on the Commission's investor education website, Investor.gov, which offers educational information to investors about investment advisers, broker-dealers, and individual financial professionals and other materials.

We proposed a version of a relationship summary on April 18, 2018.[7] The proposed relationship summary would have required information separated into the following sections: (i) introduction; (ii) the relationships and services the firm offers to retail investors; (iii) the standard of conduct applicable to those services; (iv) the fees and costs that retail investors will pay; (v) comparisons of brokerage and investment advisory services (for standalone broker-dealers and investment advisers);[8] (vi) conflicts of interest; (vii) where to find additional information,

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and Restrictions on the use of Certain Names or Titles, Investment Advisers Act Release No. 4888, Exchange Act Release No. 83063 (Apr. 18, 2018) [83 FR 23848 (May 23, 2018)] ("Proposing Release").

6 For investment advisers registered with the Commission, a new Form ADV Part 3 will describe the requirements for the relationship summary and it will be required by amended rule 203-1. For broker-dealers, Form CRS will be required by new rule 17a-14 under the Exchange Act. When we refer to Form CRS in this release, we are referring to Form CRS for both broker-dealers and investment advisers registered with the Commission. We are also adopting conforming technical and clarifying amendments to the General Instructions of Form ADV.

7 *See* Proposing Release, *supra* footnote 5.

8 We proposed definitions for "standalone investment adviser" and "standalone broker-dealer". *See* Proposed General Instruction 9.(f) to Form CRS. Given the streamlining and other revisions to the Form CRS instructions relative to the proposal, we believe that these proposed definitions are no longer needed and therefore are not adopting them. We use the terms throughout this release, however, for the avoidance of doubt, to indicate broker-dealers and investment advisers that are not dual registrants. We are adopting the proposed definition for "dual registrant" substantially as proposed. We are adding language in the

including whether the firm and its financial professionals currently have reportable legal or disciplinary history and who to contact about complaints; and (viii) key questions for retail investors to ask the firm's financial professional. The proposed instructions required firms to use standardized headings in a prescribed order throughout the disclosure and respond to the required items by using a mix of language prescribed in the instructions as well as their own wording in describing their services and offerings. The proposal limited the relationship summary to four pages or an equivalent length if in electronic format and also included three examples of how the relationship summary might look for a standalone broker-dealer, a standalone investment adviser, and a dual registrant.

To better understand retail investors' views about the disclosures designed for them, the Commission engaged in broad outreach to investors and other market participants. As described further throughout the release, the Commission received substantial feedback on the proposed relationship summary in several forms. We received comment letters in connection with the Proposing Release from a variety of commenters including individual investors, consumer advocacy groups, financial services firms, investment professionals, industry and trade associations, state securities regulators, bar associations, and others.[9] Several of those commenters provided alternative mock-ups to illustrate their suggestions. Additionally, some

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definition of dual registrant in the final instructions to clarify that a dually registered firm is not considered a dual registrant for purposes of Form CRS and the final instructions if the dually registered firm does not provide both investment advisory and brokerage services to retail investors. *See* General Instruction 11.C to Form CRS; *see infra* footnotes 201- 202 and accompanying text.

9 The comment letters are available in the comment file at https://www.sec.gov/comments/s7-08-18/s70818.htm.

commenters submitted reports of surveys or studies that they had conducted or engaged third parties to conduct in connection with the proposal. The Commission also received input and recommendations from its Investor Advisory Committee ("IAC") on the proposed relationship summary to improve its effectiveness.[10]

The Commission also solicited comments from individual investors through a number of forums in addition to the traditional requests for comment in the Proposing Release. The Commission used a "feedback form" designed specifically to solicit input from retail investors with a set of questions requesting both structured and narrative responses, and received more than 90 responses from individuals who reviewed and commented on the sample proposed relationship summaries published in the proposal.[11] Seven investor roundtables were held in

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[10] *See* Investor Advisory Committee, *Recommendation of the Investor as Purchaser Subcommittee Regarding Proposed Regulation Best Interest, Form CRS, and Investment Advisers Act Fiduciary Guidance* (Nov. 7, 2018), *available at* https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac110718-investor-as-purchaser-subcommittee-recommendation.pdf. ("IAC Form CRS Recommendation"). The majority of the IAC recommended that the Commission conduct usability testing of the proposed Form CRS disclosures and, if necessary, revise them to ensure that they enable investors to make an informed choice among different types of providers and accounts. In addition, when considering potential Commission rulemaking under section 913 of the Dodd-Frank Act, the IAC also recommended that the Commission adopt a uniform, plain English disclosure document to be provided to customers and potential customers of broker-dealers and investment advisers at the start of the engagement, and periodically thereafter, that covers basic information about the nature of services offered, fees and compensation, conflicts of interest, and disciplinary record. *See* Investor Advisory Committee*, Recommendation of the Investor Advisory Committee: Broker-Dealer Fiduciary Duty* (Nov. 22, 2013), *available at* https://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation-2013.pdf, as amended in https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac112213-minutes.htm ("IAC Broker-Dealer Fiduciary Duty Recommendations"). We discuss these IAC findings and recommendations in several sections below. Under section 39 of the Exchange Act, the Commission is required to review, assess, and disclose the action, if any, the Commission intends to take with respect to the findings and recommendations of the IAC; however, the Commission is not required to agree or to act upon any such findings or recommendations. *See* 15 U.S.C. 78pp.

[11] The feedback forms are available in the comment file at https://www.sec.gov/comments/s7-08-18/s70818.htm ("Feedback Forms"). When we refer to Feedback Form commenters, we include those who completed and submitted a Feedback Form with a relevant response or comment answering at least one of the questions on the form. To simplify discussion of comments received on the Feedback Forms, staff

different locations across the country to solicit further comment from individual investors on the proposed relationship summary, and we received in-person feedback from almost 200 attendees in total.[12]

Further, the Commission's Office of the Investor Advocate engaged the RAND Corporation ("RAND") to conduct investor testing of the proposed relationship summary.[13] RAND conducted a survey of over 1,400 individuals through a nationally representative panel to collect information on the opinions, preferences, attitudes, and level of self-assessed comprehension regarding the sample dual-registrant relationship summary in the proposal. RAND also conducted qualitative interviews of a smaller sample of individuals to ascertain comprehension of the relationship summary and gain feedback from interview participants, which allowed RAND to obtain insights to complement its survey.[14] On November 7, 2018, the Office of the Investor Advocate made the report on that testing available in the comment file to

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aggregated and summarized these comments in an appendix to this release (*see* Appendix C, the "Feedback Forms Comment Summary"), and references to individual Feedback Forms in this release use short-form names defined in the Feedback Forms Comment Summary.

12 The transcripts from the seven investor roundtables, which took place in Atlanta ("Atlanta Roundtable"), Baltimore ("Baltimore Roundtable"), Denver ("Denver Roundtable"), Houston ("Houston Roundtable"), Miami ("Miami Roundtable"), Philadelphia ("Philadelphia Roundtable"), and Washington, D.C. ("Washington, D.C. Roundtable"), are available in the comment file at https://www.sec.gov/comments/s7-08-18/s70818.htm#transcripts.

13 Angela A. Hung, *et al.*, RAND Corporation, *Investor Testing of Form CRS Relationship Summary* (2018), *available at* https://www.sec.gov/about/offices/investorad/investor-testing-form-crs-relationship-summary.pdf ("RAND 2018").

14 RAND conducted a total of 31 in-person interviews with investors recruited using guidelines designed to achieve a sample that had a broad range of educational background, racial and ethnic characteristics, gender, age and experience working with financial professionals. In describing the design of qualitative interviews, RAND explains that interviews included some general questions about comprehension and helpfulness of the form, which provided a window into participants' understanding of concepts introduced in the relationship summary, but were not designed to serve as a full assessment of participants' objective understanding of the relationship summary. *See* RAND 2018, *supra* footnote 13.

allow the public to consider and comment on the supplemental information.[15] The Commission received several letters in response to the inclusion of the RAND 2018 report in the comment file.[16]

As noted, some commenters submitted reports of surveys and studies to the comment file, and the design and scope of these varied considerably. Two reports described online surveys of larger sample sizes – one based on the sample proposed dual-registrant relationship summary[17] and another based on the proposed sample standalone investment adviser relationship summary.[18] A group of commenters submitted two reports of usability testing of the sample proposed dual-registrant relationship summary based on a small number of long-form

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15 *See Investor Testing of the Proposed Relationship Summary for Investment Advisers and Broker-Dealers*, Securities and Exchange Commission Press Release 2018-257 (Nov. 7, 2018), *available at* https://www.sec.gov/news/press-release/2018-257.

16 *See, e.g.,* Comment Letter of Investment Adviser Association (Dec. 4, 2018); Comment Letter of Ron A. Rhodes (Dec. 6, 2018); Comment Letter of AFL-CIO, *et al.* (Dec. 7, 2018) ("AFL-CIO Letter"); Comment Letter of Betterment (Dec. 7, 2018) ("Betterment Letter II"); Comment Letter of Consumer Federation of America (Dec. 7, 2018) ("CFA Letter II"); Comment Letter of Financial Services Institute (Dec. 7, 2018) ("FSI Letter II"); Comment Letter of Public Investors Arbitration Bar Association (Dec. 7, 2018); Comment Letter of Consumer Reports (Feb. 15, 2019) ("Consumer Reports Letter").

17 Comment Letter of Cetera Financial Group (Nov. 19, 2018) ("Cetera Letter II") (attaching report of Woelfel Research Inc. ("Woelfel")). Woelfel, an independent research firm, conducted internet interviews in June 2018 with a sample of 800 adults aged 25 and over, including individuals that had a current relationship with a financial professional and individuals who did not have a current financial professional relationship. Respondents were asked to read the sample dual-registrant relationship summary included in the proposal and answer a series of questions about the document overall and for specific sections. *Id.*

18 Comment Letter of Betterment (Aug. 7, 2018) ("Betterment Letter I") (attaching report of Hotspex, Inc. ("Hotspex")). Hotspex, an independent research firm, conducted online surveys with 304 current or potential U.S. investors ages 18 and over in June 2018. The survey tested the standalone investment adviser relationship summary prepared following the instructions and sample design of the proposal (the "SEC Form") and a redesigned version developed by Betterment. *Id.* Respondents reviewed and answered questions about only one version; 154 responded to questions on the SEC Form. *Id.*

interviews.[19] One of the two surveys, and the two interview-based studies, included questions designed to ascertain comprehension and tested alternate relationship summary designs with changes to some of the proposed prescribed wording and presentation from the proposal.[20] Finally, two different commenters submitted surveys of retail investors' views about disclosure communications provided by firms and their relationships with financial professionals, which did not test any version of the proposed relationship summary.[21]

The Commission appreciates the time and effort of these commenters who submitted surveys and studies. The Commission has carefully considered this input. The varying designs and scope of these surveys and studies limits us from drawing definitive conclusions, and we do

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[19] Kleimann Communication Group, Inc., *Final Report on Testing of Proposed Customer Relationship Summary Disclosures*, *Submitted to AARP, Consumer Federation of America, and Financial Planning Coalition* (Sept. 10, 2018), *available at* https://www.sec.gov/comments/s7-08-18/s70818-4341455-173259.pdf ("Kleimann I") (results of 15 90-minute qualitative interviews focusing on how consumers interacted with the sample dual-registrant relationship summary as proposed); Kleimann Communication Group, Inc., *Report on Development and Testing of Model Client Relationship Summary, Presented to AARP and Certified Financial Planner Board of Standards, Inc.* (Dec. 5, 2018), *available at* https://www.sec.gov/comments/s7-07-18/s70718-4729850-176771.pdf ("Kleimann II") (results of testing alternate designs of the proposed dual-registrant relationship summary in 18 one-on-one qualitative interviews).

[20] *See* Betterment Letter I (Hotspex), *supra* footnote 18 (online survey included ten true-false questions designed to test investor comprehension of the standalone investment adviser relationship summary as proposed relative to a version redesigned by Betterment); Kleimann I, *supra* footnote 19 (interview questions designed to elicit responses that could demonstrate two levels of cognitive skills); Kleimann II, *supra* footnote 19.

[21] Comment Letter of Charles Schwab & Co., Inc. (Aug. 6, 2018) ("Schwab Letter I") (attaching report of Koski Research ("Koski")). Koski, an independent research firm, conducted an online survey of a national sample of 1000 investors in June 2018 to measure investor understanding of fiduciary duty and best interest standards for investment advice and obtain input from retail investors on method, frequency and content of disclosure communications. *Id.;* Comment Letter of the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce (Sept. 5, 2018) ("CCMC Letter") (attaching report of investor polling ("investor polling")). CCMC commissioned online polling of 801 investors in May 2018 to examine investors' perspectives on working with financial professionals and gauge priorities regarding new regulatory requirements. *Id.*

not view any one of the surveys and studies submitted by commenters, or the RAND 2018 report, as dispositive. However, these surveys and studies submitted by commenters, together with the results of the RAND 2018 report, input from individual investors at our roundtables and on Feedback Forms, and other information offered by other commenters, have informed our policy choices. Throughout this release we discuss observations reported in the RAND 2018 report and in surveys and studies submitted by commenters, and how these observations informed our policy choices as well as the costs and benefits of such choices.

Overall, we believe that feedback we have received from or on behalf of retail investors through the RAND 2018 report, surveys and studies submitted by commenters, and input received at roundtables and on Feedback Forms, demonstrate that the proposed relationship summary would be useful for retail investors and provide information, *e.g.*, about services, fees and costs, and standard of care, that would help investors to make more informed choices when deciding among firms and account options. For example, among the RAND 2018 survey respondents, nearly 90% said that the relationship summary would help them make more informed decisions about types of accounts and services and more than 80% said it would help them compare accounts offered by different firms.[22] RAND 2018 survey participants rated information about the firm's relationship and services and fees and costs to be among the most informative.[23] In other surveys, large majorities of respondents also reacted positively to the

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[22] RAND 2018, *supra* footnote 13.

[23] RAND 2018, *supra* footnote 13 (a majority of respondents rated both of the relationships and services section and fees and costs sections of the relationship summary as one of two sections that are "most informative").

relationship summary and the types of information that would be provided.[24] In the RAND 2018 qualitative interviews, it was observed that participants could learn new information from the proposed relationship summary.[25] Similarly, other surveys and studies that assessed investor comprehension observed that investors learned important information by reviewing the relationship summary.[26] Over 70% of individuals submitting Feedback Forms commented that they found the relationship summary to be "useful," with more than 80% rating the relationship summary sections describing relationships and services, obligations, and fees and costs as "very useful" or "useful."[27] Investor roundtable participants also reacted positively and indicated that

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[24] Cetera Letter II (Woelfel), *supra* footnote 17 (more than 80% of respondents rated all of the nine topics covered by the relationship summary as "very" or "somewhat" important; 88% rated fees and costs and the firm's obligations as "very" or "somewhat" important; 61% said the relationship summary had provided the necessary information to help decide whether a brokerage relationship or an advisory relationship is best); Betterment Letter I (Hotspex), *supra* footnote 18 (finding that around 90% of survey respondents found the proposed relationship summary "very useful" or "somewhat useful"); *see also* CCMC Letter (investor polling), *supra* footnote 21 (when the concept of the proposed relationship summary was described, 62% of participants said they would be interested in reading the document and 72% agreed that the new document will "boost transparency and help build stronger relationships between me and my financial professional").

[25] RAND 2018, *supra* footnote 13 (concluding from qualitative interviews that "[p]articipants demonstrated evidence of learning new information from the relationship summary" even though interview discussions revealed areas of confusion).

[26] *See* Kleimann I, *supra* footnote19 (although the authors concluded that, overall, participants had difficulty with "sorting out similarities and differences," the study reports that "nearly all participants easily identified a key difference between Brokerage Accounts and Advisory accounts as the fee structure" and that "most participants understood that both Brokerage Accounts and Advisory Accounts could have financial relationships with other companies that could be potential conflicts with clients' best interests."); *see also* Betterment Letter I (Hotspex), *supra* footnote 18 (83% of respondents correctly identified as "true" a statement that "some investment firms have a conflict of interest because they benefit financially from recommending certain investments" when viewing a version of the standalone adviser relationship summary constructed based on the instructions set forth in the proposal").

[27] *See* Feedback Forms Comment Summary, *supra* footnote 11 (summary of answers to Questions 1 and 2). In addition, more than 70% of commenters on Feedback Forms rated all of the other sections of the proposed relationship summary as "very useful" or "useful." *Id.*

they found the relationship summary to be useful.[28] A significant percentage of RAND 2018 survey participants agreed that the relationship summary would facilitate conversations between retail investors and their financial professionals, and other surveys and studies reported similar observations.[29] Investor roundtable participants and comments on Feedback Forms also indicated that the relationship summary could facilitate conversations between retail investors and their financial professionals in a beneficial way.[30]

Many other commenters supported the concept of a short disclosure document for retail investors that would serve as part of a layered disclosure regime,[31] and agreed that that the

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[28] *See e.g.,* Houston Roundtable, at 19 ("I think your idea of having . . . a short four page . . . is really helpful"), at 27 (reacting positively to the idea of the relationship summary but asking that updated versions indicate the changed content), and at 35 (agreeing that a disclosure such as the relationship summary is needed); Atlanta Roundtable, at 28 (stating that the proposed sample relationship summary is "a very good form" and "concise" and "easy to read and clear" but needs to be in a form that can be compared with other relationship summaries).

[29] RAND 2018, *supra* footnote 13 (approximately 76% of participants agreed that they would use the relationship summary as the basis for a conversation with an investment professional; in qualitative interviews, participants said they liked all of the questions and they would ask questions in meeting with a financial service provider); *see also* Kleimann I, *supra* footnote 19 (many investors responded that they would use key questions when speaking with their brokers); Betterment Letter I (Hotspex), *supra* footnote 18 (93% of respondents viewing a version of the proposed standalone relationship summary indicated that they were very or somewhat likely to ask the suggested questions.).

[30] Houston Roundtable (several investors responding that key questions would be helpful conversation starters, one commenter remarking that the Key Questions were "very, very good"); Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 7) (over 75% of commenters indicated that the Key Questions are useful). Eleven Feedback Forms included specific comments agreeing that the Key Questions would encourage discussions with financial professionals. *See, e.g.,* Hawkins Feedback Form ("Useful information for the investor to have before engaging in a conversation with an investment firm. Giving some examples of types of questions to ask would be beneficial."); Asen Feedback Form ("The Relationship Summary (and not the individual BD or RIA account opening forms) is the opportunity to have that important conversation and "educate" the customer."); Baker Feedback Form ("key questions are very useful as they give words to an unsophisticated client").

[31] *See, e.g.*, Comment Letter of AARP (Aug. 7, 2018) ("AARP Letter"); Comment Letter of Consumers Union (Oct. 19, 2018) ("Consumers Union Letter"); Comment Letter Type B; Comment Letter of the North American Securities Administrators Association, Inc. (Aug. 23, 2018) ("NASAA Letter"); Comment Letter of the Securities Industry and Financial Markets Association (Aug. 7, 2018) ("SIFMA Letter"); Comment

relationship summary would facilitate conversations between retail investors and their financial professionals in a beneficial way.[32] However, some commenters argued that the relationship summary is duplicative of other disclosures and is unnecessary.[33] Others cautioned against over-reliance on disclosure efforts to address all issues related to the different business models and the applicable standard of conduct for broker-dealers and investment advisers.[34]

Letter of Triad Advisors, LLC (Jul. 26, 2018) ("Triad Letter"); Comment Letter of Investacorp, Inc. (Jul. 26, 2018) ("Investacorp Letter"); Comment Letter of Ladenburg Thalmann Financial Services Inc. (Jul. 26, 2018) ("Ladenburg Letter"); Comment Letter of KMS Financial Services, Inc. (Jul. 27, 2018) ("KMS Financial Letter"); Comment Letter of Securities America, Inc. (Jul. 27, 2018) ("Securities America Letter").

[32] *See, e.g.*, Comment Letter of Commonwealth Financial Network (Aug 7, 2018) ("CFN Letter") ("Form CRS may also drive conversations that help potential clients and advisors determine which type of relationship (brokerage or advisory) is most appropriate."); CCMC Letter (concluding from investor polling that "[t]he SEC's proposed Form CRS could be a good way to start a conversation with investors."); Comment Letter of the Financial Services Institute (Aug. 7, 2018) ("FSI Letter I") ("The greatest benefit of these disclosures will come in the conversations they facilitate between the client and their financial professionals"); Comment Letter Wells Fargo & Company (Aug. 7, 2018) ("Wells Fargo Letter") ("the basic premise that a brief overview document designed to provide a high-level understanding of important information to clients (with directions to more detailed information) that can be used to prompt more detailed conversations with financial professionals is a good one"). Triad Letter ("The greatest benefit of the CRS will come in the conversations it facilitates between the client and their Financial Professional…."); Ladenburg Letter (same); KMS Financial Letter (same).

[33] Some commenters stated that Form CRS would be duplicative of the Disclosure Obligation required by Regulation Best Interest. *See, e.g.*, Triad Letter; Investacorp Letter; Ladenburg Letter; KMS Financial Letter; Securities America Letter; FSI Letter I; Comment Letter of Securities Service Network, LLC (Aug. 6, 2018); Comment Letter of Cambridge Investment Research, Inc. (Aug. 7, 2018) ("Cambridge Letter"). Others argued that Form CRS is duplicative of other Form ADV disclosures. *See, e.g.*, Comment Letter of MarketCounsel (Aug. 7, 2018) ("MarketCounsel Letter"); Comment Letter of the Investment Adviser Association (Aug. 6, 2018) ("IAA Letter I"); Comment Letter of Gerald Lopatin (Jul. 30, 2018). One commenter expressed concern that because the relationship summary would be duplicative of Form ADV and Form BD, retail customers would be less likely to read the more comprehensive disclosures. *See* Comment Letter of Financial Engines (Aug. 6, 2018) ("Financial Engines Letter").

[34] *See* Comment Letter of Integrated Financial Planning Solutions (Jul. 20, 2018) ("IFPS Letter") ("Clients do not have the ability to understand the disclosure material that is still written only by and for lawyers."); Comment Letter of Sen. Elizabeth Warren (Aug. 7, 2018) ("Warren Letter") (arguing that "the [Commission] shouldn't rely on disclosure alone to protect consumers"); Consumers Union Letter ("[W]hile we support simple, understandable disclosures, we caution against placing too much reliance on disclosure to protect investors."); Consumer Reports Letter.

Nearly all commenters (including commenters on Feedback Forms) and investors participating in roundtables, suggested modifications to the proposed relationship summary, as did observations reported in the RAND 2018 report and surveys and studies submitted to the comment file. Suggested changes generally pertained to: appropriate placement of educational material; length and format; use of prescribed wording; comprehensibility; additional flexibility for firms; and delivery requirements (including electronic delivery). For example, some commenters and observations from the RAND 2018 survey and other surveys and studies indicated that the proposed relationship summary could be difficult to understand, particularly the proposed disclosures on fees, conflicts of interest, and standards of conduct.[35] Many commenters preferred a shorter, one-to-two page document relying more heavily on layered disclosure, such as by using more hyperlinks and other cross-references to more detailed disclosure.[36] Many commenters from both industry and investor groups argued that some of the

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[35] *See* RAND 2018, *supra* footnote 13 (among other findings, the percentages of respondents indicating that the fees and costs, conflicts of interest, and standards of conduct sections were either "difficult" or "very difficult" to understand were 35.5%, 33.5%, and 22.9%, respectively); Kleimann I, *supra* footnote 19 (noting that participants had difficulty "sorting out similarities and differences between Broker-Dealer Services and Investment Adviser Services. Both the formatting and language contributed to the confusion."); Betterment Letter I (Hotspex), *supra* footnote 18 (showing that survey participants had difficulty understanding differences in standard of care and did not find the section on conflicts in the standalone adviser relationship summary to be useful); *see also* Comment Letter of John Wahh (Apr. 23, 2018) ("Wahh Letter") (relationship summary is "impenetrable"); Comment Letter of David John Marotta (Apr. 26, 2018) ("Marotta Letter") (disclosures would be too confusing to clients); Comment Letter of John H. Robinson (Aug. 6, 2018) ("Robinson Letter") (expressing concern that relationship summary is too text-heavy for consumers to read and will be ineffective in resolving investor confusion); Comment Letter of CFA Institute (Aug. 7, 2018) ("CFA Institute Letter I") ("[A]s proposed, CRS is too wordy and technically written for the average investor to understand.").

[36] *See, e.g.*, AARP Letter; Comment Letter of Better Markets (Aug. 7, 2018) ("Better Markets Letter"); Comment Letter of the Bank of America (Aug. 7, 2018) ("Bank of America Letter"); Comment Letter of the Committee on Capital Markets Regulation (Jul. 16, 2018) ("CCMR Letter"); Comment Letter of LPL Financial LLC (Aug. 7, 2018) ("LPL Financial Letter"); Schwab Letter I. *Cf.* RAND 2018, *supra* footnote 13 (finding at least a plurality of respondents would keep the length of each section "as is"; however, when

prescribed wording would not be accurate or applicable in relation to the different services and business models of all firms or could lead to confusing or misleading disclosures.[37] Various commenters advocated for more flexibility for firms to use their own wording to describe their services more accurately.[38] Many commenters favored the use of a question-and-answer format,

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asked "Is the Relationship Summary too long, too short, or about right?", 56.9% of respondents answered "too long" and only 41.2% responded "about right").

37 *See, e.g.*, Comment Letter of the Vanguard Group, Inc. (Aug. 7, 2018) ("Vanguard Letter") (explaining instances in which the prescribed wording would be inaccurate or not sufficiently nuanced for some of its services); Comment Letter of the American Council of Life Insurers (Aug. 3, 2018) ("ACLI Letter") ("[M]any of the statements mandated in the Proposed Rule are inaccurate from the perspective of a life insurer-affiliated broker-dealer); IAA Letter I (expressing concern that the proposed prescribed language describing legal standards of conduct would result in less accurate understanding and greater confusion for investors); FSI Letter I ("[S]ome of the prescribed disclosure language is highly problematic, will add to investor confusion, and would negatively impact [firms'] client relationships."); AARP Letter (expressing concern that some of the prescribed language is too technical and likely to confuse retail investors); Comment Letter of the Insured Retirement Institute (Aug. 7, 2018) ("IRI Letter") (expressing concern that the prescribed language would not permit descriptions of services offered outside of brokerage accounts, such as recommendations of variable annuities). One commenter asserted that prescribed wording requiring firms to compare themselves adversely with their competitors could raise First Amendment concerns. *See* Comment Letter of the Consumer Federation of America (Aug. 7, 2018) ("CFA Letter I") (arguing that certain language requiring firms to compare their own services unfavorably to those of their competitors may raise First Amendment concerns, and that Proposed Item 5, Comparisons to be provided by standalone investment advisers and standalone broker-dealers, should be eliminated entirely); *see also infra* footnotes 77–80 and accompanying text. Although not explicitly raising First Amendment concerns, another commenter also opposed requiring firms to describe services of other types of financial professionals. *See* IAA Letter I ("In our view, it is not appropriate to require firms to include statements about business models other than their own."). *But see* Comment Letter of AFL-CIO, Consumer Federation of America, *et. al.* (Apr. 26, 2019) ("AFL-CIO, CFA Letter") (arguing that allowing firms more flexibility in their disclosure will result in a failure to clearly convey important information, and such information would not be comparable from firm to firm).

38 *See, e.g.*, ACLI Letter ("Firms should have the flexibility in the Form CRS to accurately describe their business model and what their clients can expect from the relationship"); NASAA Letter ("[F]irms should have some level of flexibility in crafting their own Form CRS so that it is tailored for the different types of customers they service."); Letter from Members of Congress (Aug. 8, 2019) ("The SEC should develop a disclosure form that ensures firms have the flexibility to provide information that the average investor will understand."); IAA Letter I (advocating that firms be given flexibility to draft their own descriptions of their principal services and conflicts of interest); FSI Letter I (suggesting that the prescribed wording regarding the extent and frequency of monitoring be removed or customized using the firm's own wording); IRI Letter (firms need more latitude to describe their relationships and services and fees and costs, given their variability; one-size-fits-all disclosures are insufficient); Comment Letter of T. Rowe Price (Aug. 10, 2018) ("T. Rowe Letter") (firms should have the flexibility to tailor their disclosures to make it clearer and more readable without potentially confusing investors); Vanguard Letter (suggesting

suggesting, for example, that focusing a document on investors' questions helps them to feel that the document is relevant to them and encourages them to read it.[39] Some commenters viewed parts of the relationship summary as educational, such as the sections comparing broker-dealers and investment advisers, describing the applicable standard of conduct, and containing key questions investors should ask, and advocated that the Commission should develop and provide educational material separately from firm-specific disclosures, such as in an additional disclosure layer or on the Commission's website.[40] Several individuals submitting Feedback Forms also were supportive of links to additional educational information.[41]

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that the Commission clarify that all of the prescribed disclosures may be modified to accurately describe the nature of firms' services and conflicts of interest given their business models); Comment Letter of CUNA Mutual Group (Aug. 7, 2018).

39 *See, e.g.*, CFA Letter I. Many of the mock-ups submitted by commenters used a question-and-answer format. *See* Comment Letter of Fidelity Brokerage Services LLC (Aug. 7, 2018) ("Fidelity Letter"); IAA Letter I; LPL Financial Letter; Comment Letter of Primerica (Aug. 7, 2018) ("Primerica Letter"); Schwab Letter I; SIFMA Letter; Wells Fargo Letter. For the purposes of this release, we view the substance and design of all mock-ups that commenters provided within their comment letters as comments on our proposed form, and the mock-ups have informed our approach to the relationship summary, as discussed below throughout.

40 *See, e.g.*, Comment Letter of the American Securities Association (Aug. 7, 2018) ("ASA Letter"); Primerica Letter; ACLI Letter; IAA Letter I; Comment Letter of Pickard Djinis and Pisarri LLP (Aug. 14, 2018) ("Pickard Djinis and Pisarri Letter"); Comment Letter of L.A. Schnase (Jul. 30, 2018) ("Schnase Letter"); CFA Letter I; LPL Financial Letter.

41 *See, e.g.,* Daunheimer Feedback Form ("I would like to see a list of applicable websites for discerning disciplinary websites or anything else that would additionally educate a consumer."); Asen Feedback Form ("Might want to consider hyperlinking key words for ease of definition lookup."); Baker Feedback Form (responding to a question on the Additional Information section, commented "Helpful also were the website links, i.e., sec.gov, investor.gov, BrokerCheck.Finra.org."); Smith2 Feedback Form ("would like to see a link included a site or sites that contain general investment information. Types of investments, risks, time horizons …").

Although some commenters argued that the relationship summary is duplicative of other disclosures and is unnecessary,[42] we believe that the relationship summary has a distinct purpose and will provide a separate and important benefit relative to other disclosures. The relationship summary is designed to help retail investors select or determine whether to remain with a firm or financial professional by providing better transparency and summarizing in one place selected information about a particular broker-dealer or investment adviser. The format of the relationship summary also allows for comparability among the two different types of firms in a way that is distinct from other required disclosures. Both broker-dealers and investment advisers must provide disclosures on the same topics under standardized headings in a prescribed order to retail investors, which should benefit retail investors by allowing them to more easily compare services by comparing different firms' relationship summaries.[43] We do not believe that existing disclosures provide this level of transparency and comparability across investment advisers, broker-dealers, and dual registrants. The relationship summary also encourages retail investors to ask questions and highlights additional sources of information. All of these features should make it easier for investors to get the facts they need when deciding among investment firms or financial professionals and the accounts and services available to them. As noted above, the relationship summary will complement additional rules and guidance that the Commission is

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42 *See supra* footnote 33.

43 Several individuals submitting Feedback Forms said that more firm-specific information that could be easily compared would be helpful. *See, e.g.,* Lee1 Feedback Form ("The information should let me compare firms. . . . Make it short, more useful (so I can compare services and firms)."); Anonymous13 Feedback Form ("Firm specific info would be nice on this document."); Bhupalam Feedback Form ("I would like to see additional information regarding specific firm rather than a general description.").

adopting concurrently to enhance protections for retail investors and is not designed to address all investor protection issues related to different business models and legal obligations of broker-dealers and investment advisers.[44]

Further to this purpose, in response to the comment letters and other feedback, we modified the instructions to reorganize and streamline the relationship summary, to enable more accurate descriptions tailored to what firms offer, and to help improve investor understanding of the disclosures provided. The instructions we are adopting are consistent with and designed to fulfill the original goals of the proposal, including the creation of relationship summaries that will highlight certain information in one place for retail investors in order to help them select or decide whether to remain with a firm or financial professional, encourage retail investors to engage in meaningful and individualized conversations with their financial professionals, and empower them to easily find additional information. Although certain prescribed generalized comparisons between brokerage and investment advisory services have been removed from the final instructions, we believe the revised instructions will result in more meaningful comparisons among firms.

The key changes of the relationship summary and instructions we are adopting include the following:[45]

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[44] *See supra* footnote 34.

[45] If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

- *Standardized Question-and-Answer Format and Less Prescribed Wording.* Instead of declarative headings as proposed, the final instructions for the relationship summary will require a question-and-answer format, with standardized questions serving as the headings in a prescribed order to promote consistency and comparability among different relationship summaries. The headings will be structured and machine-readable, to facilitate data aggregation and comparison. Under the standardized headings, firms will generally use their own wording to address the required topics. Thus, the final instructions contain less prescribed language, which creates more flexibility in providing accurate information to investors. Investment advisers and broker-dealers will be limited to two pages and dual registrants will be limited to four pages (or an equivalent length if in electronic format).[46]
- *Use of Graphics, Hyperlinks, and Electronic Formats.* To help retail investors easily digest the information, the instructions will specifically encourage the use of charts, graphs, tables, and other graphics or text features in order to explain or compare different aspects of the firm's offerings. If the chart, graph, table, or other graphical feature is self-explanatory and responsive to the disclosure item, additional narrative language that may be duplicative is not required. For electronic relationship summaries, the instructions encourage online tools that populate information in comparison boxes based on investor selections. The

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[46] For clarification purposes, one page is equivalent to a single-side of text on a sheet of paper, rather than two sides of the same paper.

instructions permit, and in some instances require, a firm to cross-reference additional information (*e.g.*, concerning services, fees, and conflicts), and will require embedded hyperlinks in electronic versions to further facilitate layered disclosures. Firms must use text features to make the required cross-references more noticeable and prominent in relation to other discussion text.

- *Introduction with Link to Commission Information.* The relationship summary will include a more streamlined introductory paragraph that will provide a link to Investor.gov/CRS, a page on the Commission's investor education website, Investor.gov, which offers educational information about investment advisers, broker-dealers, and individual financial professionals and other materials. In order to highlight the importance of these materials, the introduction also will note that brokerage and advisory services and fees differ and that it is important for the retail investor to understand the differences.
- *Combined Fees, Costs, Conflicts of Interest, and Standard of Conduct Section*. We are integrating the proposed fees and costs section with the sections discussing the conflicts of interest and standards of conduct. We are also expanding the discussion of fees and making several other changes to help make the disclosures clearer for retail investors. The relationship summary will cover the same broad topics as proposed, including a summary of fees and costs, a description of ways the firm makes money, certain conflicts of interest, and standards of conduct. In addition, firms will include disclosure about financial professionals' compensation.

- *Separate Disciplinary History Section.* Firms will be required to indicate under a separate heading whether or not they or any of their financial professionals have reportable disciplinary history and where investors can conduct further research on these events, instead of including this information under the Additional Information section as proposed.
- *Conversation Starters.* The proposed Key Questions to Ask have generally been integrated into the relationship summary sections either as question-and-answer headings or as additional "conversation starters" to provide clearer context for the questions. Retail investors can use these questions to engage in dialogue with their financial professionals about their individual circumstances. The discussion topics raised by certain other proposed key questions have been incorporated into the relationship summary through otherwise-required disclosure.
- *Elimination of Proposed Comparisons Section.* We are eliminating the proposed requirement that broker-dealers and investment advisers include a separate section using prescribed wording that in a generalized way described how the services of investment advisers and broker-dealers, respectively, differ from the firm's services. We encourage, but do not require, dual registrants to prepare a single relationship summary that discusses both brokerage and investment advisory services. Whether dual registrants prepare a single or two separate relationship summaries to describe their brokerage and investment advisory services, they must present information on both services with equal prominence and in a manner that clearly distinguishes and facilitates comparison between the two. The material provided on Investor.gov offers educational information about

investment advisers, broker-dealers, and individual financial professionals and other materials.

- *Delivery*. As proposed, investment advisers must deliver a relationship summary to each new or prospective client who is a retail investor before or at the time of entering into an investment advisory contract with the retail investor. In a change from the proposal, broker-dealers must deliver the relationship summary to each new or prospective customer who is a retail investor before or at the earliest of: (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor. We also are revising the instructions to provide greater clarity on the use of electronic delivery, while generally maintaining the guidelines that were proposed.

We designed the final disclosure requirements in light of comments, input from individual investors through roundtables and on Feedback Forms, and observations reported in the RAND 2018 report and other surveys and studies, that suggest retail investors benefit from receiving certain information about a firm before the beginning of a relationship with that firm, but they prefer condensed disclosure so that they may focus on information that they perceive as salient to their needs and circumstances, and prefer having access to other "layers" of additional information rather than receiving a significant amount of information at once. Together, all of the required disclosures will assist a retail investor to make an informed choice regarding whether a brokerage or investment advisory relationship, as well as whether a particular broker-dealer or investment adviser, best suits his or her particular needs and circumstances. The

relationship summary will complement additional rules and guidance that the Commission is adopting concurrently to enhance protections for retail investors.[47]

Some commenters responding to the RAND 2018 report noted that the RAND 2018 survey and qualitative interviews did not objectively test investor comprehension, and they pointed to observations from RAND 2018 interviews that suggested that some interview participants failed to understand differences in the legal standards that apply to brokerage and advisory accounts and did not understand the meaning of the word "fiduciary" for example.[48] They argued that we should conduct more usability testing before adopting Form CRS and Regulation Best Interest.[49]

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47 *See* Regulation Best Interest, Exchange Act Release No. 86031 (June 5, 2019) (adopting rule 15*l*-1 under the Exchange Act ("Regulation Best Interest")) ("Regulation Best Interest Release"). Along with adopting Regulation Best Interest, the Commission is clarifying standards of conduct for investment advisers. *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Release No. 5248 (June 5, 2019) ("Fiduciary Release"). The Commission is also providing guidance about when a broker-dealer's advisory services are solely incidental to the conduct of the business of a broker or dealer. *See* Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion to the Definition of Investment Adviser, Advisers Act Release No. 5249 (June 5, 2019) ("Solely Incidental Release").

48 *See* CFA Letter II (noting that the testing conducted for the RAND 2018 Report is limited and does not provide more detailed information, such as transcripts of the in-depth interviews, to present fully the level of investor understanding); Comment Letter of CFA Institute (May 16, 2019) ("CFA Institute Letter II") ("The RAND Report is clear that its survey was not designed to measure objective comprehension … Nor did it provide respondents with alternatives that could have allowed them to express preferences for certain formats or language."). *See also* AFL-CIO Letter; Consumer Reports Letter; Comment Letter of PIABA (Dec. 7, 2018).

49 *See, e.g.,* AFL-CIO Letter ("If the Commission chooses to maintain different standards for brokers and advisers, it must clearly delineate what the differences are … This would require rethinking the Form CRS and re-testing to ensure that it achieves these goals …"); CFA Letter II ("make the [RAND 2018] report the start, not the end, of an iterative process of testing and revision needed to develop disclosure that works …"); AFL-CIO, CFA Letter (stating ". . . unless the Commission retests the revised disclosure, it won't have any way to know whether the revised version solves the problems that earlier testing has identified."); Consumer Reports Letter ("SEC must test and retest Form CRS disclosures … and continue to publish the results of its testing before the form is made final"); CFA Institute Letter II. Others commented on the results of the RAND 2018 report but did not suggest delaying adoption of Form CRS. *See, e.g.*, Comment Letter of Charles Schwab & Co. Inc. (Dec. 7, 2018) ("Schwab Letter II") ("The Commission should

We disagree. The amount of information available from the various investor surveys and investor testing described in this release, including those submitted by commenters, as well as the comment letters and other input submitted to the Commission for this rulemaking, is extensive. We considered all of this information thoroughly, leveraging our decades of experience with investor disclosures, when evaluating changes to the relationship summary from the proposal. The perceived usefulness of the relationship summary, as shown by observations in the RAND 2018 report, surveys and studies submitted by commenters, and input from individual investors at our roundtables and in Feedback Forms, demonstrates that, even as proposed, the relationship summary would benefit investors by providing information that would help investors make more informed choices when deciding among firms and account options.[50] Large majorities of participants in the RAND 2018 survey and in other surveys supported the specific topics, such as services, fees, conflicts and standards of conduct, that we require firms to address in the relationship summary.[51] Even though the RAND 2018 qualitative interviews and

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acknowledge and act on consensus findings to improve the Form CRS"); Betterment Letter II (noting that the RAND 2018 report "demonstrates that Form CRS serves a valuable function"). *See also* FSI Letter II (encouraging the Commission to "continue investor testing of Form CRS after the final rule is in place").

50 *See supra* footnotes 22 to 30 and accompanying text. We note that the Department of Labor did not describe or reference usability testing in adopting its now vacated rule broadening the definition of fiduciary investment advice under the Employee Retirement Income Security Act of 1974 as amended ("ERISA") and the related Best Interest Contract Exemption ("BIC Exemption"). The BIC Exemption required certain disclosures to be provided to a retirement investor and included on a financial institution's public website. *See* DOL, Best Interest Contract Exemption, 81 FR 21002, 21045-52 (Apr. 8, 2016).

51 *See supra* footnotes 23 to 24 and accompanying text; *see also* Schwab Letter (Koski), *supra* footnote 21(reporting that retail investors say it is most important for firms to communicate about "costs I will pay for investment advice," a "description of advice services," the "obligations the firm and its representatives owe me" and any "conflicts of interest related to the advice I receive"); CCMC Letter (investor polling), *supra* footnote 21 (reporting as issues that "matter most" to investors, "explaining fees and costs," explaining conflicts of interest" and "explaining own compensation").

another interview-based study observed that interview participants could have some gaps in understanding, these studies still observed that interview participants could learn new important information from the relationship summary as proposed.[52]

In addition, as noted above and discussed in further detail below, we are making a number of modifications designed to improve the relationship summary relative to the proposal, which are informed by these and other observations reported by RAND 2018 and other surveys and studies, as well as by investor feedback at roundtables and in Feedback Forms and the other comment letters we have received. For example, we are substantially revising our approach to disclosing standard of conduct and conflicts of interest to make this information clearer to retail investors, including (among other changes) eliminating the word "fiduciary" and requiring firms—whether broker-dealers, investment advisers, or dual registrants—to use the term "best interest" to describe their applicable standard of conduct.[53] Further, as compared to the proposal, modifications adopted in the final relationship summary instructions require less prescribed

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[52] *See* RAND 2018, *supra* footnote 13 (describing that participants in qualitative interviews had difficulty reconciling the information provided in the obligations section and conflicts of interest section and other areas of confusion, but concluding that "[p]articipants demonstrated evidence of learning new information from the relationship summary"); Kleimann I, *supra* footnote 19 (although study author concluded that, overall, participants had difficulty with "sorting out similarities and differences," the study reports that "nearly all participants easily identified a key difference between Brokerage Accounts and Advisory accounts as the fee structure;" "[p]articipants expected to pay for transactions in a Brokerage Account or the quarterly fee for an Advisory Account;" "most participants understood that both Brokerage Accounts and Advisory Accounts could have financial relationships with other companies that could be potential conflicts with clients' best interests" and "[nearly all participants saw the Key Questions as essential … straightforward and raised important questions that they themselves might not have thought to ask."); *see also* Betterment Letter I (Hotspex) *supra* footnote 18 (83% of respondents correctly identified as "true" a statement that "some investment firms have a conflict of interest because they benefit financially from recommending certain investments" when viewing a version of the standalone adviser relationship summary constructed based on the instructions set forth in the proposal).

[53] *See infra,* Section II.B.3.

wording, and instead, firms will generally use their own wording to address required topics, which creates flexibility in providing accurate information to investors. We believe that this modification substantially limits the practicability and benefit of additional usability testing because there is no single version of the relationship summary (or a limited set of form versions) that may be used to gauge investor comprehension given firms' flexibility to tailor their relationship summary.[54] Therefore, we believe that any anticipated benefit from continued rounds of investor usability testing does not justify the cost to investors of delaying a rulemaking designed to increase investor protection.

Accordingly, we believe that the totality of input received through comments (including Feedback Forms), outreach at roundtables and through the OIAD/RAND and RAND 2018 reports, as well as surveys and studies submitted by commenters, fully supports our consideration and adoption of the relationship summary, with modifications informed by this input as discussed more fully below. However, to help ensure that the relationship summary fulfills its intended purpose, we have directed our staff to review a sample of relationship summaries that are filed with the Commission beginning after June 30, 2020, when firms first

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[54] In this regard, the RAND 2018 report and surveys and studies submitted by commenters generally were based on sample versions of the relationship summary that we included in the proposal. Alternate designs tested by commenters generally used the all of the same topics (*e.g.*, a description of service and the relationship, fees and costs, standard of care, conflicts, additional information and key questions) as the proposed sample versions, with changes using different versions of prescribed wording and formatting designed to be more appealing to readers. *See* Kleimann II, *supra* footnote 19 (describing alternative Form CRS design assumptions) and Betterment Letter I (Hotspex) *supra* footnote 18 (describing approach to optimizing the Form CRS). Given modifications that we are adopting to the Form CRS instructions that provide firms more flexibility to use their own wording to describe service offerings, fees and costs and their conflicts of interest and more flexibility in formatting as compared to the proposal, we are not preparing sample or illustrative versions of the relationship summary that could be used to repeat such surveys and testing, and we do not believe that we would be able to develop sample versions that would be representative given the diversity among firms in their service and product offerings.

file their relationship summaries, and to provide the Commission with the results of this review. The Commission and its staff are also reviewing educational materials provided on Investor.gov and intend to develop additional content in order to continue to improve the information available to investors about working with investment advisers, broker-dealers, individual financial professionals, and investing.

In the Proposing Release, we proposed certain disclosures to be included in all print or electronic retail investor communications by broker-dealers, investment advisers, and their financial professionals (the "Affirmative Disclosures"). We have determined not to adopt the Affirmative Disclosures, as we discuss further below. In our view, the combination of the disclosure requirements in Form CRS and Regulation Best Interest should adequately address the objectives of the proposed Affirmative Disclosures.

II. FORM CRS RELATIONSHIP SUMMARY

A. Presentation and Format

The relationship summary is designed to be a short and accessible disclosure for retail investors that helps them to compare information about firms' brokerage and/or investment advisory offerings and promotes effective communication between firms and their retail investors.[55] The proposed instructions included requirements on length, formatting, and content. The proposal also provided three examples of what a relationship summary might look like for a

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[55] Form CRS defines "relationship summary" as "[a] disclosure prepared in accordance with these Instructions that you must provide to *retail investors*" and also references Advisers Act rule 204-5 and Exchange Act rule 17a-14. Firms that do not have any retail investors to whom they must deliver a relationship summary are not required to prepare or file one. *See* General Instructions to Form CRS, Advisers Act rule 204-5, Exchange Act rule 17a-14(a).

standalone broker-dealer, standalone investment adviser, and dual registrant. In providing feedback on the proposed sample relationship summaries, commenters on Feedback Forms and participants in the RAND 2018 survey and other surveys and studies provided by commenters indicated that the proposed relationship summary could be too dense and difficult to read.[56] They suggested using simpler terms and more white space, among other changes.[57] Commenters also encouraged the use of design principles that would result in a more visually appealing and

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[56] *See* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Questions 1 and 4) (33 commenters (35%) answered "Somewhat" or "No" in either of Question 3(a) (*Do you find the format of the Relationship Summary easy to follow?*) or Question 3(c) (*Is the Relationship Summary easy to read?*); comments responding to Question 4 ("*Are there topics in the relationship summary that are too technical or that could be improved*?"); 41 Feedback Forms (44%) indicated in response to Question 4 or another question that the relationship summary was too technical or suggested one or more topics that could be improved); *see also* RAND 2018, *supra* footnote 13 (on average, 24% of respondents described any given section as difficult or very difficult, more than 30% described the fees and costs section as difficult or very difficult; but qualitative interview discussions revealed that there were areas of confusion for participants, including differences between account types or financial professionals); Betterment Letter I (Hotspex) *supra* footnote 18 (only 22% of respondents reviewing a version of the standalone adviser relationship summary said information was easy to understand; only 18% said the format was appealing); Kleimann I, *supra* footnote 19 (finding that participants were confused). *Cf.* Cetera Letter II (Woelfel), *supra* footnote 17 (more than 75% of respondents strongly or somewhat agreed that individual topics covered by the relationship summary were described clearly). *See also* comments discussed *supra* footnote 35.

[57] Comment Letter of Front Street Consulting (Jun. 8, 2018) (stating that disclosure must be readable and understandable using plain language); Kleimann II, *supra* footnote 19 (describing design and content principles for a redesigned relationship summary, noting that "[h]eading and white space allow readers to have an overview of the content, see the overall structure of the content, and choose which parts most interest them…"); IAA Letter I (recommending flexibility for innovative use of design techniques including "using more white space, and using visuals like icons and images"); Fidelity Letter (discussing designed relationship summary using "key design elements that are informed by our experienced employees whose focus is on graphic design and applying design thinking techniques to customer facing products"). Schwab Letter I (Koski), *supra* footnote 21 (reporting that the "majority of retail investors surveyed want communications that are relevant to them (91%), short and to the point (85%), and visually appealing (79%)"); Schwab Letter II (stating that combined results of RAND 2018 and its own survey indicate that the Form CRS should be shorter, organized around questions, focus on "fees/costs" and "services/relationships" and contain "hyperlinks"); Betterment Letter I (Hotspex), *supra* footnote 18 (providing suggestions for streamlining and focusing the content requirements and improving the visual layout and format of the relationship summary to improve its effectiveness).

accessible disclosure.[58] In addition, the IAC recommended, through a majority vote, uniform, simple, and clear summary disclosures to retail investors.[59] We have incorporated many of these suggestions into the instructions.

We are changing the instructions to require a question-and-answer format, give additional support for electronic formats, provide guidance that firms should include white space, and implement other design features to make the relationship summary easier to read.[60] We are requiring firms to use standardized headings in a prescribed order to preserve comparability, while permitting greater flexibility in other aspects of the relationship summary's wording and design to enhance the relationship summary's accuracy, usability, and effectiveness.[61] The final instructions will require limited prescribed wording compared to the proposal and will permit firms to use their own wording to describe most topics. We also are not requiring firms to discuss the sub-topics required within each section in a prescribed order, as proposed.[62] Dual

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58 *See, e.g.,* Betterment Letter II ("The form should better implement design principles that have been shown to facilitate visual appeal and comprehension."); Schwab Letter I (citing to a presentation given by Kleimann Communication Group, Inc., at an IAC meeting on June 14, 2018); IAA Letter I (arguing that more visually dynamic and engaging design would make the relationship summary more effective and likely to be read).

59 *See* IAC Form CRS Recommendation, *supra* footnote 10 (reiterating a recommendation from the IAC Broker-Dealer Fiduciary Duty Recommendations in 2013 to "adopt a uniform, plain English disclosure document to be provided to customers and potential customers of broker-dealers and investment advisers that covers basic information about the nature of services offered, fees and compensation, conflicts of interest, and disciplinary record" and recommending that the Commission work with a design expert and test the relationship summary for effectiveness).

60 General Instruction 2.A. to Form CRS. ("You should include white space and implement other design features to make the *relationship summary* easy to read.").

61 *See, e.g.*, Items 2.B. and 3.C.(ii) of Form CRS.

62 *See* Proposed General Instruction 1.(b) to Form CRS ("Unless otherwise noted, you must also present the required information within each item in the order listed.").

registrants[63] and affiliated brokerage and investment advisory firms also will have flexibility to decide whether to prepare separate or combined relationship summaries. These changes are intended to enhance the relationship summary's clarity, usability, and design, and to promote effective communication and understanding between retail investors and their firms and financial professionals. We describe these changes in more detail below.

We are also adopting some parts of the instructions that address presentation and formatting as proposed. The instructions state that the relationship summary should be concise and direct, and firms must use plain English and take into consideration retail investors' level of financial experience, as proposed.[64] Firms also are not permitted to use multiple negatives, or legal jargon or highly technical business terms unless firms clearly explain them, as proposed. In a change from the proposal, the instructions will not permit use of legal jargon or technical terms without explaining them in plain English, even if the firm believes that reasonable retail investors will understand those terms.[65] Several commenters suggested that the relationship

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63 Form CRS defines "dual registrant" as "A firm that is dually registered as a broker or dealer registered under section 15 of the Exchange Act and an investment adviser registered under section 203 of the Advisers Act and offers services to *retail investors* as both a broker-dealer and an investment adviser." General Instruction 11.C. to Form CRS. This definition varies from the one proposed in that it includes only those investment advisers registered with the SEC, rather than with the States. For the avoidance of doubt, it also includes the statutory registration provisions for broker-dealers and investment advisers.

64 *See* General Instruction 2.A. to Form CRS (providing that firms should (i) use short sentences and paragraphs; (ii) use definite, concrete, everyday words; (iii) use active voice; (iv) avoid legal jargon or highly technical business terms unless firms clearly explain them; and (v) avoid multiple negatives. Firms must write their responses to each item as if speaking to the *retail investor*, using "you," "us," "our firm," etc.). Delivery of the relationship summary will not necessarily satisfy the additional requirements that broker-dealers and investment advisers have under the federal securities laws and regulations or other laws or regulations. *See* General Instruction 2.D. to Form CRS; Proposed General Instruction 3 to Form CRS.

65 General Instruction 2.A. to Form CRS. *Compare to* Proposed General Instruction 2 to Form CRS ("…avoid legal jargon or highly technical terms unless you clearly explain them or you believe that reasonable *retail investors* will understand them…").

summary avoid the use of jargon (*e.g.*, terms like "asset-based fee" and "load" in the fees section),[66] and several roundtable participants and participants in the RAND 2018 interviews and another study said that they did not understand certain technical terms.[67] Roundtable participants and commenters on Feedback Forms asked that the relationship summary include definitions or a glossary.[68] In addition, the IAC recommended that a document such as the relationship summary use plain English and a concise format.[69] As a result, we are instructing firms to avoid using legal jargon and highly technical terms in the relationship summary unless they are able to explain the terms in the space of the relationship summary. We believe this simpler approach obviates the need for firms to justify what they believe a reasonable retail investor would or would not understand. Firms would have the flexibility to use their own wording, including legal or highly technical terms as long as they explain them, or may prefer to use simpler terms, given the space limitations of the relationship summary. Additionally, we have added a cover page for Form CRS under the Exchange Act (17 CFR 249.640) only, displaying a currently valid

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66 CFA Letter I; AARP Letter; IAA Letter I.

67 *See, e.g.*, Miami Roundtable; Houston Roundtable; Philadelphia Roundtable; RAND 2018, *supra* footnote13 (in qualitative interviews participants asked for definitions of "transaction-based fee," asset-based fee," and struggled with terms such as "mark-up," "mark-down," "load," surrender "charges" and "wrap fee"); *see also* Kleimann I, *supra* footnote 19.

68 *See, e.g.,* Philadelphia Roundtable, at 64 (participant recommending a glossary at the end of the relationship summary); Washington, D.C. Roundtable, at 31 ("You might want to consider a glossary of terms."); Feedback Forms Comment Summary, *supra* footnote 11 (summary of comments to Question 4) (10 comments asked for a definition or a better explanation of the term "fiduciary," seven asked for definitions of terms such as transaction-based fee, asset-based fee or wrap fee); *see also* Anonymous18 Feedback Form ("A glossary would be nice – not in "legalize" [sic] language").

69 *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10; and IAC Form CRS Recommendation, *supra* footnote 10.

OMB control number and including certain statements relating to federal information law and requirements, and the SEC's collection of information.[70]

1. Limited Prescribed Wording

The proposed instructions would have required firms to include prescribed wording throughout many sections of the relationship summary. In particular, the fees and costs, standard of conduct, and the comparison section for standalone broker-dealers and investment advisers included a number of required statements, many that differed for broker-dealers, investment advisers, and dual registrants.[71] The introduction, conflicts of interest, and key questions sections also included some required statements.[72] In response to comments (as described more fully below) we are largely eliminating the prescribed wording and replacing those statements with instructions that generally allow firms to describe their own offerings with their own wording.

For example, the proposed instructions would have required broker-dealers to state, "If you open a brokerage account, you will pay us a transaction-based fee, generally referred to as a commission, every time you buy or sell an investment" and "The fee you pay is based on the specific transaction and not the value of your account."[73] Broker-dealers also would have stated "The more transactions in your account, the more fees we charge you. We therefore have an

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70 Under the Advisers Act, Form CRS is Part 3 of Form ADV, which already contains a cover page.

71 *See infra* discussion at Sections II.B.3 (fees and costs and standard of conduct) and II.B.6 (proposed items omitted in final instructions).

72 *See infra* discussion at Sections II.B.1 (introduction) and II.B.3 (conflicts of interests) and *supra* Section II.A.4 (conversation starters).

73 Proposed Items 2.B.1. and 4.B.1. of Form CRS.

incentive to encourage you to engage in transactions."[74] Instead the final instructions will require broker-dealers to describe the principal fees and costs that retail investors will incur, including their transaction-based fees, and summarize how frequently the fees are assessed and the conflicts of interest they create.[75]

Many commenters requested more flexibility for firms to provide accurate descriptions of their services.[76] Some argued that the mix of prescribed and firm-authored wording required by the proposed instructions would be inaccurate, contribute to investor confusion, or be ineffective for investors, particularly language that some commenters considered "boilerplate."[77] Observations reported in the RAND 2018 qualitative interviews and other surveys and studies

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[74] Proposed Item 4.B.5. of Form CRS.

[75] *See* Items 3.A. through 3.C. of Form CRS.

[76] *See, e.g.*, IAA Letter I; Comment Letter of Massachusetts Mutual Life Insurance Company (Aug. 7, 2018) ("MassMutual Letter"); Comment Letter of the Association for Advanced Life Underwriting (Aug. 7, 2018) ("AALU Letter"); Comment Letter of Prudential Financial, Inc. (Aug. 7, 2018) ("Prudential Letter"); Comment Letter of Mutual of America Life Insurance Company (Aug. 3, 2018) ("Mutual of America Letter"); Comment Letter of John Hancock Life Insurance Company (U.S.A) (Aug. 3, 2018) ("John Hancock Letter"); ACLI Letter; Comment Letter of New York Life Insurance Company (Aug. 7, 2018) ("New York Life Letter"); Comment Letter of Transamerica (Aug. 7, 2018) ("Transamerica Letter"); Vanguard Letter. *See also* Betterment Letter I, *supra* footnote 18 (arguing that investor survey conducted by Hotspex showed that its more customized version of the relationship summary facilitated investor understanding). Some individuals submitting Feedback Forms also preferred more firm-specific information. *See, e.g.,* Anonymous13 Feedback Form ("Firm-specific info would be nice on this document."); Bhupalam Feedback Form ("I would like to see additional information regarding specific firm rather than a general description."); Christine Feedback Form ("I'm interested in my individual advisor's orientation – small cap, mid cap, large cap or mix growth vs. value foreign, domestic or mix fundamental or quantitative long term or short term").

[77] ASA Letter ("[T]he mix of prescribed and customized language will only create more confusion and complexity, as well as legal risk for financial institutions."); Primerica Letter ("This mix of prescribed and flexible disclosure would ultimately result in a patchwork of new disclosures that fail to comprehensively describe a particular firm's business model in a way that is accessible and digestible by retail investors."); IAA Letter I ("Many firms would . . . be compelled to explain to prospective clients how and why their business is different from the boilerplate descriptions and why the comparisons are not applicable. The boilerplate language may thus detract from a firm's ability to explain its own services and make it harder for investors to understand those services.").

also showed that investors had difficulty understanding, were confused by, or misinterpreted some of the prescribed wording.[78] A range of commenters asserted that the proposed prescribed wording could be inaccurate or inapplicable.[79] For example, various providers of insurance products explained that references to brokerage or investment advisory accounts were not consistent with their business models and could confuse retail investors because customers generally purchase insurance products directly from the issuer, without needing to open a brokerage account.[80] One commenter expressed concern that some of the prescribed wording could constitute impermissible compelled speech that could raise First Amendment concerns.[81] That same commenter, with others, also opposed providing firms with more flexibility than

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78 *E.g.*, RAND 2018, *supra* footnote 13 (describing that, in qualitative interviews, participants noted some words or phrases that needed further definition and some misunderstood differences between account types and professionals); Kleimann I, *supra* footnote 19; Betterment Letter I (Hotspex) *supra* footnote 18 (finding that investors had difficulty understanding certain key information on the SEC sample version of standalone investment adviser relationship summary); *see also* Kleimann II, *supra* footnote 19 (investors misconstrued the legal standard in alternative versions of prescribed wording used in a redesigned version of the relationship summary); Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 4) (41 Feedback Forms included narrative responses that indicated that one or more topics were too technical or could be improved; of these, 20 indicated that the relationship summary language was too technical, wordy, confusing or should be simplified; 23 indicated that information on fees and costs was too technical or needed to be more clear; 23 suggested that information in sections on relationships and services and obligations needed clarification, and 14 suggested clarification or more information about conflicts of interest).

79 *See, e.g.*, IAA Letter I; ACLI Letter; AARP Letter; SIFMA Letter; FSI Letter I; Triad Letter; Vanguard Letter.

80 *See, e.g.*, Comment Letter of the Committee of Annuity Insurers (Aug. 7, 2018) ("Committee of Annuity Insurers Letter") ("The use of the term 'brokerage account may be confusing to retail investors purchasing and owning annuities, as annuities are typically 'held' directly by an insurance company."); ACLI Letter; IAA Letter I; FSI Letter I; Comment Letter of Lincoln Financial Group (Nov. 13, 2018) ("Lincoln Financial Group Letter") ("Sales of variable annuities, and variable life insurance products, typically do not involve the opening of a brokerage account and are not conducted in a brokerage account.").

81 *See* CFA Letter I, *supra* footnote 37.

proposed to implement the relationship summary, arguing that more flexibility could impair comparability.[82]

We recognize that extensive use of prescribed wording in certain contexts could add to investor confusion and may not accurately or appropriately capture information about particular firms. Accordingly, the final instructions permit firms, within the parameters of the instructions, to describe their services, investment offerings, fees, and conflicts of interest using their own wording. This approach should enable firms to reflect accurately what they offer to retail investors, should result in disclosures that are more useful to retail investors, and should mitigate concerns relating to the mix of prescribed and firm-authored wording, and the extensive use of prescribed wording, that the proposed instructions required.

Although we are allowing more flexibility so that firms can describe their offerings more accurately, firms still will be required to discuss required topics within a prescribed order, as discussed below.[83] This approach will facilitate transparency, consistency, and comparability of information across the relationship summaries of different firms, helping retail investors to focus on information that we believe would be particularly helpful in deciding among firms, financial professionals, services, and accounts — namely: relationships and services; fees, costs, conflicts, and required standard of conduct; disciplinary history; and how to get additional information. We believe that more tailored, specific, and distinct information in the required topic areas also

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82 *See* AFL-CIO, CFA Letter.

83 *See, e.g.*, General Instructions 1.A and 1.B., and 2.B. to Form CRS.

will better serve the educational purpose by facilitating more robust substantive comparisons across firms.

This approach addresses — and mitigates —First Amendment concerns. Generally, the instructions no longer require any specific speech.[84] Rather, they permit firms to use their own words to impart accurate information to investors. In certain circumstances, however, we are continuing to require firms to use prescribed wording. For example, the final instructions require firms to use standardized headings and conversation starters, which are in the form of questions that investors are encouraged to ask.[85] These elements are organizational (the headings) or intended to prompt a discussion by the investor (the conversation starters).[86] The final instructions also require firms to include prescribed statements describing their required standard of conduct when providing recommendations or advice.[87] Requiring firms to provide a consistent articulation of their required legal obligations in this regard will reduce and minimize investor confusion, as compared with allowing firms to state their required standard of conduct using their own wording.[88] These statements are designed to require the disclosure of purely factual information about the standard of conduct that applies to the provision of recommendations by broker-dealers and the provision of advice by investment advisers under

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84 For example, the final instructions no longer require the proposed Comparisons section or other prescribed wording that could be perceived as requiring firms to compare their owns services unfavorably to those of their competitors. *See infra* Section II.B.6.

85 *See infra* Sections II.A.2 and II.A.4.

86 *See infra* Sections II.A.2. and II.A.4.

87 Item 3.B.(i) of Form CRS. *See infra* Section II.B.3.b.

88 *See infra* Sections II.A.2 and II.B.3.b.

their respective legal regimes.[89] Finally, the instructions require firms to include a prescribed, factual statement regarding the impact of fees and costs on investments, and a prescribed statement encouraging retail investors to understand what fees and costs they are paying.[90] As explained further below, the final instructions provide that if a required disclosure or conversation starter is inapplicable to a firm's business or specific wording required by the instructions is inaccurate, firms may omit or modify it.[91]

As in the proposal, the final instructions include parameters for the scope of information expected within the relationship summary, though we are modifying the requirements to clarify the scope further in light of commenter concerns. First, all information in the relationship summary must be true and may not omit any material facts necessary in order to make the disclosures, in light of the circumstances under which they were made, not misleading.[92] The

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89 *See Milavetz, Gallop & Milavetz*, *P.A. v. United States*, 559 U.S. 229, 249-50 (2010) (upholding against First Amendment challenge a requirement that lawyers disclose their "legal status" and "the character of the assistance provided"); *Zauderer v. Office of Disciplinary Counsel,* 471 U.S. 626, 651 (1985) (upholding required disclosure of factual information about terms of service); *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 310 (1st Cir. 2005) (upholding requirement that pharmacy benefit managers disclose conflicts of interest and financial arrangements).

90 *See* Item 3.A.(iii) of Form CRS (requiring firms to state, "You will pay fees and costs whether you make or lose money on your investments. Fees and costs will reduce any amount of money you make on your investments over time. Please make sure you understand what fees and costs you are paying."). *See also infra* footnotes 424–425 and accompanying text.

91 *See* General Instruction 2.B to Form CRS. We are adopting this provision to ensure that firms are not compelled to include wording in their relationship summaries that is misleading or inaccurate in the context of their business models. This provision may apply in limited circumstances. For example, the headings and conversation starters prescribed by the final instructions are worded at a highly generalized level and cover selected key topics that are broadly applicable to broker-dealers and investment advisers and their relationships with retail investors, irrespective of business model (*i.e.,* relationships and services the firm offers to retail investors, fees and costs that retail investors will pay, specified conflicts of interest and standards of conduct, and disciplinary history).

92 General Instruction 2.B. to Form CRS ("All information in your *relationship summary* must be true and may not omit any material facts necessary in order to make the disclosures required by these Instructions

proposed instructions required all information in the relationship summary to be true and prohibited firms from omitting any material facts necessary to make the disclosures required by the instructions and the applicable item not misleading, but did not include the clause "in light of the circumstances under which they were made."[93] Commenters raised concerns with respect to the applicability of this standard to a short document with strict page limits that is meant to provide only a brief summary of information.[94]

We continue to believe that firms should include only as much information as is necessary to enable a reasonable investor[95] to understand the information required by each

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and the applicable Item, in light of the circumstances under which they were made, not misleading."). *Cf.* Proposed Instruction 3 to Form CRS ("All information in your *relationship summary* must be true and may not omit any material facts necessary to make the disclosures required by these Instructions and the applicable item not misleading.").

93 Proposed General Instruction 3 to Form CRS.

94 *See, e.g.*, LPL Financial Letter (raising concerns that the relationship summary raises the risk of liability for material omissions given its page limits and required level of detail); CCMC Letter ("The page and length limitations imposed by the proposed regulation, coupled with the required disclosure that is mandated by the proposed rules, present a substantial risk of liability for omissions that may be necessary only to ensure the disclosure meets the Commission's strict formatting requirements."); Fidelity Letter (stating that firms "would find it very challenging to summarize their offerings within the four-page limit and other content and formatting constraints of the form as proposed, let alone to do so in a manner that provides sufficient detail to convey meaningful information to investors, and is sufficiently accurate to avoid creating liability for a misstatement").

95 The proposed instructions referred to a "reasonable retail investor." For example, under the proposed instructions, firms would have been able to omit or modify prescribed wording or other statements required to be part of the relationship summary if such statements were inapplicable to a firm's business or would have been misleading to a "reasonable retail investor." *See* Proposed General Instruction 3 to Form CRS. The final instructions no longer make reference to a "reasonable retail investor." By eliminating the reference to a "reasonable retail investor," we are clarifying that we did not intend at the proposal, and do not intend now, to introduce a new standard under the federal securities laws, which generally refer to what a "reasonable investor" would consider important in making a decision. *See infra* footnotes 95–105 and accompanying text. References to a "reasonable retail investor" in the proposed instructions were meant to clarify how the operative Instruction or Item would apply in the context of a retail investor. Because new rule 17a-14 under the Exchange Act and new rule 204-5 under the Advisers Act require firms to deliver relationship summaries to retail investors in accordance with such rules, we do not believe such clarifications are necessary.

item.[96] As discussed below, we believe that investors will benefit from receiving a relationship summary containing high-level information that they will be more likely to read and understand, with the ability to access more detailed information.[97] As a result, we recognize a firm's relationship summary by itself is a summary of the information required to inform retail investors about the services a firm provides along with its fees, costs, conflicts of interest, and standard of conduct. We also believe that the disclosure provided in the relationship summary should be responsive and relevant to the topics covered by the final instructions,[98] and not omit information that is required to be disclosed or necessary to make the required disclosure not misleading.[99] We are sensitive to commenters' concerns, however, regarding expectations for

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[96] General Instruction 2.A. to Form CRS. The instructions remind firms to use not only short sentences as proposed, but also short paragraphs. General Instruction 2.A.(i) to Form CRS.

[97] *See infra* Section II.A.3.

[98] Firms should keep in mind the applicability of the antifraud provisions of the federal securities laws, including section 206 of the Advisers Act, section 17(a) of the Securities Act, and section 10(b) of the Exchange Act and rule 10b-5 thereunder, in preparing the relationship summary, including statements made in response to the relationship summary's "conversation starters." *See infra* Section II.B.2.c.

[99] This approach is consistent with the approach the Commission has taken with respect to disclosure more broadly. *See, e.g.*, rule 408(a) under Regulation C [17 CFR 230.408(a)] ("In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading"); Exchange Act rule 12b-20 [17 CFR 240.12b-20] ("In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading"); *see also* Commission Statement and Guidance on Public Company Cybersecurity Disclosures, Securities Act Release No. 82746 (Feb. 21, 2018) [83 FR 8166 (Feb. 26, 2018)] (stating that the "Commission considers omitted information to be material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or that disclosure of the omitted information would have been viewed by the reasonable investor as having significantly altered the total mix of information available"); *TSC Industries v. Northway*, 426 U.S. 438, 449 (1976) (stating a fact is material "if there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision or if it "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available" to the shareholder); *Basic, Inc. v. Levinson*, 485 U.S. 224, 240 (1988) (stating that "materiality depends on the significance the reasonable investor would place on the withheld or

the scope of required information within page limits. In this regard, the instructions continue to provide, as proposed, that firms may not include a disclosure in the relationship summary other than a disclosure that is required or permitted by the instructions and the applicable item,[100] and that all the information contained in the relationship summary must be true.[101]

In a change from the proposal, and to address commenters' concerns, the final instructions provide that the information contained in the relationship summary may not omit any material facts necessary in order to make the disclosures, *in light of the circumstances under which they were made*, not misleading.[102] We have added the phrase "in light of the circumstances under which they were made" to clarify that the content included or not included in the relationship summary should be viewed, for example, in light of the fact that the disclosure is intended to be a summary, that firms must adhere to the page limit, and that there will be links to additional information. Any information contained in the relationship summary or omitted facts will not be viewed in isolation in respect of determining whether such information would have been viewed by a reasonable investor as having significantly altered the total mix of

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misrepresented information"); *Securities and Exchange Com'n v. Texas Gulf Sulphur*, 258 F. Supp. 262, 279 (S.D.N.Y. 1966) (stating that "[a]n insider's liability for failure to disclose material information which he uses to his own advantage in the purchase of securities extends to purchases made on national securities exchanges as well as to purchases in 'face-to-face' transactions"); *Cochran v. Channing Corporation*, 211 F. Supp. 239, 242 (S.D.N.Y. 1962) (stating that the "Securities Exchange Act was enacted in part to afford protection to the ordinary purchaser or seller of securities. Fraud may be accomplished by false statements, a failure to correct a misleading impression left by statements already made or, as in the instant case, by not stating anything at all when there is a duty to come forward and speak").

100 General Instruction 1.B. to Form CRS; *see also* Proposed General Instruction 1.(d) to Form CRS.

101 General Instruction 2.B. and 2.C. to Form CRS; *see also* Proposed General Instruction 3 to Form CRS.

102 *Id*.

information available.[103] As discussed below, firms will provide additional detail and context through layered disclosure. For example, the instructions require firms to include specific references or a link to additional information as part of the relationships and services and fees and conflicts sections.[104] In other instances, the instructions encourage firms to reference or link to additional information to supplement their required disclosures.[105] While this change from the proposal is drawn from other areas of the federal securities laws,[106] Form CRS is not intended to create a private right of action.

Second, firms may omit or modify required disclosures or conversation starters that are inapplicable to their business, or specific wording required by the final instructions that is inaccurate.[107] The proposed instructions permitted firms to omit or modify required disclosures that were inapplicable to their business or would be misleading to a reasonable retail investor.[108] We modified the proposed instruction to provide a more concrete requirement allowing firms to omit or modify prescribed wording, rather than using a broader standard referencing a reasonable

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103 *See* rule 10b-5 under the Exchange Act [17 CFR 240.10b-5]; *supra* footnote 99 and accompanying text;*see also* footnote 469 and accompanying text.

104 *See infra* Section II.A.3.

105 *See, e.g.*, General Instruction 3.A. to Form CRS ("You are encouraged to use charts, graphs, tables, and other graphics or text features in order to respond to the required disclosures. . . . You also may include: (i) a means of facilitating access to video or audio messages, or other forms of information (whether by hyperlink, website address, Quick Response Code ("QR code"), or other equivalent methods or technologies); (ii) mouse-over windows; (iii) pop-up boxes; (iv) chat functionality; (v) fee calculators; or (vi) other forms of electronic media, communications, or tools that designed to enhance a *retail investor's* understanding of the material in the relationship summary.").

106 *See supra* footnotes 99 and 103 and accompanying text.

107 General Instruction 2.B. to Form CRS.

108 *See* Proposed General Instruction 3 to Form CRS ("If a statement is inapplicable to your business or would be misleading to a reasonable *retail investor*, you may omit or modify that statement.").

retail investor. This instruction is intended to ensure that no statements are misleading or inaccurate in the context of a firm's particular services or business. Rather, the objective of the Commission is to ensure that required disclosures are purely factual and provide investors with an accurate portrayal of the firm's services and operations.

Finally, given that firms will use mostly their own wording, we are adding instructions that remind firms that their responses must be factual and provide balanced descriptions to help retail investors evaluate the firm's services.[109] For example, firms may not include exaggerated or unsubstantiated claims, vague and imprecise "boilerplate" explanations, or disproportionate emphasis on possible investments or activities that are not made available to retail investors.[110] The relationship summary is designed to serve as disclosure, rather than marketing material, and should not unduly emphasize aspects of firms' offerings that may be favorable to investors over those that may be unfavorable.

2. Standard Question-and-Answer Format and Other Presentation Instructions

As with the proposed instructions, the final instructions require firms to present information under standardized headings and to respond to all the items in the final instructions in a prescribed order.[111] Instead of using declarative headings as proposed, however, the headings will be in the form of questions.[112] This change responds to feedback from surveys and

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109 General Instruction 2.C. to Form CRS.

110 General Instruction 2.C. to Form CRS.

111 General Instruction 1.B. to Form CRS.

112 *See generally* Items 2.A., 3.A., 3.B., 3.C, and 4.A to Form CRS.

studies[113] and commenters,[114] including many submitting their own mock-ups of the relationship summary that suggested or used a question-and-answer format in their own documents. Several commenters noted that the question-and-answer format is a more effective design for consumer disclosures because it focuses on questions to which a consumer wants answers and allows a consumer to skim quickly and understand where to get more information.[115] Based on consideration of these comments, we are both incorporating the format generally and are utilizing several of the question headings suggested by commenters in mock-ups, as discussed in each item below.

In addition to the standardized headings, we continue to believe that a prescribed order of topics facilitates comparability of different firms' relationship summaries. Commenters generally supported or did not oppose the premise of a prescribed order of topics.[116] Some

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113 *See e.g.*; RAND 2018, *supra* footnote 13 (reporting that about 60% of survey respondents preferred a question-and-answer format over the sample relationship summary format presented in the survey). Kleimann I, *supra* footnote 19 ("Participants liked the Key Questions section, but wanted the questions to be answered within the document.").

114 IAA Letter I ("A [question-and-answer] format will help keep the relationship summary short and should also remove the onus of the retail investor having to ask questions. This format would encourage further conversation, particularly if the Commission requires firms to point investors to additional information—including comparison information and other key questions—on the SEC's website."); Schwab Letter I (citing Kleimann Communication Group, Inc., *Making Disclosures Work for Consumers* (Jun. 14, 2018), *available at* https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-slides-by-susan-kleimann.pdf, and contemporaneous discussions); Schwab Letter II ("Form CRS should be organized around questions"); Fidelity Letter (redesigned relationship summary with a question-and-answer format).

115 *See* Kleimann II, *supra* footnote 19 ("Readers ask questions when they read, especially of functional documents . . . . For good design, we want to build upon this tendency by identifying the key questions investors should or are likely to ask and featuring them prominently in the text, thus easing the cognitive task for readers."); Schwab Letter I ("[Q]uestions that a consumer has . . . should be the organizing principle."); *see also* CFA Letter I.

116 *See, e.g.*, Trailhead Consulting Letter (supporting a standardized order of topics to facilitate comparability); Fidelity Letter ("[W]e urge the SEC to consider prescribing content and topics, but not specific language…").

commenters did, however, suggest changes to the organization or inclusion of topics, either explicitly in their comment letters, implicitly by the design of their own mock-ups, or both.[117] Results of surveys and studies that assessed comprehension of the sample proposed relationship summaries demonstrated the importance of context and revealed confusion caused by the placement of some information. For example, the RAND 2018 qualitative interviews suggested that investors were confused by and had difficulty reconciling the conflicts and standard of conduct sections, which were separated by the fees and comparisons sections.[118] Another study suggested that the appearance of fee information in three separate sections and separation of the fees and conflicts sections by the comparisons section inhibited understanding of the connection between fees and conflicts.[119] As discussed further below, we are combining the proposed Fees and Costs, Conflicts of Interest, and Standard of Conduct sections into one, to address these comments.[120] In addition, in response to suggestions that we provide more flexibility for how

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117 *See, e.g.*, CFA Letter I (suggesting changes to the order of the disclosures and the design of the relationship summary); IAA Letter I (suggesting a different order of topics and elimination of the Comparisons section, including by submitting its own mock-up); Comment Letter of Charles Schwab & Co., Inc. (Feb. 26, 2019) ("Schwab Letter III") (providing sample Form CRS instructions that permit flexibility as to the order of sub-topics under each topic). On Feedback Forms, 57 (about 60%) commenters responded "yes" when asked whether information was in the appropriate order; 8 commenters suggested moving the Key Questions to be first or closer to the front of the document. *See* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Questions 3(b) and 7). A few commenters on Feedback Forms suggested moving the Additional Information section forward. *See* Durgin Feedback Form, Salkowitz Feedback Form, Starmer2 Feedback Form, Anonymous14 Feedback Form, and a few suggested changes to the order of discussion of obligations and conflicts. See Anonymous28 Feedback Form, Asen Feedback Form, Lee2 Feedback Form.

118 *See* RAND 2018, *supra* footnote 13.

119 *See* Kleimann I, *supra* footnote 19, at 30 (participants "had difficulty building knowledge and relating one piece to another when it was separated by physical space.").

120 *See* Item 3 of Form CRS.

firms describe their services so that they can more accurately convey the information, the final instructions do not require firms to present the information within each section in the order listed.[121] Therefore, firms are free to discuss the required sub-topics within each item in an order that they believe best promotes accurate and readable descriptions of their business.

The final instructions provide for page limits to promote brevity, as proposed. The proposed instructions limited the length of the relationship summary to four pages for both standalone firms and dual registrants.[122] The final instructions provide that for dual registrants that include their brokerage services and advisory services in a single relationship summary, the relationship summary must not exceed four pages in paper format, or the equivalent if delivered electronically.[123] For broker-dealers[124] and investment advisers[125] a relationship summary in

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121 *See* Proposed General Instruction 1.(b) to Form CRS ("Unless otherwise noted, you must also present the required information within each item in the order listed.").

122 Proposed General Instruction 1.(c) to Form CRS.

123 General Instruction 1.C. to Form CRS.

124 Proposed Form CRS defined "standalone broker-dealer" as "a broker or dealer registered under section 15 of the Exchange Act that offers services to *retail investors* and (i) is not dually registered as an investment adviser under section 203 of the Advisers Act or (ii) is dually registered as an investment adviser under section 203 of the Advisers Act but does not offer services to *retail investors* as an investment adviser." We are not adopting this definition because we believe using the term "broker-dealer" is sufficient for the final instructions. The final instructions provide that Form CRS applies to broker-dealers registered under section 15 if the Exchange Act. *See supra* footnote 8.

125 Proposed Form CRS defined "standalone investment adviser" as "an investment adviser registered under section 203 of the Advisers Act that offers services to *retail investors* and (i) is not dually registered as a broker or dealer under Section 15 of the Exchange Act or (ii) is dually registered as a broker or dealer under Section 15 of the Exchange Act but does not offer services to *retail investors* as a broker-dealer." We are not adopting this definition because we believe using the term "investment adviser" is sufficient for the final instructions. *See* supra footnote 8. Furthermore, the final instructions specify that Form CRS applies to investment advisers registered under section 203 of the Advisers Act.

paper format must not exceed two pages, or the equivalent if delivered electronically.[126] Dual registrants that prepare separate relationship summaries for their brokerage and advisory services are limited to two pages each, or the equivalent if delivered electronically.[127] Unlike the proposed instructions, the final instructions do not prescribe paper size, font size, and margin width, providing instead that they should be reasonable.[128] For example, we believe that 8½" x 11" paper size, at least an 11 point font size, and a minimum of 0.75" margins on all sides, as proposed, could be considered reasonable, but other parameters could also be reasonable. The objective of the proposed paper, font, and margin size limitations was to make the relationship summary easy to read. We expect that a visually engaging and effective design, including in electronic format, could achieve the same objective without the prescriptive limitations.

Many commenters preferred a shorter, one-to-two page document more heavily relying on layered disclosure with increased use of hyperlinks and other cross-references to more detailed disclosure.[129] Commenters also said that investors are more likely to read a shorter

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126 General Instruction 1.C. to Form CRS.

127 General Instruction 1.C. to Form CRS. We discuss additional considerations and requirements for dual registrants and affiliates in Section II.A.5 below.

128 General Instruction 1.C. to Form CRS.

129 *See, e.g.*, Schwab Letter I ("Form CRS should simply be a short navigation aid to the existing Form ADV Part 2 disclosure" for investment advisers or "to additional information readily available on the firm's website or enclosed with the account documentation" for broker-dealers.); FSI Letter I ("While we support the Commission's efforts to ensure concise disclosure by limiting the required Form CRS to four pages (or its electronic equivalent), we suggest an even shorter document (perhaps as short as one page) with hyperlinks to more detailed disclosures."); *see also* AARP Letter; Better Markets Letter; Comment Letter of the Teachers Insurance and Annuity Association of America (Aug. 7, 2018) ("TIAA Letter"); Bank of America Letter; CCMR Letter; LPL Financial Letter; Kleimann II, *supra* footnote 19 ("Form CRS should be as short as possible.").

document.[130] Several commenters submitted mock-ups that were shorter than four pages.[131] Others indicated that the length of Form CRS was acceptable but should not exceed four pages.[132] On the other hand, certain commenters suggested that the length of the relationship summary may be too short to appropriately describe firms' insurance services or products.[133] One commenter said that it would be challenging for dual registrants to summarize all of their offerings within the four-page limit.[134] Investor feedback from surveys, studies, roundtables, and Feedback Forms also did not show consistent results. For example, 57% of the RAND 2018 survey respondents indicated that the proposed relationship summary was too long, 41% said it was about right, and roughly 2% said it was too short.[135] In section-by-section questioning, however, the most common response from RAND 2018 survey respondents was to keep the section length as is.[136] Similarly, some roundtable participants provided feedback that the

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130 *See* Fidelity Letter; *see also* Schwab Letter I (Koski), *supra* footnote 21 (85% of survey participants answered that they would be more likely to read disclosure that is short and to the point with links to more information; 61% answered that they would be less likely to read a document that is longer and more comprehensive, but 31% answered that they would be more likely to read a longer and more comprehensive disclosure); Comment Letter of Glen Strong (Jul. 27, 2018).

131 *See, e.g.*, Schwab Letter I; Fidelity Letter; IAA Letter I.

132 *See* Cambridge Letter; Comment Letter of Morningstar, Inc. (Aug. 7, 2018) ("Morningstar Letter"); Trailhead Consulting Letter.

133 *See, e.g.*, ACLI Letter; MassMutual Letter.

134 *See* Fidelity Letter.

135 RAND 2018, *supra* footnote 13.

136 RAND 2018, *supra* footnote 13; *see also* Cetera Letter II (Woelfel), *supra* footnote 17 (when asked generally how the relationship summary could be improved, 10% of survey respondents said relationship summary could be shorter).

proposed length was right at the maximum, "about right," or "good,"[137] whereas others would have preferred a shorter document.[138] About 40% of commenters on Feedback Forms said that relationship summary was an appropriate length, while about 30% indicated a preference for a shorter document.[139]

In light of commenter and investor feedback, we have determined that the relationship summary should be no more than four pages, and that in many cases a document shorter than four pages is appropriate. As proposed, both standalone firms and dual registrants were subject to a four-page limit, even though a dual registrant may have to include more disclosures discussing its advisory business and brokerage business as compared with standalone firms. Upon further consideration of the comments advocating for a more streamlined disclosure that includes more white space, we are adopting a four-page limit for dual registrants that prepare one combined relationship summary, to permit them to capture all of the required information within twice as much space as for standalone firms. If dual registrants and affiliated[140] standalone firms choose to prepare separate relationship summaries for their brokerage and investment advisory services, each relationship summary should not exceed two pages.[141] The two-page limit will

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137 Washington, D.C. Roundtable, at 18, 26.

138 *See* Philadelphia Roundtable, at 5, 19 (noting that lengthy disclosure "actually prevents investor interest and really understanding more. If something like [the relationship summary] can replace the 200 pages and then you have access to the 200 pages if you want them, that's a better system").

139 *See* Feedback Forms Comment Summary (summary of responses to Question 6), *supra* footnote 11.

140 Form CRS defines an "affiliate" as "Any persons directly or indirectly controlling or controlled by you or under common control with you." General Instruction 11.A. to Form CRS.

141 General Instruction 1.C. to Form CRS ("*Dual registrants* and *affiliates* that prepare separate *relationship summaries* are limited to two pages for each relationship summary. . . . If delivered electronically, the

help to facilitate comparison of the dual registrant's services, as investors can easily review the separate relationship summaries side-by-side, and will encourage firms to focus on succinctly and clearly explaining the required information. Some commenters, including providers of insurance products, supported a longer relationship summary or expressed concern that four pages would not be enough to allow for a summary of all of their offerings.[142] We believe that the elimination of certain sections (such as the comparison section)[143] and most of the prescribed wording from the relationship summary, along with the flexibility firms will have under the final instructions to describe services with their own wording, and to omit or modify required disclosures or conversation starters that are inapplicable to their business or specific wording that is inaccurate, should help to alleviate the concerns of those who advocated for the relationship summary to be longer.

3. Electronic and Graphical Formats, and Layered Disclosure

We are adding instructions that clarify our support for firms wishing to use electronic media in preparing the relationship summary for retail investors.[144] The proposed instructions would have permitted firms to add embedded hyperlinks within the relationship summary in

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relationship summary must not exceed the equivalent of two pages or four pages in paper format, as applicable.").

142 *See supra* footnotes 133–134 and accompanying text.

143 *See infra* Section II.B.6 (Proposed Items Omitted in Final Instructions).

144 Delivery is discussed in Section II.C. Firms may deliver electronic versions of the relationship summary in accordance with the final instructions and the Commission's guidance regarding electronic delivery. *See* General Instructions 10.B. through 10.D. to Form CRS.

order to supplement required disclosures[145] and would have required firms to use hyperlinks for any document that is cross-referenced in any electronic relationship summary.[146] The proposed instructions also permitted firms to use various graphics or text features to explain the required information but did not reference whether they should be electronic- or paper-based.[147]

Many commenters supported electronic formats, including in connection with layered disclosure.[148] One commenter endorsed electronic, including mobile, formats as inherently easier to navigate and use in a layered approach and asserted that the relationship summary would be more engaging to investors, and thus more effective as a disclosure, if the Commission encouraged more creative use of electronic formats.[149] Research submitted by commenters and feedback from our investor roundtables indicated that investors preferred a more visually

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145 Proposed General Instruction 1.(g) to Form CRS ("You may add embedded hyperlinks within the *relationship summary* in order to supplement required disclosures, for example, links to fee schedules, conflicts disclosures, the firm's narrative brochure required by Part 2A of Form ADV, or other regulatory disclosures.").

146 Proposed General Instruction 1.(g) to Form CRS ("In a *relationship summary* that is posted on your website or otherwise provided electronically, you must use hyperlinks for any document that is cross-referenced in the *relationship summary* if the document is available online.").

147 Proposed General Instruction 1.(f) to Form CRS ("You may use charts, graphs, tables, and other graphics or text features to respond to explain the required information, so long as the information: (i) is responsive to and meets the requirements in these instructions (including space limitations); (ii) is not inaccurate or misleading; and (iii) does not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. When using interactive graphics or tools, you may include instructions on their use and interpretation.").

148 *See, e.g.*, IAA Letter I ("Each key point should be made as simply and succinctly as possible, and the investor should then be pointed clearly and directly to specific additional plain English disclosure explaining the point . . . . This approach would also provide firms with the flexibility they need to use innovative design and delivery techniques.").

149 *See* IAA Letter I.

appealing disclosure.[150] Commenters recommended a more visually-focused and designed experience, and many mock-ups that commenters submitted used graphics and other design features extensively.[151] In addition, the IAC has recommended exploring the use of layered disclosure in certain contexts.[152] The IAC has also recommended that the Commission "continue to explore methods to encourage a transition to electronic delivery that respect investor preferences and that increase, rather than reduce, the likelihood that investors will see and read important disclosure documents."[153] Some commenters also expressed support for the IAC's recommendation relating to electronic delivery.[154]

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150 *See* Betterment Letter I (Hotspex), *supra* footnote 18 (reporting study authors' conclusions that survey respondents found a version of the standalone adviser relationship summary "more appealing and understandable," where Betterment revised the form to "[i]mprove visual hierarchy (e.g., layout, shading, shorten and standardize paragraph lengths to improve legibility, appeal and retention of information"); Schwab Letter I (Koski), *supra* footnote 21(79% of survey respondents said they are more likely to read disclosure that is "visually appealing and did not seem like a legal document"); Washington, D.C. Roundtable, at 20; Atlanta Roundtable, at 35.

151 *See, e.g.*, CFA Letter I; Fidelity Letter (citing to Stanford Law School Design Principles, *Use visual design and interactive experiences, to transform how you present legal info to lay people*, *available at* http://www.legaltechdesign.com/communication-design); Betterment Letter I (mock-up); SIFMA Letter; IAA Letter I; Schwab Letter I; *see also* Kleimann II, *supra* footnote 19 (describing design assumptions for a redesigned version of the relationship summary).

152 *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10 (in connection with the disclosure of disciplinary history, the Commission "should look at whether it might be beneficial to adopt a layered approach to such disclosures, with the goal of developing a more abbreviated, user-friendly document for distribution to investors").

153 Investor Advisory Committee, *Recommendation of the Investor as Purchaser Subcommittee: Promotion of Electronic Delivery and Development of a Summary Disclosure Document for Delivery of Investment Company Shareholder Reports* (Dec. 7, 2017), *available at* https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-promotion-of-electronic-delivery-and-development.pdf ("IAC Electronic Delivery Recommendation").

154 *See, e.g.*, FSI Letter I; Cambridge Letter; Comment Letter of the Institute for Portfolio Alternatives (Aug. 7, 2018) ("Institute for Portfolio Alternatives Letter").

Accordingly, we are adopting and adding provisions to the proposed instructions to encourage the use of electronic formatting and graphical, text, online features and layered disclosures in preparing their relationship summaries.[155] Key elements of the final instructions include the following:

- The instructions encourage (rather than just permit, as proposed) firms to use graphics or text features to respond to the required disclosures, or to make comparisons among their offerings, including by using charts, graphs, tables, text colors, and graphical cues, such as dual-column charts.[156] If the chart, graph, table, or other graphical feature is self-explanatory and responsive to the disclosure item, additional narrative language that may be duplicative is not required. For a relationship summary provided electronically, the instructions further encourage online tools that populate information in comparison boxes based on investor selections.[157]

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155 We created a separate section in the instructions focused on electronic and graphical formats that includes these instructions. Proposed General Instruction 1.(f) to Form CRS ("You may use charts, graphs, tables, and other graphics or text features to explain the required information, so long as the information: (i) is responsive to and meets the requirements in these instructions (including space limitations); (ii) is not inaccurate or misleading; and (iii) does not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. When using interactive graphics or tools, you may include instructions on their use and interpretation.").

156 *See* General Instruction 3.A. to Form CRS ("You are encouraged to use charts, graphs, tables, and other graphics or text features to respond to the required disclosures. You are also encouraged to use text features, text colors, and graphical cues, such as dual-column charts, to compare services, account characteristics, investments, fees, and conflicts of interest.").

157 *See* General Instruction 3.A. to Form CRS ("For a *relationship summary* that is posted on your website or otherwise provided electronically, we encourage online tools that populate information in comparison boxes based on investor selections.").

- The instructions reference a non-exhaustive list of electronic media, communications, or tools that firms may use in their relationship summary.[158] We are including an instruction that, in a relationship summary that is posted on a firm's website or otherwise provided electronically, firms must provide a means of facilitating access (*e.g.,* hyperlinking) to any information that is referenced in the relationship summary if the information is available online.[159] For relationship summaries delivered in paper format, firms may include URL addresses, QR codes, or other means of facilitating access to such information.[160] This instruction permits layered disclosure through paper disclosures and hybrid paper and electronic deliveries, while supporting some investors' preference for paper.

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158 General Instruction 3.A. to Form CRS ("You also may include: (i) a means of facilitating access to video or audio messages, or other forms of information (whether by hyperlink, website address, Quick Response Code ("QR code"), or other equivalent methods or technologies); (ii) mouse-over windows; (iii) pop-up boxes; (iv) chat functionality; (v) fee calculators; or (vi) other forms of electronic media, communications, or tools designed to enhance a *retail investor's* understanding of the material in the *relationship summary*.").

159 General Instruction 3.B. to Form CRS. ("In a *relationship summary* that is posted on your website or otherwise provided electronically, you must provide a means of facilitating access to any information that is referenced in the *relationship summary* if the information is available online, including, for example, hyperlinks to fee schedules, conflicts disclosures, the firm's narrative brochure required by Part 2A of Form ADV, or other regulatory disclosures.").

160 General Instruction 3.B. to Form CRS. ("In a *relationship summary* that is delivered in paper format, you may include URL addresses, QR codes, or other means of facilitating access to such information.").

- The instructions provide guidance that firms may include instructions on the use and interpretation of interactive graphics or tools, as proposed.[161] We believe that these features can make the relationship summary more engaging, accessible, and effective in communicating to retail investors.[162]
- The instructions replace the term "hyperlink" with the more evergreen concept of "a means of facilitating access," which will include hyperlinks as well as website addresses, QR Codes, or other equivalent methods or technologies.[163] Expanding the types of technology referenced in the instructions will make them more relevant as new technologies continue to be developed.

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161 General Instruction 3.C. to Form CRS. Instructions that firms provide on the use and interpretation of interactive graphics or tools would not be subject to the page limitation for relationship summaries under General Instruction 1.C to Form CRS, but should be succinct, consistent with General Instruction 2.A.

162 Similar to the proposed instructions, the final instructions include the caveat that these graphical and text features and electronic media, communications, or tools, (i) must be responsive to and meet the requirements in these instructions for the particular item in which the information is placed; and (ii) may not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. General Instruction 3.C. to Form CRS. *Cf.* Proposed General Instruction 1.(f) to Form CRS ("You may use charts, graphs, tables, and other graphics or text features to explain the required information, so long as the information: (i) is responsive to and meets the requirements in these instructions (including space limitations); (ii) is not inaccurate or misleading; and (iii) does not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included."). We deleted the reference in the proposed instructions to "is not inaccurate or misleading" because it is covered by another instruction.

163 *See, e.g.*, General Instruction 3.A. to Form CRS ("You also may include: (i) a means of facilitating access to video or audio messages, or other forms of information (whether by hyperlink, website address, Quick Response Code ("QR code"), or other equivalent methods or technologies"); General Instruction 3.B. to Form CRS ("In a *relationship summary* that is posted on your website or otherwise provided electronically, you must provide a means of facilitating access to any information that is referenced in the *relationship summary* if the information is available online, including, for example, hyperlinks to fee schedules, conflicts disclosures, the firm's narrative brochure required by Part 2A of Form ADV, or other regulatory disclosures.)." *Cf.* Proposed General Instruction 1.(g) to Form CRS ("In a *relationship summary* that is posted on your website or otherwise provided electronically, you must use hyperlinks for any document that is cross-referenced in the *relationship summary* if the document is available online.").

A number of commenters suggested different approaches for whether we would treat the relationship summary as "incorporating by reference" information provided in additional disclosures or materials that are hyperlinked to or otherwise accessible from the relationship summary.[164] Some of these commenters suggested that we treat certain hyperlinked information as "incorporated by reference."[165] Other commenters recommended that firms should be permitted, but not necessarily required, to incorporate in the relationship summary additional information provided in other documents.[166]

As discussed above, we support the use of layered disclosure and believe that investors will benefit greatly from receiving a relationship summary containing high-level information that they will be more likely to read and understand, with the ability to access more detailed information. Layered disclosure is an approach that can balance the goal of keeping the

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164 *See, e.g.*, Comment Letter of Cetera Financial Group (Aug. 7, 2018) ("Cetera Letter I"); IRI Letter; Schwab Letter I; Schwab Letter III (providing sample Form CRS instructions permitting incorporation of materials by reference); Comment Letter of The National Society of Compliance Professionals (Aug. 7, 2018) ("NSCP Letter"); Schnase Letter; LPL Financial Letter.

165 Schwab Letter I (with respect to broker-dealers, Form CRS should navigate investors to additional information readily available on the firm's website or enclosed with account information, and the additional information would be considered incorporated by reference); NSCP Letter (firms should be permitted to incorporate by reference public disciplinary disclosure events); Schnase Letter ("Firms that follow the SEC rules in filing, posting and linking should get the full anti-fraud benefit of the information in the Firm Brochure being deemed "delivered" when the Relationship Summary is delivered, without having to resort to arcane and outmoded language and concepts such as "incorporation by reference.").

166 *See* Cetera Letter I (suggesting that firms "should be permitted to incorporate other information in Form CRS by reference without reproducing the specified information in its' [sic] entirety, so long as the location is reasonably accessible to the public and the other sources of information are sufficient to meet the standards of Form CRS"); IRI Letter (the Commission should "permit (but not require) firms to use incorporation by reference to satisfy particular components of the disclosures required under Regulation Best Interest and/or Form CRS. In other words, if an investor already receives a particular piece of information in an existing disclosure document (including disclosures required under the federal securities laws, SEC or FINRA rules, ERISA, or DOL rules) the firm should be permitted to merely reference that existing document (with sufficient information for investors to locate or obtain that document.").

relationship summary short and accessible with the goal of providing retail investors with fulsome and specific information. The relationship summary is intended to be a self-contained document, however, and firms should be able to meet the instructions' requirements by providing generalized and summary responses to each item, without relying on incorporation by reference to other documents providing additional information. In contrast with other disclosure obligations such as prospectuses and registration statements, a firm could not satisfy the disclosure requirements set forth in the relationship summary instructions by incorporating another document (such as the Form ADV Part 2A brochure) by reference.

At the same time, we recognize the communicative value of layered disclosure. The instructions provide, as discussed above, that firms may[167] (and in some cases must)[168] cross-reference other documents and use hyperlinks or other tools to give more details about the topic. Where firms link to content outside the relationship summary disclosure, whether on a permissive or mandatory basis, the information may not substitute for providing any narrative descriptions that the instructions require, and the additional information should be responsive and relevant to the topic covered by the instruction. Firms should be mindful that the antifraud

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167 *See, e.g.*, General Instruction 3.A. to Form CRS ("You also may include: (i) a means of facilitating access to video or audio messages, or other forms of information (whether by hyperlink, website address, Quick Response Code ("QR code"), or other equivalent methods or technologies); (ii) mouse-over windows; (iii) pop-up boxes; (iv) chat functionality; (v) fee calculators; or (vi) other forms of electronic media, communications, or tools designed to enhance a *retail investor's* understanding of the material in the *relationship summary*.").

168 *See, e.g.*, Item 3.A.(iii) of Form CRS ("You must include specific references to more detailed information about your fees and costs that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure (specifically Items 5.A., B., C., and D.) and Regulation Best Interest, as applicable.").

standards under the federal securities laws apply to linked information, as with other securities law disclosures.

All together we believe encouraging the use of electronic and graphical formatting online features, and layered disclosures will permit firms to create innovative disclosures that engage investors.

4. Conversation Starters

Consistent with the proposal, the relationship summary will be required to contain suggested follow-up questions for retail investors to ask their financial professional. The relationship summary, however, will not include a separate section of "Key Questions to Ask," at the end of the relationship summary, as proposed. Instead, firms will be required to integrate those "key questions" for retail investors to ask their financial professionals throughout the relationship summary as headings to items or as "conversation starters."

The proposed relationship summary would have required firms to include ten questions, as applicable to their particular business, under the heading "Key Questions to Ask" after a statement that the retail investors should ask their financial professional the key questions about a firm's investment services and accounts.[169] In addition, we proposed to allow firms to include up to four additional frequently asked questions.[170]

Most comment letters that discussed the "Key Questions to Ask" section generally did not support the proposed approach of including a separate section of up to fourteen questions at

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169 *See* Proposed Item 8 of Form CRS.

170 *See id.*

the end of the relationship summary. Commenters who proposed keeping a key questions section typically suggested significant substantive or stylistic alterations.[171] In a separate approach, many commenter mock-ups included topics and questions from "Key Questions to Ask" in a question-and-response format throughout the relationship summary.[172] Several commenters suggested that the key questions be removed from the relationship summary and placed on the Commission's website with other educational materials.[173]

Observations reported in the RAND 2018 report and other surveys and studies, and individual investor feedback at roundtables and on Feedback Forms generally indicated, that retail investors found the key questions helpful, however. In the RAND 2018 survey, the "Key Questions to Ask" section received the highest support of all sections to "keep as is" when investors were asked if they would add more detail, keep as is, shorten, or delete the section, and a majority of RAND 2018 survey respondents also indicated that they were either "very comfortable" or "somewhat comfortable" with asking each of the key questions.[174] Surveys and studies submitted by commenters also indicated that most investors who reviewed one of the

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171 *See, e.g.*, CFA Institute Letter I (suggesting interspersing questions through sections of Form CRS rather than including at the end); SIFMA Letter (suggesting that firms only be required to answer "four to five" questions to make the communication "shorter and more meaningful" to investors).

172 *See, e.g.*, IAA Letter I; Comment Letter of the Institute for the Fiduciary Standard (Aug. 6, 2018) ("IFS Letter"); LPL Financial Letter; Schwab Letter I.

173 *See, e.g.*, ACLI Letter; IAA Letter I; LPL Financial Letter. One commenter representing investors argued that the Commission was better-placed to provide information on topics covered in the "Key Questions to Ask" section because financial professionals would have "room for obfuscation" in their discussions with retail investors. *See* CFA Letter I.

174 *See* RAND 2018, *supra* footnote 13. RAND 2018 also reports that, in qualitative interviews, "[m]ost interview participants said that they liked all of the questions, that they would ask these questions in meeting with a financial service provider, and did not suggest dropping any of the questions."

proposed sample relationship summaries found the suggested questions to be useful and said they were likely to ask the questions.[175] In addition, the "Key Questions to Ask" section received the most "very useful" ratings from commenters who submitted Feedback Forms, and narrative comments on several Feedback Forms specifically indicated that the questions would encourage discussion with financial professionals.[176] Similarly, investors at Commission-held roundtables indicated that they viewed the questions as helpful.[177]

In light of comments, we believe that including questions for investors to ask their financial professionals is an important component of the relationship summary. Several commenter mock-ups showed questions throughout the relationship summary grouped by subject matter rather than at the end of the document. Investor studies showed that proximity and context are important for questions an investor may have for a financial professional.[178] In

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175 *See* Betterment Letter I (Hotspex) *supra* footnote 18 (82% of respondents viewing a version of the investment-adviser relationship summary found the suggested questions to be very or somewhat useful and 93% were very or somewhat likely to ask the questions); Cetera Letter II (Woelfel) *supra* footnote 17 (85% of survey participants who viewed the sample dual-registrant relationship summary found the key questions to be "very" or "somewhat" important to cover, and 84% "strongly" or "somewhat" agreed that the key questions described their topics clearly); Kleimann I, *supra* footnote 19 ("Nearly all participants saw the Key Questions as essential. They felt the questions were straight forward and raised important questions … Many said they would use the set of questions in their next exchange with their broker or adviser.").

176 *See* Feedback Forms Comment Summary, *supra* footnote 11 (51 commenters (55%) responded to Question 2(g) that the Key Questions section was "very useful" and 28 (30%) responded that the Key Questions section was "useful"; in comparison, other sections were scored as "very useful" in the range of 31% to 44%; similarly, more than 75% of Feedback Forms included a narrative response to Question 7 or other response indicating that the Key Questions were useful; 11 narrative responses included specific comments agreeing that the Key Questions would encourage discussions with financial professionals; and two others stated more generally that the relationship summary would encourage dialogue).

177 *See, e.g.*, Atlanta Roundtable (three investors responded positively to a question as to whether the key questions were helpful, with no dissent to that view); Houston Roundtable (one investor responding that "the questions for me are very, very good.").

178 *See* Kleimann I, *supra* footnote 19; Kleimann II, *supra* footnote 19 (each recommending question-and-answer format in part to place relevant information together).

addition, some commenters' Feedback Forms requested that questions be placed earlier in the relationship summary document; one specifically suggested that we put the questions with "the appropriate section [with] each section to which it applies."[179] We have determined to follow a similar approach by replacing the Key Questions to Ask section with specified "conversation starters" throughout the document. We are also using some of the proposed questions as topic headings.

There are required questions as conversation starters in each section other than the Introduction.[180] These conversation starters are intended to cover the same topics as the proposed key questions and in many cases are substantially similar in wording to the proposed key questions.[181] For each conversation starter, firms must use text features to make the conversation starters more noticeable and prominent in relation to the other discussion text. For example, they may use larger or different font; a text box around the heading or questions; bolded, italicized, or underlined text; or lines to offset the questions from other sections.[182] We believe the questions will be more helpful to investors when included throughout the document

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179 *See* Feedback Forms Comment Summary, *supra* footnote 1111 (summary of responses to Question 7); Hoggan Feedback Form ("Maybe you should question at the end of each section – to help frame the issue"); *see also* Hawkins Feedback Form (commenting on obligations section that "[g]iving some examples of types of questions to ask would be beneficial").

180 *See* Items 2.D. (relationships and services); 3.A.(iv) and 3.B.(iii) (fees, costs, conflicts, and standard of conduct); 4.D.(ii) (disciplinary history); and 5.C. (additional information) of Form CRS.

181 For example, the proposed Key Question 6 ("How will you choose investments to recommend for my account?") has been included in the final relationship summary as a conversation starter to the Relationships and Services section ("How will you choose investments to recommend to me?"). For discussion of additional conversation starter questions, *see infra* Section II.A.4 *See also* Proposed Item 8.6 of Form CRS and Item 2.D.(iv) of Form CRS.

182 *See* General Instruction 4.A. to Form CRS.

with formatting highlighting the conversation starters and organizing the conversation starters together with the firm's disclosures about a particular topic, providing retail investors clearer context for each question. However, if a required conversation starter is inapplicable to the firm's business, the firm may omit or modify that conversation starter.[183] With these changes, we believe that the conversation starters will better help retail investors initiate and engage in useful and informative conversations with their investment professionals.

As proposed, investment advisers that provide only automated investment advisory services or broker-dealers that provide services only online without a particular individual with whom a retail investor can discuss the conversation starters must include a section or page on their website that answers each of the conversation starter questions and must provide in the relationship summary a means of facilitating access (*e.g.*, by providing a hyperlink) to that section or page.[184] For example, a firm could include a hyperlink, QR Code, or some other equivalent methods or technologies that would enable a retail investor to access that information. One commenter requested clarification that all firms could provide retail investors with the answers to each key question in writing, and then investors could call a call center for follow-up questions.[185] All firms could choose to provide written answers to conversation starters, but the

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183 *See* General Instruction 2.B. to Form CRS.

184 General Instruction 4.B. to Form CRS. As proposed, such advisers or broker-dealers would have provided a hyperlink in the relationship summary to the appropriate section or page. *See* Proposed Item 8 of Form CRS. In response to comments supporting electronic access more broadly, we broadened the instruction to allow for other means of facilitating access. We also changed the term "automated advice" from the proposed instructions to "automated investment advisory services" in the final instructions to underscore the ongoing nature of the investment advisory relationship.

185 *See* LPL Financial Letter.

final instructions will only require written responses in these limited circumstances to ensure that retail investors receive responses when they do not have access to a financial professional to ask questions. We continue to believe that the requirement as adopted will encourage investor engagement and make the conversation starters useful where there is no firm representative to answer the question in-person (or by telephone) for the retail investor. In addition, as proposed, if the firm provides automated investment advisory or brokerage services, but also makes a financial professional available to discuss the firm's services with a retail investor, the firm must make the financial professional available to discuss the conversation starters with the retail investor.[186]

Six of the proposed key questions will continue to have analogous "conversation starter" questions in the final Form CRS, which we discuss in each applicable section below.[187] These questions cover services, fees and costs, conflicts, disciplinary information, and information about appropriate contact persons. As described below, we revised the wording for all of these questions.

We did not replace four of the key questions with analogous "conversation starter" questions; the topics raised by these key questions will be addressed in other ways in the relationship summary. First, we have replaced the question requesting financial professionals to

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186 General Instruction 4.B. to Form CRS.

187 *See infra* Sections II.B.2 (relating to Item 2.D. of Form CRS), II.B.3.a (relating to Item 3.A.(iv) of Form CRS), II.B.3.b (relating to Item 3.B.(iii) of Form CRS); II.B.4 (relating to Item 4.D.(ii) of Form CRS), and II.B.5 (relating to Item 5.C. of Form CRS).

"do the math for me" with a different conversation starter.[188] Commenters raised specific concerns about this question for operational and recordkeeping reasons.[189] We are instead requiring that firms include a conversation starter question prompting retail investors to ask their financial professional to help them understand how the fees and costs might affect their investments and the potential impact of fees and costs on a $10,000 investment.[190] As we note below, our intent with the proposed "Do the math for me" question was that it serve as a prompt to encourage retail investors to ask about the hypothetical amount they would pay per year for an account, what would make the fees more or less, and what services they would receive for those fees. The question was not intended to require firms to generate individualized cost estimates for each particular retail investor. We believe that the newly worded conversation starter makes that more clear. Additionally, the required discussion of fees, costs, and conflicts, together with the conversation starter question, will better serve as an initial basis for understanding how fees

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188 *See* Proposed Item 8.2 of Form CRS ("Do the math for me. How much would I pay per year for an advisory account? How much for a typical brokerage account? What would make those fees more or less? What services will I receive for those fees?").

189 *See, e.g.*, Comment Letter of Edward D. Jones and Co., L.P. (Aug. 7, 2018) ("Edward Jones Letter") ("[G]iven the range of services available, it would be very difficult for financial professionals to fully address this question at the outset of the [customer] relationship, particularly for investors selecting transaction-based services."); SIFMA Letter ("[M]ost firms do not currently have systems in place to allow the financial professionals to answer questions such as customer-specific 'Do the math for me' requests."); John Hancock Letter ("We further believe that the costs and operational hurdles associated with providing personalized fee information have been underestimated, and encourage the SEC to provide that any "do the math"-type questions may be answered through the use of examples."). In part to avoid recordkeeping requirements on behalf of a financial professional, one commenter suggested reframing the questions as reflecting questions back to an investor with a prompt to ask the representative for help if the investor was unsure as to a response to the questions. *See* Primerica Letter.

For additional discussion of recordkeeping, *see infra* Section II.E.

190 *See* Item 3.A.(iv) of Form CRS.

affect investment returns and the fees that they will pay than the "Do the math for me" key question.[191]

Two other proposed key questions regarding costs associated with an account and how firms make money[192] covered information that the relationship summary as adopted requires to be disclosed under the section on fees, costs, conflicts, and standard of conduct.[193] Specifically, firms must (i) summarize the principal fees and costs that retail investors will incur from their services (including how frequently they are assessed and the conflicts of interest they create) and (ii) describe any other fees related to their brokerage or investment advisory services in addition to those principal fees that the retail investor will incur.[194] Additionally, the new conversation starter question included in Item 3 is intended to elicit similar points of discussion with the following wording: "Help me understand how these fees and costs might affect my investments. If I give you $10,000 to invest, how much will go to fees and costs, and how much will be invested for me?" Finally, unlike the proposal, the relationship summary must include a description of the ways in which the firm and its affiliates make money from brokerage or investment advisory services and investments it provides to retail investors as well as material

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191 *See infra* Section II.B.3.

192 *See* Proposed Items 8.3 ("What additional costs should I expect in connection with my account?") and 8.4 ("Tell me how you and your firm make money in connection with my account. Do you or your firm receive any payments from anyone besides me in connection with my investments?") of Form CRS.

193 *See* Item 3 of Form CRS. The Item 3.C. disclosure combined with the conversation starter included therein would similarly cover information intended to be discussed in response to the fifth proposed key question ("What are the most common conflicts of interest in your advisory and brokerage accounts? Explain how you will address those conflicts when providing services to my account."). *See infra* Section II.B.3.b.

194 *See* Items 3.A.(i) and 3.A.(ii) of Form CRS; *see also infra* Section II.B.3.

conflicts of interest.[195] As a result of these disclosure requirements, the separate questions from the proposal are not necessary.

Finally, we are not adopting a conversation starter question analogous to the proposed key question asking "How often will you monitor my account's performance and offer investment advice?", because the Relationships and Services section of the adopted relationship summary requires disclosure about the services and advice or recommendations that firms offer and whether or not they monitor accounts, including the frequency and any material limitations on any such monitoring.[196]

5. Presentation of Relationship Summaries by Dual Registrants and Affiliated Firms

We are modifying the proposed instructions in order to encourage a dual registrant to prepare one combined relationship summary discussing both its brokerage and advisory services, but a dual registrant will be permitted to provide two separate relationship summaries, each describing one type of service.[197] The proposal would have required a dual registrant to prepare one relationship summary, presenting most of the required items under standardized headings and in a tabular format, with brokerage services described in one column and advisory services described in another.[198] We also are adding a new instruction permitting affiliates to prepare a

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195 *See* Item 3.B.(ii) of Form CRS; *see also infra* Section II.B.3.

196 *See* Item 2.B.(i) of Form CRS ("Explain whether or not you monitor the performance of *retail investors'* investments, including the frequency and any material limitations. Indicate whether or not the services described in response to this Item 2.B.(i) are offered as part of your standard services."); *see also infra* Section II.B.2.

197 General Instruction 5.A. to Form CRS.

198 Proposed General Instruction 1.(e) to Form CRS.

single relationship summary describing both brokerage and investment advisory services that they offer or to prepare separate relationship summaries, one for each type of service.[199] In comparison, the proposed instructions did not permit affiliates to deliver one combined relationship summary, but did allow them to state that they offer retail investors their affiliates' brokerage or advisory services, as applicable.[200]

We are not adopting the definitions of "standalone broker-dealer" and "standalone investment adviser" as proposed, because they are no longer necessary given the streamlining of the instructions relative to the proposal.[201] Under the final instructions, however, we are defining a dual registrant as "[a] firm that is dually registered as a broker-dealer under section 15 of the Exchange Act and an investment adviser under section 203 of the Advisers Act and offers services to retail investors as both a broker-dealer and an investment adviser", substantially as proposed. To clarify, a firm that is dually registered as both a broker-dealer and an investment adviser but does not offer both brokerage and investment advisory services to retail investors would not fall within the definition of dual registrant. For example, a firm that is dually registered and offers investment advisory services to retail investors, but offers brokerage services only to institutional customers,

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199 General Instruction 5.B. to Form CRS.

200 Proposed Item 2.D. of Form CRS. This disclosure only applied in the context of an affiliate of the firm. This item was not intended to describe disclosure of a financial professional's outside business activities, such as an outside investment advisory business of a broker-dealer registered representative. *Cf.* Comment Letter of Northwestern Mutual Life Insurance Company (Aug. 7, 2018) ("Northwestern Mutual Letter") (interpreting Proposed Item 3 to prohibit the mention of affiliate services).

201 *See supra* footnote 8.

would be required to prepare, file, and deliver the relationship summary only in accordance with the obligations of an investment adviser offering services to retail investors.[202]

Dual Registrants. Investor studies and surveys showed mixed results in connection with the dual-column, combined relationship summary. For example, when presented with screen shots of each separate section in dual-column format, 85% of RAND 2018 survey respondents indicated that the side-by-side comparison format helped them decide whether a broker-dealer or investment adviser account would be right for them, but during qualitative interviews, some participants had difficulty with the two column format.[203] On Feedback Forms, some indicated that they liked the side-by-side or grid presentation.[204] One Feedback Form commenter said the dual-column format was confusing, however.[205] An interview-based study also indicated that both the formatting and the language in the dual-column format in our proposed sample relationship summary contributed to investor confusion about differences between broker-dealers' and investment advisers' services.[206] Both industry representatives and commenters representing

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202 *See also* Advisers Act Rule 204-5; Exchange Act Rule 17a-14(a); General Instructions to Form CRS ("If you do not have any *retail investors* to whom you must deliver a relationship summary, you are not required to prepare or file one."); General Instruction 11.C to Form CRS.

203 *See* RAND 2018, *supra* footnote 13, at 22; *see also id.*, at 46 ("Some participants grasped that the document was organized into two columns, each corresponding to an account type. Some others did not realize this immediately but grasped it once it was pointed out by an interviewer.").

204 *See, e.g.,* Anonymous03 Feedback Form ("a side by side chart with u's [sic] to say which type of account offers which service"); Anonymous14 Feedback Form ("recommend chart structure"); Anonymous28 ("Presenting the differences in parallel columns gives the best chance for people new ot [sic] investing to understand what is involved"); Baker Feedback Form ("the double column format, comparing the two classes, was clear and easy to follow"); and Smith1 Feedback Form ("I like the side by side comparisons").

205 *See* Anonymous02 Feedback Form ("Maybe a bit hard to read the columns.").

206 *See* Kleimann I, *supra* footnote 19, at 30–31 ("Most participants tried to read the CRS by looking first at one column, usually the Broker Dealer Services, and then at the second column … when they turned to the second column they then tried to match the bullets …. Sometimes this matching was relatively easy to do,

investors also expressed concerns about the proposed formatting requirements for dual registrants' relationship summaries.[207] Two commenters supported using visual formatting to help investors understand the options dual registrants provide, but argued that the proposed content or design should be changed.[208]

Several commenters suggested letting dual registrants choose whether to prepare one combined relationship summary or two separate ones.[209] Commenters argued that providing information about both brokerage and investment advisory services as proposed would confuse investors.[210] Another suggested requiring dual registrants to prepare and deliver different relationship summaries to retail investors depending on whether the investors enter into an advisory or brokerage relationship, and to highlight the availability and link to the relationship

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as in the Types of Relationships and Services section because the bullets aligned almost exactly. They struggled and found the misaligned bullets confusing in subsequent sections … Some participants simply took information from the first bullet they read or from bolded words or phrases.").

207 *See* AARP Letter; CFA Letter I; TIAA Letter; Fidelity Letter; MassMutual Letter; LPL Financial Letter; SIFMA Letter; Comment Letter of BlackRock, Inc. (Aug. 7, 2018) ("BlackRock Letter") (expressing concern that investors may be confused if dual registrants were required to disclose all of their advisory and brokerage services in a single relationship summary); *see also* Schwab Letter II ("Dual-registrant firms recommend flexibility because of real-world concerns that the side-by-side comparison will not be effective.").

208 *See* AARP Letter ("[a]lthough the visual formatting is helpful, the substantive information laid out within the table remains technical and is likely to be confusing to the average retail investor"); CFA Letter I (emphasizing that investors must see all available options in order to make an informed decision, and that the Commission consult with disclosure design experts toward developing a form that is most likely to result in informed investor choice.").

209 *See* Schwab Letter III (providing sample Form CRS instructions that permit dual registrants either to prepare a single, comparative relationship summary, or two separate relationship summaries describing each type of service and providing links to each other); TIAA Letter; Fidelity Letter; MassMutual Letter; LPL Financial Letter; SIFMA Letter; BlackRock Letter.

210 *See, e.g.*, TIAA Letter (a combined relationship summary would confuse customers of dually registered firms that provide only one type of service and would overwhelm them with information not relevant to the relationship); LPL Financial Letter; SIFMA Letter; BlackRock Letter.

summary of the other type of service.[211] One commenter argued that dual registrants needed flexibility to maintain two separate disclosures to allow each financial professional associated with the dual registrant to provide a tailored disclosure to his/her customer, without including services that he/she is not licensed to provide.[212]

We encourage dual registrants to prepare a single disclosure, designed in a manner that facilitates comparison between their brokerage and advisory services. Informed by comments, we have determined that two separate disclosures might be appropriate, depending on the different ways firms and their financial professionals offer services and on the particular facts and circumstances. For example, financial professionals with licenses to offer services as a representative of a broker-dealer and investment adviser may offer services through a dual registrant, affiliated firms, or unaffiliated firms, or only offer one type of service notwithstanding their dual licensing.[213] Financial professionals who are not dually licensed may offer one type of service through a firm that is dually registered. Accordingly, the final instructions permit dual registrants and affiliates to prepare a single relationship summary, or alternatively, two separate ones, to describe their brokerage and investment advisory services in a way that accurately reflects their business models and will be the most helpful to retail investors. The instructions

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211 *See* IAA Letter I.

212 *See* MassMutual Letter.

213 *See, e.g.*, LPL Financial Letter.

explicitly encourage preparation of a single relationship summary, however, given that a number of investors and commenters reacted positively to this presentation.[214]

A firm preparing a single relationship summary will be required to employ design elements of its own choosing to promote comparability; however, we are not prescribing the two-column format, as proposed. We agree that making retail investors aware of a range of options is important to help them make an informed choice,[215] but we recognize the potential limits of a tabular format, as illustrated by results from some investor studies and surveys,[216] and we have concluded that firms are generally in a better position than the Commission to determine a format and design that facilitates comparison of their specific brokerage and investment advisory services. Whether a firm prepares a single relationship summary or two separate ones, the final instructions require a firm to present the information with equal prominence and in a manner that clearly distinguishes and facilitates comparison of the two types of services.[217] For example, a firm could use a tabular format; text features such as text boxes; bolded, italicized, or underlined text; or lines to clearly indicate similarities and differences in its services.

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214 *See, e.g.*, RAND 2018, *supra* footnote 13 (reporting that 85% of survey respondents found the side-by-side comparison format to be helpful for purposes of deciding between a broker-dealer and investment adviser); s*ee also* CFA Letter I (stating it supported using one document to provide comparing brokerage and investment advisory services); Fidelity Letter (stating that a single Form CRS for a dual-registered firm could accomplish its objective); Schnase Letter (supporting the idea of having a unique form for dual registrants).

215 *See supra* footnote 208 and accompanying text; *infra* footnote 1046 and accompanying text (discussing studies concerning the availability and presentation of comparative information on decision making).

216 *See supra* footnotes 203–206 and accompanying text.

217 General Instruction 5.A. to Form CRS.

While we are providing this flexibility, we believe investors should see a range of options. Accordingly, the final instructions provide that a firm preparing two separate relationship summaries must provide a means of facilitating access to each relationship summary (*e.g.,* include cross-references or hyperlinks) and deliver both with equal prominence and at the same time to each retail investor, whether or not that retail investor qualifies for those retail services or accounts.[218] We disagree with commenters suggesting that dual registrants should have the option to deliver to retail investors a relationship summary describing only one type of service if, for example, that investor does not qualify for one of the services.[219] Retail investors should be able to learn about and compare the range of options a firm offers to retail investors, even if the financial professional does not believe that the retail investor meets the requirements for or is considering certain services at that time. For example, a retail investor may initially seek ongoing advice through an advisory account, but after learning about both brokerage and advisory services and speaking with a financial professional, may decide that a brokerage account is a better choice. Or a retail investor may not qualify for certain accounts at the time of receiving the relationship summary, *e.g.*, by not being able to meet an account opening minimum, but may qualify for them in the future, or may qualify for a particular service at one firm but not another. Furthermore, a retail investor may initially make the financial professional aware of only certain asset holdings (for example, he or she approaches a firm to rollover an IRA). On that basis, the firm may believe the investor only qualifies for certain of the firm's services.

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218 General Instruction 5.A. to Form CRS.

219 *See* IAA Letter I; Fidelity Letter.

However, the investor may also have substantial other asset holdings and thus qualify for a variety of accounts that the firm offers. Knowing about the alternative brokerage and investment advisory options that a firm offers will help retail investors to compare firms' offerings and consider whether to adjust the relationship or services as investors' financial circumstances change.

Affiliate Services. As discussed above, the proposed instructions did not permit affiliates to prepare a combined relationship summary, but did permit firms with affiliates offering retail investors brokerage or advisory services to disclose these services.[220] Several commenters recommended that affiliates should have the same flexibility to prepare one or two relationship summaries as dual registrants.[221] We agree that this flexibility is appropriate for affiliates and are modifying the instructions to permit, but not require, delivery of a single relationship summary. Affiliates preparing a single relationship summary will provide the same comparative benefits for investors as dual registrants doing so. As with dual registrants, some affiliated firms market their services together and have financial professionals who hold licenses through each

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220 Proposed Item 2.D. of Form CRS.

221 *See* Fidelity Letter; LPL Financial Letter ("[D]ual-hatted financial professionals may either (i) provide brokerage and advisory services on behalf of LPL or (ii) provide brokerage services on behalf of LPL while providing advisory services on behalf of an unaffiliated RIA that is separately registered . . . . [In the latter case, an investor] would receive a dual registrant relationship summary from LPL and a standalone investment adviser relationship summary from the RIA" without knowing which entity would be providing advisory services."). Other commenters suggested that the instructions clarify whether the requirements for dual registrants apply to affiliated broker-dealers and investment advisers. Comment Letter of State Farm Mutual Automobile Insurance Company (Aug. 6, 2018) ("State Farm Letter") ("[T]he SEC did not provide a template or otherwise discuss whether affiliated broker-dealers and investment advisers can use blended or combined Form CRS"); Cambridge Letter (requesting that the Commission clarify that all references to dual registrants are applicable to broker-dealers and registered investment advisers organized under a single corporate structure as affiliated entities).

firm. We recognize, however, that not all affiliates operate in the same way. Some affiliated firms operate independently, do not market their services together, and do not share financial professionals. The different ways in which financial professionals affiliate with firms to provide services also warrant this flexibility. For example, some commenters noted that many financial professionals are licensed representatives of a brokerage firm and are also licensed through an affiliated investment advisory firm or an unaffiliated investment advisory firm (sometimes as a sole proprietor) separately registered with the Commission or one or more States.[222] Depending on the relationship among affiliates and their financial professionals, a single relationship summary or two separate summaries may be more appropriate.[223]

Many dually licensed financial professionals offer services on behalf of two affiliates, similar to dually licensed financial professionals offering services for a dual registrant. One commenter requested that the Commission provide clarity that all references to dual registrants apply to broker-dealers and investment advisers organized under a single corporate structure as affiliated entities.[224] Consistent with our discussion above, we believe that retail investors seeking services from dually licensed financial professionals should receive information about all of the services the financial professional offers, even if the services are through two affiliated

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222 *See, e.g.*, LPL Financial Letter.

223 One commenter described arrangements in which a dual-hatted financial professional may provide brokerage services on behalf of a dual registrant and advisory services on behalf of an unaffiliated investment adviser. The commenter expressed concern that an investor may be confused if the dual registrant's and unaffiliated investment adviser's relationship summaries both describe investment advisory services. *See* LPL Financial Letter. We believe the flexibility for dual registrants and affiliated firms to prepare combined or separate relationship summaries under the final instructions should address this concern, and firms can determine which presentations are most helpful for investors.

224 *See* Cambridge Letter.

SEC-registered firms. As a result, if two affiliated SEC-registered firms prepare separate relationship summaries, and they provide brokerage and investment advisory services through dually licensed financial professionals, the final instructions require the firms to deliver to each retail investor both firms' relationship summaries with equal prominence and at the same time, without regard to whether the particular retail investor qualifies for those retail services or accounts. To provide clarity, we have added a definition for dually licensed professionals in the final instructions that was not included in the proposal.[225] The final instructions also provide that each of the relationship summaries must cross-reference and link to the other.[226] If the affiliated firms are not providing brokerage and investment advisory services through dually licensed financial professionals, they may choose whether or not to reference each other's relationship summary and whether or not to deliver the affiliate's relationship summary with equal prominence and at the same time.[227]

Finally, we modified the instructions to explicitly permit a firm to acknowledge other financial services the firm provides in addition to its services as a broker-dealer or investment

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225 General Instruction 11.B. to Form CRS (defining "dually licensed financial professional" as "A natural person who is both an associated person of a broker or dealer registered under section 15 of the Exchange Act, as defined in section 3(a)(18) of the Exchange Act, and a supervised person of an investment adviser registered under section 203 of the Advisers Act, as defined in section 202(a)(25) of the Advisers Act.").

226 General Instruction 5.B. to Form CRS. As discussed above, as is the case for dual registrants, affiliates preparing separate relationship summaries must deliver them to each retail investor with equal prominence and at the same time, without regard to whether the particular retail investor qualifies for those retail services or accounts. Each of the relationship summaries must reference and provide a means of facilitating access to the other. General Instruction 5.B.(ii).a. to Form CRS.

227 General Instruction 5.B.(ii).b. to Form CRS. Firms that are unaffiliated will be treated as standalone broker-dealers and standalone investment advisers, each with an independent responsibility to create and deliver its own relationship summary in accordance with the final instructions.

adviser registered with the SEC, such as insurance, banking, or retirement services, or investment advice pursuant to state registration or licensing.[228] Firms may include a means of facilitating access (*e.g.,* cross-references or hyperlinks) to additional information about those services.[229] Some commenters encouraged the SEC to allow firms to disclose services of other affiliates, even if those services are not regulated by the SEC, such as investment advisory services offered by an affiliated thrift savings institution.[230] In response to our request for comment asking whether we should permit firms to include wording regarding other types of services and lines of businesses, several commenters submitting mock-ups of relationship summaries included language referencing banking and insurance services or products.[231] We found these comments persuasive and believe that permitting firms to reference financial services not necessarily regulated by the Commission so that retail investors can see the range of options available to them can benefit their decision-making, as discussed above.[232] This new instruction supports and expands upon the commenters' suggestions. Given that the focus of the relationship summary is on brokerage and/or advisory services, however, information pertaining

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228 General Instruction 5.C. to Form CRS. This would also permit a broker-dealer that is registered with one or more states as an investment adviser to refer to such advisory services.

229 General Instruction 5.C. to Form CRS.

230 *See* Northwestern Mutual Letter (seeking flexibility to disclose advisory services offered through an affiliated thrift because this would be in the clients' best interest); ACLI Letter (asserting that Form CRS is not flexible enough to describe in a meaningful and accurate way investment advisory services provided by insurance affiliates such as banks or thrifts).

231 *See* ASA Letter; Primerica Letter; Comment Letter of Stifel Financial (Aug. 7, 2018) ("Stifel Letter") (referencing bank sweep accounts and also providing: "Banks and insurance brokers and agents may also provide access to financial planning and advice services, but these services are beyond the scope of this document."); Cetera Letter I (referencing bank sweep programs).

232 *See supra* footnotes 215, 218– 219, and accompanying text.

to other services should not obscure or impede understanding of the information that must be disclosed in accordance with the Form CRS instructions.[233]

We believe that, together, these requirements for dually registered firms, financial professionals, and affiliates will enhance comparability while providing flexibility for them to present their services and relationships in the way the firm believes to be the clearest.

B. Items

The relationship summary is principally designed to provide succinct information about (i) relationships and services the firm offers to retail investors; (ii) fees and costs that retail investors will pay, conflicts of interest, and the applicable standard of conduct; and (iii) disciplinary history. The proposed relationship summary included this information as well as additional topics that we are eliminating, as explained further below. In determining the scope of the relationship summary, we balanced the need for robust disclosures with the risk of "information overload" and reader disengagement, a theme in comment letters, investor feedback at roundtables and in the Feedback Forms, and observations reported in the RAND 2018 report and other surveys and studies.

Some of the key changes from the proposal include:

- We have modified the sections to place substantively related information generally together. We believe this will facilitate comprehension, leading to a better-informed decision-making process and selection of a firm, financial professional, account type, services, and investments.

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[233] *See* General Instruction 5.C. to Form CRS.

- The final instructions simplify the introduction; highlight disciplinary history in a separate section; and integrate key questions, now characterized as "conversation starters," among the remaining sections of the relationship summary.
- After reviewing the comments and observations reported in the RAND 2018 report and other surveys and studies, we have determined to remove prescribed generalized comparisons between brokerage and investment advisory services.

1. Introduction

The relationship summary will include a standardized introductory paragraph. The instructions will require a firm to: (i) state the name of the broker-dealer or investment adviser and whether the firm is registered with the Securities and Exchange Commission as a broker-dealer, investment adviser, or both; (ii) indicate that brokerage and investment advisory services and fees differ and that it is important for the retail investor to understand the differences; and (iii) state that free and simple tools are available to research firms and financial professionals at the Commission's investor education website, Investor.gov/CRS, which also provides educational materials about broker-dealers, investment advisers, and investing.[234]

The introduction's instructions as adopted differ from the proposal, which would have required prescribed wording in the introduction that differed for broker-dealers, investment advisers, and dual registrants. Specifically, the prescribed wording in the proposed introduction was intended to highlight in a generalized sense and make investors aware that broker-dealers

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234 *See* Item 1 of Form CRS. Firms also must include the date prominently at the beginning of the relationship summary, for example, in the header or footer of the first page or in a similar location for a relationship summary provided electronically. *See id.*

and investment advisers are different, and that investors needed to carefully consider this choice. We received one comment specifically addressing the introduction. It stated that the prescribed wording would not capture the attention of retail investors and failed to adequately convey information regarding differences between investment advisers and broker-dealers.[235] In addition, several of the mock-ups commenters submitted included other suggestions for beginning the relationship summary, many of which had an introduction that was generally shorter and included less discussion about generalized business models than the proposed relationship summary.[236] In response to the comment and the mock-ups, a number of which we found conveyed useful information in a more concise manner than the proposed prescribed wording, we simplified and standardized the introductory paragraph, eliminating or replacing most of the prescribed wording we proposed, as discussed further below. In addition, we added a requirement to provide a link to Investor.gov/CRS in the Introduction to highlight the tools and educational resources available to retail investors. This dedicated page on Investor.gov will provide information specifically tailored to educate retail investors about financial professionals, including search tools in order to research firms and financial professionals and information about broker-dealers and investment advisers and their different services, fees, and conflicts. We believe the changes and the new page will better focus retail investors on how the relationship

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235 *See* CFA Letter I. The commenter argued that the introduction would best be used to convey additional basic information about the differences between services offered by broker-dealers, investment advisers, and dual registrants. *See id.*

236 *See, e.g.*, Primerica Letter; Schwab Letter I; SIFMA Letter.

summary can be most helpful to them, while providing a link to resources to more general investor education information at the front of the relationship summary.

We made the following specific changes to the introduction: First, the final instructions require all firms to include certain information without prescribing the specific words that firms must use.[237] The proposed relationship summary would have required prescribed wording that differed for standalone investment advisers, standalone broker-dealers, and dual registrants.[238] These changes correspond with the general approach throughout the final instructions of permitting more flexibility for firms to tailor the wording of their relationship summaries to enhance the relationship summary's accuracy, clarity, usability, and design.[239]

Second, we eliminated the proposed requirement that standalone investment advisers state that they do not provide brokerage services, and *vice versa*.[240] We believe this information is more succinctly conveyed by including the firm's registration status.[241] Additionally, commenters pointed out that the choice of financial services providers is not binary—there are

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237 *See* Item 1 of Form CRS.

238 *See* Proposed Items 1.B. (standalone broker-dealers); 1.C. (standalone investment advisers); and 1.D. (dual registrants) of Form CRS.

239 *See supra* footnote 83 and accompanying text.

240 In bold font, a standalone broker-dealer would have been required to state: "We are a broker-dealer and provide brokerage accounts and services rather than advisory accounts and services." Proposed Item 1.B. of Form CRS. Likewise, a standalone investment adviser would have been required to state in bold font: "We are an investment adviser and provide advisory accounts and services rather than brokerage accounts and services." Proposed Item 1.C. of Form CRS. Dual registrants would have included a similar statement in bold font: "Depending on your needs and investment objectives, we can provide you with services in a brokerage account, investment advisory account, or both at the same time." Proposed Item 1.D. of Form CRS.

241 As noted and discussed further *infra*, the Introduction will also refer retail investors to Investor.gov/CRS for further information regarding broker-dealers and investment advisers.

more than two types of services offered that could apply.[242] We agree that the proposed wording could be viewed as unduly constricting and potentially misleading.

Third, we excluded the statement for dual registrants that, depending on an investor's needs and investment objectives, the firm can provide services in a brokerage account, investment advisory account, or both at the same time. We believe that this information is conveyed more effectively by the statement of a firm's registration status and the information provided elsewhere in the relationship summary, such as in the description of services that the firm provides.[243] In addition, requiring a statement of a firm's registration status at the beginning of the relationship summary helps obviate a need for the Affirmative Disclosures under the Exchange Act and the Advisers Act proposed specifically to require a broker-dealer and an investment adviser to prominently disclose that it is registered as a broker-dealer or investment adviser, as applicable, with the Commission in print or electronic retail investor communications.[244] As discussed below, we are not adopting the Affirmative Disclosures.[245] In response to our request for comment relating to the Affirmative Disclosures,[246] several commenters stated that the proposed rules were duplicative of other disclosure obligations (*e.g.*,

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242 *See, e.g.*, ACLI Letter (describing the "binary approach that the SEC has taken, which is not entirely accurate for the distribution of variable annuity and variable life products").

243 *See infra* Section II.B.2.

244 *See* Proposing Release, *supra* footnote 5, at Section III.D.

245 *See infra* Section III.

246 *See* Proposing Release, *supra* footnote 5, at Section III.D.

Form ADV, Regulation Best Interest, Form CRS)[247] and that such rules were costly and difficult to implement and supervise.[248]

Fourth, we have included an instruction that allows (but does not require) reference to FINRA or Securities Investor Protection Corporation ("SIPC") membership in a manner consistent with other rules and regulations (*e.g.*, FINRA rule 2210).[249]

We are not adopting the proposed requirements to include statements that: (i) there are different ways an investor can get help with investments; (ii) an investor should carefully consider which types of accounts and services are right for him or her; (iii) the relationship summary gives an investor a summary of the types of services the firm provides and how the investor pays; and (iv) an investor should ask for more information with a specific reference to the key questions.[250] We believe that this information is not necessary in the introduction and is better conveyed through the revised question-and-answer structure of the relationship summary and a more streamlined introduction highlighting that it is important for retail investors to understand the difference between brokerage and investment advisory services and fees and referencing Investor.gov/CRS.[251] The conversation starters more directly prompt discussion

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247 *See*, *e.g.*, LPL Financial Letter; SIFMA Letter; IRI Letter; Committee of Annuity Insurers Letter; Trailhead Consulting Letter; *see also infra* Section III.

248 *See*, *e.g.*, LPL Financial Letter; Bank of America Letter; IRI Letter; SIFMA Letter; Comment Letter of Altruist Financial Advisors LLC (Aug. 7, 2018) ("Altruist Letter"); *see also infra* Section III.

249 *See* Item 1.A. of Form CRS.

250 *See* Proposed Items 1.B. (standalone broker-dealers); 1.C. (standalone investment advisers); and 1.D. (dual registrants) of Form CRS.

251 Similarly, we eliminated the reference to suggested questions on a specified page because the key questions are now included throughout the relationship summary.

between retail investors and their investment professionals than a generalized statement to ask for more information, and the conversation starters relating to the Relationships and Services item convey that an investor should carefully consider which types of accounts and services are appropriate. In addition, several commenter mock-ups demonstrated that removing the prescribed wording from each of these changes results in a shorter introduction and promotes additional white space in the relationship summary. Our adopted instructions remove required text that might be unnecessary for investors, similar to introductions in mock-ups that were typically shorter with less discussion about generalized business models than the proposed relationship summary.[252] As a result, we believe these changes will enhance the relationship summary's clarity, usability, and design.

Finally, we added a requirement to provide a link to Investor.gov/CRS and state that free and simple search tools are available at Investor.gov/CRS in order to research firms and financial professionals. Firms also will state that the page provides educational materials about broker-dealers, investment advisers, and investing. These materials include information about the different services and fees that broker-dealers and investment advisers offer. We believe a focus on Investor.gov and specifically the Investor.gov/CRS page at the beginning of the relationship summary will be more helpful to retail investors than the proposed relationship summary introduction. Investor.gov provides various resources that can assist with investor education relating to firms and their professionals. Among other components, Investor.gov currently provides resources prepared by Commission staff for retail investors to:

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[252] *See, e.g.*, Primerica Letter; Schwab Letter I; SIFMA Letter.

- Review the background of their investment professional;
- Educate themselves about investment products, including the risks and unique characteristics of many products;
- Perform fee calculations;
- Review Investor Alerts and Bulletins;
- Find contact information for the Commission; and
- Review educational information regarding broker-dealers and investment advisers.[253]

The Investor.gov/CRS page will bring together these types of educational materials about investment professionals, along with broader tools and other content specifically tailored for retail investors on Investor.gov, which will help them to more easily learn about different types of firms and find information about specific firms and financial professionals.

As discussed further below, we are removing discussions in the proposed relationship summary that were more generalized or educational in nature, including the comparison sections for standalone broker-dealers and investment advisers and other statements comparing these two different types of financial services and fees. Many commenters indicated that the Commission is generally better-positioned to provide investor education materials as compared to firms.[254]

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253 *See* Investor Bulletin: Ten Ways to Use Investor.gov (Mar. 8, 2017), *available at* https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-ten-ways-use-investorgov; *see also* Brokers, *available at* https://www.investor.gov/research-before-you-invest/methods-investing/working-investment-professional/brokers; Investment Advisers, *available at* https://www.investor.gov/research-before-you-invest/methods-investing/working-investment-professional/investment-advisers.

254 *See supra* footnote 40 and accompanying text.

As a result, the revised introduction provides the Investor.gov/CRS link at the beginning of the relationship summary to direct retail investors to the Commission staff's resources and highlights the importance of investor education.[255]

Investors and commenters also supported highlighting Investor.gov more generally. Investor feedback at roundtables generally indicated that Investor.gov was a useful website for retail investors and should be prominent in the relationship summary.[256] Comment letters were supportive of the Commission providing educational materials to retail investors generally and Investor.gov specifically.[257] Observations in surveys and studies also indicated that many retail investors would seek information at Investor.gov and would trust that information because it is a government site.[258] Some investor studies, however, indicated that retail investors did not

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255 Certain commenters provided mock-ups that did not include any introductory wording. *E.g.*, Fidelity Letter; IAA Letter I. In our view, these mock-ups either did not include, or, at minimum, did not appropriately highlight, important information regarding the registration status of the firm or the availability of additional information for retail investors.

256 *See* Denver Roundtable (Investor Nine: "Yeah, I went there [to Investor.gov], that's good." Ms. Siethoff: "Did you think that sort of thing should be highlighted more?" Investor Nine: "More, yes. More"); Philadelphia Roundtable (Investor Four: "I went to those websites [including Investor.gov] and I found them very useful."). Some Feedback Form commenters also indicated that a link to Investor.gov or a similar educational website would be helpful. *See*, *e.g.,* Baker Feedback Form ("I found the document overall extremely useful and learned, most importantly, to refer to the sec.gov website often"); Shepard Feedback Form ("An investing.gov [sic] website seems to be a useful source"); Smith2 Feedback Form ("would like to see a link included to a site or sites that contain general investment information").

257 *See, e.g.*, MassMutual Letter ("The SEC provides a wealth of information at www.investor.gov for educational purposes… Providing general information about broker-dealers and investment advisers in a consistent and readily-accessible [sic] space on the SEC's website would allow each firm to use the space available in Form CRS to accurately describe its brokerage and advisory services, with tailored language to reflect its business model, products and services offered and conflicts of interest.").

258 *See* Kleimann II, *supra* footnote 19 ("Many participants said that they would use the investor.gov site… [and] that they would put a high level of trust in whatever information would be on the site because it was a government site."); RAND 2018, *supra* footnote 13 (finding that two-thirds of investors would be "very likely" or "somewhat likely" to click on a hyperlink for investor education materials).

understand what information was available at Investor.gov.[259] Moving the link to Investor.gov/CRS and the related explanation to the front of the relationship summary (from the "Additional Information" section at the end of the relationship summary, as proposed) will address this issue by making the website more prominent and by concentrating information helpful to retail investors on one dedicated page on Investor.gov.

2. Relationships and Services

As proposed, after the introduction firms will be required to summarize the relationships and services that they offer to retail investors. They will use a revised heading, "What investment services and advice can you provide me?", which follows the new question-and-answer format.[260] Several commenters used this question or a similar heading in mock-ups they provided.[261] Generally as proposed, we are requiring firms to provide information about specific aspects of their brokerage and investment advisory services, with modifications from the proposal to permit firms to use their own wording to cover these topics.

We proposed separate instructions for firms to describe brokerage account services and investment advisory account services. Firms would have used a mix of prescribed wording and their own wording to provide a summary overview of fees and certain required topics, including

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259 *See* Kleimann I, *supra* footnote 19 ("None [of the study participants] had a clear idea of the information that would be provided at Investor.gov."); *see also* Kleimann II, *supra* footnote 19 ("Many participants said that they would use the investor.gov site to research the firm, but few knew what specific information would be at that site…").

260 Item 2.A. of Form CRS.

261 *See, e.g.*, IAA Letter I; LPL Financial Letter; Primerica Letter ; SIFMA Letter; Wells Fargo Letter; Fidelity Letter; Schwab Letter I (mock-up). We proposed requiring the heading, "[Types of] Relationships and Services." As discussed above, many commenters recommended that the relationship summary use a question-and-answer format as a more engaging approach for retail investors.

the scope of advice services, investment discretion, monitoring, and significant limitations on investments available to retail investors.[262] We received feedback from the observations in the RAND 2018 report, other surveys and studies and on Feedback Forms that relationships and services is an important area to cover,[263] and that investors learned important information from the prescribed wording on relationships and services.[264] In addition, the IAC recommended that the Commission adopt a uniform, plain English disclosure for retail investors that would include basic information "about the nature of services offered," among other things.[265] However, some commenters expressed concern that, without more educational content, this approach would not

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262 *See, e.g.*, Proposed Item 2.B. of Form CRS ("If you are a broker-dealer that offers brokerage accounts to *retail investors*, summarize the principal brokerage services that you provide to *retail investors*."); and Proposed Item 2.C. of Form CRS ("If you are an investment adviser that offers investment advisory accounts to *retail investors*, summarize the principal investment advisory services that you provide to *retail investors*.").

263 *See* RAND 2018, *supra* footnote 13 (next to fees and costs, survey participants responded the relationships and services section was one of the most informative; more than 56% of survey participants said to keep the section the same length); *see also* Cetera Letter II (Woelfel) *supra* footnote 17 (85% of survey participants responded that this section was very or somewhat important); Schwab Letter I (Koski) *supra* footnote 21 (54% of survey participants selected "a description of the investment advice services the firm will provide to me" from a menu of 11 subjects as one of the four most important things for firms to communicate). In addition, nearly 90% of Feedback Form commenters graded this section as "very useful" or "useful." *See* Feedback Forms Comment Summary *supra* footnote 11 (summary of responses to Question 2(a)).

264 *See* RAND 2018, *supra* footnote 13 (in qualitative interviews, participants appeared to have "a general understanding that this section describes two different services or accounts that a client would choose"); Kleimann I, *supra* footnote 19 (while study authors found that participants had difficulty with "sorting out the similarities and differences," this study also reports that "[n]early all participants easily identified a key difference between the Brokerage Accounts and Advisory Accounts as the fee structure either being tied to transactions or to assets. Some further identified as a key difference who had the final approval on all transactions, seeing the Brokerage Account as giving them more control on making the final decision.").

265 *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10; and IAC Form CRS Recommendation, *supra* footnote 10.

sufficiently inform or would confuse retail investors.[266] One commenter pointed out that the proposed instructions dictated different ways for broker-dealers and investment advisers to describe similar services.[267] These commenters suggested including more explanatory wording or definitions to cover what services are typically associated with brokerage accounts and investment advisory accounts, to provide more background information to help retail investors understand the firm-specific disclosures.[268] At the same time, commenters noted that summary, prescribed wording for this section may not accurately describe the services of every broker-dealer or investment adviser.[269] Results of the RAND 2018 survey reflected these concerns and

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266 *See* CFA Letter I ("We believe the Commission should . . . require firms to be crystal clear about the nature of the services they offer. Simply telling [investors] that the account is a brokerage account or an advisory account doesn't necessarily convey useful information."); CFA Institute Letter I ("Given the similarities to what investment advisers offer, CRS disclosure of these additional services will likely confuse investors without language clarifying that they are outside of their usual broker-dealer duties and would typically require a separate contract.").

267 CFA Letter I.

268 *See* CFA Letter I (suggesting prescribed wording for how typical broker-dealers and investment advisers might describe their services); CFA Institute Letter I (suggesting alternative wording for how broker-dealers might describe their services). Commenters on Feedback Forms also asked for explanatory wording and definitions. *See* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 4) (seven commenters asked for definitions of terms such as transaction-based fee, asset-based fee or wrap fee; 10 asked for a definition or better explanation of the term "fiduciary"); *see also,* Bhupalam Feedback Form ("The definition of a broker dealer [sic] and investment advisory [sic] is not very clear."); Daunheimer Feedback Form ("For a novice investor, all terms that seasoned investors take for granted, are new to them. Consider making the language as simple as possible."); Margolis Feedback Form ("wording is very confusing and not very accurate"); Anonymous27 Feedback Form ("define better"), *but see* Baker Feedback Form ("the discussion of differences among the relationships is very useful as it describe [sic] the differences in services provided … and most importantly, the difference between a commission-based fee and an 'asset-value' fee"); Hawkins Feedback Form ("Summary does a good job of explaining the basis [sic] services for a brokerage vs advisory account. Some clearer examples could help."); Rohr Feedback Form ("Makes clear how a discretionary account differs from a brokerage account").

269 *See, e.g.*, MassMutual Letter (explaining that the prescribed wording that a customer will pay a commission each time a security is bought and sold is not universally true, *e.g.*, for mutual funds and variable annuities with internal exchange programs, which allow a customer to switch from one investment to another without paying a commission); CFA Letter I (recognizing that a generalized description of portfolio management

showed that almost a quarter of survey respondents (22.2%) described the relationships and services section as "difficult" or "very difficult" to understand.[270] Comments from participants in qualitative interviews reported in the RAND 2018 report, as well as comments from roundtable participants and on Feedback Forms, indicated that prescribed terms such as "transaction-based fee," "asset-based fee," "discretionary account," and "non-discretionary account" contributed to this difficulty.[271]

As discussed in Section II.A.1. above, we are sensitive to the potential inaccuracies and confusion that the prescribed wording can create. We also recognize that in some cases, providing instructions that require broker-dealers and investment advisers to describe similar services in different ways can create confusion. Accordingly, we have revised the instructions to allow firms to use more of their own wording. We also eliminated the separate instructions for brokerage account services and investment advisory account services, and instead are adopting

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services, included for purposes of educating investors, does not apply to all business model among registered investment advisers).

270 RAND 2018, *supra* footnote 13. In the RAND 2018 qualitative interviews, participants noted several phrases that raised concerns such as "additional services" and "might pay more" and identified terms that needed further definition. *Id.* Another interview-based investor study found that "[p]articipants were quite mixed in their understanding about the advice and monitoring that was offered in the two accounts" when presented with the proposed sample dual registrant relationship summary. Kleimann I, *supra* footnote 19.

271 RAND 2018, *supra* footnote 13; *see also* Betterment Letter I (Hotspex) *supra* footnote 18 (finding that "respondents found certain terminology (e.g., 'fiduciary,' 'asset-based,' 'ETF') to be unclear or lack sufficient detail"). Roundtable discussions found similar results. *See, e.g.*, Philadelphia Roundtable (participant finding "transaction-based fee" to be complex); Miami Roundtable (participant stating that "most people don't really understand" what fiduciary duty means); *see also* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 4) (Seven Feedback Forms included narrative comments that asked for definitions of terms such as "transaction-based fee," "asset-based fee" or "wrap fee;" 10 asked for explanation or definition of the term "fiduciary"); Anonymous06 Feedback Form ("Definitions might not be understood transaction based vs asset based fee"); Baker Feedback Form ("It may be more helpful to have detailed definitions (Ex. "transaction-based fee") that, unfortunately, result in a longer document."); Bhupalam Feedback Form ("definition of a broker dealer [sic] and investment advisory [sic] is not very clear"); Starmer2 Feedback Form ("Spell out … best interest").

one set of instructions that generally applies the same requirements to all firms.[272] To facilitate comparison of firms' relationships and services, however, we have retained the concept of specific sub-topics that each firm must cover in this section.[273]

Another change from the proposed instructions relates to a concern regarding how accounts were delineated. The proposed instructions would have applied based on whether or not broker-dealers and investment advisers offered brokerage accounts or investment advisory accounts to retail investors and would have included some prescribed language referencing accounts.[274] Insurance and variable annuity providers commented that this focus on accounts would not allow them to accurately describe insurance offerings and would be confusing, particularly to investors whose insurance or annuity products are held directly with an issuing

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272 *See, e.g.*, Item 2.B. of Form CRS (requiring all firms to summarize their principal services but requiring broker-dealers to state whether or not they offer recommendations and investment advisers to state the particular types of advisory services they offer).

273 As discussed in Section II.A.2 above, we are not requiring that these sub-topics follow a prescribed order, so firms are able to tailor the presentation of their services, as well as include additional information about their brokerage or advisory services, so long as the description covers all applicable topics. *See supra* footnote 121 and accompanying text.

274 *See, e.g.*, Proposed Items 2.B.2. ("If you offer accounts in which you offer recommendations to retail investors, state that the retail investor may select investments or you may recommend investments for the retail investor's account . . . .") and 2.C.4. ("If you significantly limit the types of investments available to retail investors in any accounts, include the following . . . .") of Form CRS. In addition, some of the prescribed wording included language specific to accounts. *See, e.g.*, Proposed Item 2.B.1. of Form CRS. Broker-dealers would state, "If you open a brokerage account, you will pay us a transaction-based fee, generally referred to as a commission, every time you buy or sell an investment."

insurance company.[275] We agree and have replaced references to accounts in this section with references to "services, accounts, or investments you make available to retail investors."[276]

a. Description of Services

The final instructions have an overarching requirement to state that the firm offers brokerage services, investment advisory services, or both, to retail investors, and to summarize the principal services, accounts, or investments the firm makes available to retail investors.[277] A firm also must include any material limitations on those services.[278] The final instructions require firms to include certain information in their descriptions. Similar to the proposal, broker-dealers must state the particular types of principal brokerage services the firm offers to retail investors, including buying and selling securities, and whether or not they offer recommendations to retail investors (*i.e.*, to distinguish execution-only services).[279] Investment advisers must state the particular types of principal advisory services they offer to retail investors, including, for example, financial planning and wrap fee programs.[280] The final instructions do not, however, require prescribed wording to describe the particular characteristics

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275 *E.g.*, ACLI Letter; Committee of Annuity Insurers Letter; IRI Letter; MassMutual Letter; New York Life Letter; Northwestern Mutual Letter.

276 Item 2.B. of Form CRS.

277 Item 2.B. of Form CRS.

278 Item 2.B. of Form CRS.

279 Item 2.B. of Form CRS.

280 Item 2.B. of Form CRS.

of these services, as did the proposed instructions.[281] Commenters argued that the proposed prescribed wording may not accurately describe the services of every broker-dealer or investment adviser.[282] As discussed in Section II.A.1 above, given that investors may be confused by information that does not directly relate to the firm's offerings, we are allowing firms to use their own wording to describe their own services. Therefore, unlike the proposal, the final instructions do not prescribe specific wording for firms to describe the particular characteristics of these services.[283]

Some commenters raised concerns about investor confusion if both broker-dealers and investment advisers discuss the advice they provide in the relationship summary. To mitigate that confusion, some commenters called for an explicit statement that broker-dealers are in sales relationships.[284] In response to these concerns, we added the explicit requirement that broker-

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281 *See, e.g.*, Proposed Item 2.B.2. of Form CRS (requiring broker-dealers (i) that only offer accounts in which they offer recommendations to retail investors to state that the retail investor may select investments or the broker-dealer may recommend investments for the retail investor's account, but the retail investor "will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments" and (ii) that do not offer recommendations to state that the retail investor "will select the investments" and "will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments").

282 *See, e.g.*, MassMutual Letter (explaining that the prescribed wording that a customer will pay a commission each time a security is bought and sold is not universally true, *e.g.*, for mutual funds and variable annuities with internal exchange programs, which allow a customer to switch from one investment to another without paying a commission); CFA Letter I (recognizing that a generalized description of portfolio management services, included for purposes of educating investors, does not apply to all business models among registered investment advisers).

283 *See generally* Items 2.B.(i) through 2.B.(v) of Form CRS.

284 *See, e.g.*, CFA Institute Letter I; Consumers Union Letter; s*ee also* Kleimann II, *supra* footnote 19 (alternative wording for redesigned relationship summary described broker-dealer services as a "sales relationship").

dealers state that they buy and sell securities, in order to clarify their principal services.[285] We also have included a note in the final instructions that broker-dealers offering recommendations should consider the applicability of the Investment Advisers Act of 1940, consistent with SEC guidance.[286]

The final instructions require all firms to address the following topics in the description of their services: (i) monitoring; (ii) investment authority; (iii) limited investment offerings; and (iv) account minimums and other requirements.[287] As discussed further below, the final instructions require firms to include much of the same substantive information as proposed, but rely less on prescribed wording and assumptions regarding typical brokerage and investment advisory accounts.[288] In response to comments, we added a new requirement for firms to disclose whether or not they have account minimums.[289] Commenters recommended that we include information about account minimums in the relationship summary.[290] In addition, a

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285 *See* Item 2.B of Form CRS ("For broker-dealers, state the particular types of principal brokerage services you offer, including buying and selling securities, and whether or not you offer recommendations to *retail investors*.").

286 *See* Item 2.B.(ii) to Form CRS. *See* Solely Incidental Release, *supra* footnote 47.

287 Item 2.C. of Form CRS.

288 In the proposed instructions, assistance with developing or executing the retail investor's strategy and monitoring the performance of the retail investor's account were characterized as additional services for broker-dealers. The final instructions do not make this distinction and instead permit firms more flexibility to describe their services accurately. *See* Proposed Item 2.B.3. of Form CRS.

289 Item 2.B.(iv) to Form CRS ("Explain whether or not you have any requirements for *retail investors* to open or maintain an account or establish a relationship, such as minimum account size or investment amount.").

290 *See, e.g.*, NASAA Letter ("Form CRS should specify minimum account size and include information on miscellaneous fees different categories of investors can expect to pay."); Cetera Letter I (Form CRS should include "[w]hether or not the firm has established standards for the minimum or maximum dollar amount of various account types.").

number of commenters submitting mock-ups included disclosures on account minimums in their forms.[291] We agree this information is important to investors when they are deciding on account types and services, particularly as they consider the amount of funds they are planning to invest and whether they may incur any fees or become ineligible for certain services if their accounts fall under certain dollar thresholds. We also removed requirements to discuss fees at the beginning of this section[292] and are consolidating these requirements with other related ones in the fees, costs, conflicts, and standard of conduct section, as discussed below.[293] We also are not adopting a proposed requirement to describe any regular communications with retail investors.[294] Neither the RAND 2018 report nor other surveys and studies suggested that this information was important to investors, as compared to fees. Mock-ups submitted by commenters also did not include this disclosure, underscoring the relative importance of other topics. Given the goal of limiting the length of the relationship summary so that investors remain engaged and are not overwhelmed by the information, we decided to prioritize requiring other information in the relationship summary.

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291 *See, e.g.*, Primerica Letter and Cetera Letter I.

292 *See* Proposed Items 2.B.1. (broker-dealers) ("If you open a brokerage account, you will pay us a transaction-based fee, generally referred to as a commission, every time you buy or sell an investment."); and 2.C.1. (investment advisers) ("State the type of fee you receive as compensation if the retail investor opens an investment advisory account. For example, state if you charge an on-going asset-based fee based on the value of cash and investments in the advisory account, a fixed fee, or some other fee arrangement. Emphasize the type of fee in bold and italicized font. If you are a standalone adviser, also state how frequently you assess the fee.") of Form CRS.

293 *See infra* footnotes 373–375 and accompanying text.

294 *See* Proposed Items 2.B.3. (broker-dealers) and 2.C.2. (investment advisers) of Form CRS ("Briefly describe any regular communications you have with retail investors, including the frequency and method of the communications.").

Monitoring. The final instructions require both broker-dealers and investment advisers to explain whether or not they monitor retail investors' investments, including the frequency and any material limitations of that monitoring, and if so, whether or not the monitoring services are part of the firm's standard services.[295] In the proposal, different instructions concerning monitoring applied to broker-dealers and investment advisers. Broker-dealers would have stated whether they monitored the performance of retail investors' accounts, and if so, how frequently they performed such monitoring, whether it constituted additional services or was part of the broker-dealer's standard services, and whether a retail investor would pay more for it.[296] Investment advisers would have stated how frequently they monitor retail investors' accounts.[297]

One commenter objected to the requirement for broker-dealers to describe additional services, including monitoring, on the basis that the information would add little value.[298] On the other hand, several commenters suggested that understanding the degree to which firms monitor the performance of their investments can be important to investors.[299] One of these

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295 Item 2.B.(i) of Form CRS.

296 Proposed Item 2.B.3. of Form CRS.

297 Proposed Item 2.C.2. of Form CRS.

298 *See* Wells Fargo Letter (recommending elimination of broker-dealer description of additional services because it could take up substantial space and adds little value for the investor).

299 *See, e.g.*, Comment Letter of the St. John's Law School Securities Arbitration Clinic (Aug. 7, 2018) ("St. John's Law Letter"); CFA Letter I (discussing investors' expectations of a fiduciary duty based on whether and to what degree a firm or financial professional provides monitoring services); Comment Letter of the Commonwealth of Massachusetts (Aug. 7, 2018) ("Massachusetts Letter") (suggesting that the payment of ongoing compensation, such as a trail commission, indicates an ongoing relationship and should carry ongoing duties to monitor the investment); IAA Letter I (stating that, just as an adviser's duty to monitor extends to all personalized advice it provides a client, so should investors expect a similar duty from broker-dealers when providing monitoring services).

commenters noted that broker-dealers and investment advisers have different legal obligations to monitor accounts, and that differences would remain even under Regulation Best Interest.[300] Observations from surveys and studies indicated that investors are interested in or may benefit from clarification of monitoring services.[301] For example, an overwhelming majority of participants in the OIAD/RAND study believed that a financial professional required to act in an investor's best interest would monitor the investor's account on an on-going basis.[302] In qualitative interviews in the RAND 2018 report, participants seemed to distinguish brokerage and investment advisory accounts and assess which type of relationship was a better fit for different investors based on assumptions concerning monitoring.[303] Other surveys and studies also showed that participants varied in their understanding of monitoring and whether they should expect firms to monitor their account.[304]

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300 *See* CFA Letter II.

301 *See, e.g.,* RAND 2018, *supra* footnote 13 (in qualitative interviews, "participants were sometimes unclear on how a financial professional would monitor an account" and "some participants were unclear on how frequently monitoring would occur").

302 *See* OIAD/RAND (finding that 69% of all participants in the survey, 75% of a specialized group defined as "investors," and 86% of a specialized group defined as "investment advice consumers" believed that best interest required ongoing monitoring).

303 *See* RAND 2018, *supra* footnote 13 (in qualitative interviews, "some felt that brokerage accounts are better for those with investment expertise and time to dedicate to investing, whereas advisory accounts are better for those who have less expertise and/or less time to monitor investments"; one participant was confused by a statement that the firm could provide "additional services to assist you and monitor performance" and wanted to know up front which services would be included and which would cost extra.).

304 *See* Kleimann I, *supra* footnote 19 ("Participants assumed that the level of advice and monitoring provided in the two accounts would be the same. They defined monitoring as constant looking at the market and their accounts and making sure their accounts were making money"); Betterment Letter I (Hotspex) *supra* footnote 18 (among survey participants reviewing a standalone adviser relationship summary designed to follow the proposal sample, only 37% correctly identified as "false" a statement that broker-dealers typically monitor client's portfolios and provide advice on an ongoing basis).

We disagree with the comment that requiring broker-dealers to describe monitoring services would add little value. As we also state in the Regulation Best Interest Release, we believe that it is important for retail customers to understand (1) the types of monitoring services (if any) a particular broker-dealer provides, and (2) whether the broker-dealer will be monitoring the particular retail customer's account.[305] We also agree with commenters that monitoring is an important distinguishing feature of different investment services and believe that retail investors should have accurate expectations of the types of monitoring firms offer. We are therefore requiring firms to explain whether or not they monitor retail investors' investments, and if so, the frequency, material limitations, and whether or not monitoring is offered as part of the firm's standard services.[306]

The proposal provided different instructions for broker-dealers and investment advisers concerning monitoring, requiring broker-dealers to discuss monitoring of account performance only if they offered it, and requiring investment advisers to disclose how frequently they monitor retail investors' accounts, as monitoring is generally part of ongoing advisory services.[307] Even with the different wording for broker-dealers and investment advisers as proposed, some participants in investor studies still assumed that the level of monitoring was the same between

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305 *See* Regulation Best Interest Release, *supra* footnote 47; *see also* Solely Incidental Release, *supra* footnote 47.

306 Item 2.B.(i) of Form CRS.

307 *See* Fiduciary Release, *supra* footnote 47.

broker-dealers and investment advisers.[308] As discussed above, we believe it is important for firms to describe more accurately and precisely the monitoring that they actually do for retail investors. Therefore, we are retaining, with slight modifications, the obligation to disclose monitoring services, applying the same instruction to both broker-dealers and investment advisers, and eliminating the prescribed wording. The final instructions pertain to monitoring services generally and are not limited to monitoring for account performance only; to the extent firms describe monitoring services, they must include the frequency and any material limitations on these services and whether or not they are offered as part of the firm's standard services. We believe that subjecting firms to the same requirements to describe their own monitoring services, including a specific statement that they do not provide monitoring, if that is the case, will better facilitate investor understanding of whether any monitoring is provided and if so, the scope and type of such service. This approach also may result in more comparable information so that retail investors can understand the key differences among monitoring services by different firms based on firm-specific descriptions.

Investment Authority. The final instructions require investment adviser firms that accept discretionary authority to describe those services and any material limitations on that authority. Broker-dealers may, but are not required, to state whether they accept limited discretionary authority. Both investment advisers that offer non-discretionary services and broker-dealers

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308 *See* Kleimann I, *supra* footnote 19, at 10 ("Some participants assumed that the advice and level of monitoring was the same."); Betterment Letter I (Hotspex) *supra* footnote 18 (among survey participants reviewing a standalone investment adviser's relationship summary designed to follow the proposal, only 37% correctly identified as "false" a statement that broker-dealers typically monitor client's portfolios and provide advice on an ongoing basis).

must explain that the retail investor makes the ultimate decision regarding the purchase or sale of investments.[309]

Commenters and results from the RAND 2018 qualitative interviews suggested modifications to the proposed investment authority disclosures in the relationship summary but generally supported including this topic.[310] In addition, various commenters submitting their own mock-ups included disclosures on investment authority in their relationship summaries.[311] One commenter also alluded to disputes that can arise when investors misunderstand the investment authority the financial professional exercises for different accounts.[312] One investor study indicated that only a few investors understood from the proposed sample dual-registrant relationship summary that non-discretionary advisory accounts offer investors the ability to

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309 Item 2.B.(ii) of Form CRS.

310 *See* CFA Letter I (stating that it is necessary for firms to describe the various types of discretionary and/or non-discretionary accounts they offer with specificity for such information to be useful to investors in choosing among providers for financial services); CFA Institute (suggesting that investment advisers only be required to discuss the type of accounts they offer (*i.e.*, discretionary and/or nondiscretionary accounts) because discussing both—when not both are offered—would be confusing to customers); Betterment Letter I (stating that some of the prescribed language concerning investment authority may lead to more confusion than it clarifies); RAND 2018 report, *supra* note 13 (participants in qualitative interviews stated that it would be helpful if the relationship summary provided clearer definitions of "discretionary account" and "non-discretionary account"); *see also* Kleimann I, *supra* note 19 (noting that some "identified a key difference as who had final approval on all transactions, seeing the Brokerage Account as giving them more control" and only a few "recognized that non-discretionary advisory accounts also offer this option."). One Feedback Form commenter also noted that explanation of non-discretionary accounts was not clear. *See* Shaffer Feedback Form (broker-dealer recommendation and investment adviser "non-discretionary" account seem very similar. I was asking: "what's the difference."), *but see* Asen Feedback Form ("The Relationship and Services section for BDs is clear in that the investment decision is the customer's …"); Rohr Feedback Form ("makes clear how a discretionary account differs from a brokerage account").

311 *See, e.g.*, Stifel Letter; AALU Letter; Wells Fargo Letter; Cetera Letter I; LPL Financial Letter; IAA Letter I; Primerica Letter; ASA Letter.

312 *See* St. John's Law Letter (describing an arbitration case in which investor was not informed of a change in investment authority when the account type changed).

approve recommendations.[313] Some RAND 2018 interview participants indicated that further definitions of "discretionary account" and "non-discretionary account" would be helpful.[314]

We continue to believe that it is important for investors to understand whether they or the firm or financial professional ultimately makes the investment decision in the relationship or service that they are considering. Accordingly, the final instructions generally require disclosure of the same substantive information on this topic as the proposed instructions, but in a less prescriptive way. As discussed in Section II.A.1, above, we believe that allowing firms to use their own wording to describe their discretionary and non-discretionary offerings and explaining what that means to retail investors in terms of who makes the ultimate investment decisions can lead to disclosures that are more meaningful and less confusing. We recognize that some investor feedback suggested that further definitions of "discretionary account" and "non-discretionary account" would be useful. While the final instructions do not require prescribed wording including these terms, as the proposed instructions would have required, the final instructions do require investment advisers that accept discretionary authority to use their own wording to explain similar information.[315]

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313 *See* Kleimann I, *supra* footnote 19 (noting that some "identified a key difference as who had final approval on all transactions, seeing the Brokerage Account as giving them more control" and only a few "recognized that non-discretionary advisory accounts also offer this option.").

314 *See* RAND 2018, *supra* footnote 13 (participants in qualitative interviews stated that it would be helpful if the relationship summary provided clearer definitions of "discretionary account" and "non-discretionary account").

315 Item 2.B.(ii) to Form CRS.

The final instructions provide that investment advisers that accept discretionary authority will be required to describe these services and any material limitations on that authority.[316] Additionally, any such summary must include the specific circumstances that would trigger that discretionary authority and any material limitations.[317] Investment advisers may, for example, explain whether they seek the retail investor's approval before implementing or changing investment strategies or executing certain transactions. In comparison, the proposed instructions took a more prescriptive approach.[318] For example, the proposed instructions prescribed wording for investment advisers to include in their relationship summaries if they offer a discretionary account.[319] We believe that the more general final instruction provides investment advisers with the flexibility to describe their discretionary offerings more accurately.

For broker-dealers, the final instructions provide that they may, but are not required to, state whether they accept limited discretionary authority.[320] We have made this disclosure

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316 Item 2.B.(ii) of Form CRS.

317 Item 2.B.(ii) of Form CRS.

318 *Compare* Item 2.B.(ii) of Form CRS *with* Proposed Item 2.C.3 of Form CRS ("State if you offer advisory accounts for which you exercise discretion (*i.e.*, discretionary accounts), accounts where you do not exercise discretion (*i.e.*, non-discretionary accounts), or both. Emphasize the type of account (discretionary and non-discretionary) in bold and italicized font.").

319 *See* Proposed Item 2.C.3. of Form CRS ("If you offer a discretionary account, state that it allows you to buy and sell investments in the retail investor's account, without asking the retail investor in advance.").

320 *Compare* Item 2.B.(ii) of Form CRS *with* Proposed Item 2.B.2, which instructed broker-dealers: "If you offer accounts in which you offer recommendations to retail investors, state that the retail investor may select investments or you may recommend investments for the retail investor's account, but the retail investor will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments. If you only offer accounts in which you do not offer recommendations to retail investors (*e.g.*, execution-only brokerage services), state that the retail investor will select the investments and the retail investor will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments."

optional for broker-dealers because of our understanding that these services may not be a significant part of broker-dealers' services.[321] Accordingly, describing them here may detract from disclosure of other items that better characterize the firm's business and would be more helpful to investors. If limited discretion services are a significant part of a broker-dealer's business, for example, if limited discretion services constitute material facts relating to the scope and terms of the relationship with the retail customer that need to be disclosed under Regulation Best Interest, that broker-dealer may wish to include in its relationship summary a statement that it offers limited discretion services.

Finally, both broker-dealers and investment advisers that offer non-discretionary services must explain that the retail investor makes the ultimate decision regarding the purchase or sale of investments.[322] Under the proposed instructions, firms would have been required to explain whether they offer non-discretionary services and what that means, but using prescribed wording. Investment advisers would have been required to state that they give advice and the retail investor decides what investments to buy and sell.[323] Broker-dealers would have been required to state that the retail investor will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments, in addition to other prescribed wording to distinguish execution-only accounts from those in which the broker-dealer would

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321 *See* discussion on discretionary authority in Solely Incidental Release, *supra* footnote 47; *see also* footnotes 284– 286 and accompanying text.

322 Item 2.B.(ii) of Form CRS.

323 *See* Proposed Instruction to Item 2.C.3. of Form CRS ("If you offer a non-discretionary account, state that you give advice and the *retail investor* decides what investments to buy and sell.").

offer recommendations.[324] The final instructions require firms to explain to retail investors that they make the ultimate investment decision in non-discretionary accounts, but do not include requirements to use prescribed wording or references to account types. This change is consistent with our general approach described above that such prescribed wording may be confusing or may not sufficiently cover the discretionary and non-discretionary services a firm may offer.[325]

Limited Investment Offerings. The final instructions require firms to explain whether or not they make available or offer advice only with respect to proprietary products, or a limited menu of products or types of investments. If so, they must also describe the limitations.[326] In comparison, the proposed instructions included prescribed wording for firms to include if they significantly limit the types of investments in any accounts.[327] Specifically, broker-dealers would have stated, "We offer a limited selection of investments. Other firms could offer a wider range of choices, some of which might have lower costs."[328] Investment advisers would have

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324 *See* Proposed Item 2.B.2. of Form CRS ("If you offer accounts in which you offer recommendations to *retail investors*, state that the *retail investor* may select investments or you may recommend investments for the *retail investor's* account, but the *retail investor* will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments. If you only offer accounts in which you do not offer recommendations to *retail investors* (*e.g.*, execution-only brokerage services), state that the *retail investor* will select the investments and the *retail investor* will make the ultimate investment decision regarding the investment strategy and the purchase or sale of investments.").

325 *See, e.g.*, CFA Letter I (suggesting that Form CRS should require advisers to discuss only what they offer in terms of discretionary or nondiscretionary accounts, because discussing both types when they offer only one would confuse investors); IAA Letter I (suggesting that the proposed prescribed wording would not cover sufficiently the variety of discretionary or non-discretionary advisory services a firm may offer and offering alternative language).

326 Item 2.C.(iii) of Form CRS.

327 The Proposed Items stated, "If you significantly limit the types of investments available to *retail investors* in any accounts, include the following . . . ." Proposed Items 2.B.4. and 2.C.4. of Form CRS.

328 Proposed Item B.4. of Form CRS.

stated, "Our investment advice will cover a limited selection of investments. Other firms could provide advice on a wider range of choices, some of which may have lower costs."[329] The proposed instructions gave examples of what might constitute a significant limitation on the types of investments, specifically, offering only one type of asset (*e.g.*, mutual funds, exchange-traded funds, or variable annuities); mutual funds or other investments sponsored or managed by the firm or an affiliate, *i.e.*, proprietary products; or only a small number of investments.[330] If these limits applied only to certain accounts the proposed instructions would have required firms to identify those accounts.[331]

Comments were mixed on the proposed instruction concerning limited investment offerings. Several commenters acknowledged the importance of investors understanding limitations on investments.[332] Results of RAND 2018 qualitative interviews also indicated that investors would like to understand limits on investment offerings.[333] Some commenters expressed concerns that the proposed disclosure would not be of sufficient value to investors.[334] A number of commenters, whether or not they supported generally requiring firms to discuss

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329 Proposed Item C.4. of Form CRS.

330 Proposed Items B.4. and C.4. of Form CRS.

331 Proposed Items B.4. and C.4. of Form CRS.

332 *See* CFA Letter I; CFA Institute Letter I; New York Life Letter; *see also* mock-ups submitted by commenters that included the "limited selection of investments" wording or substantially similar wording. *See* Fidelity Letter; IAA Letter I; IRI Letter. These mock-ups did not elaborate on what the limitations are.

333 *See* RAND 2018, *supra* footnote 13 (from qualitative interviews, finding that "[p]articipants reacted strongly to the notion of being offered limited investment options").

334 *See* CFA Letter I ("[W]e fear the proposed disclosure provides too little information to be of value to the investor."); CFA Institute Letter I (suggesting that the disclosure expressly state that performance may be lower due to higher costs).

limitations on investments, expressed concerns that the scope of "significantly limits" in the proposed instructions or "limited selection of investments" was not sufficiently clear.[335] Furthermore, a few commenters expressed concern that the prescribed wording ("Other firms could offer a wider range of choices, some of which might have lower costs.") unduly prioritized cost over other investment product features or characteristics.[336]

We continue to believe that firms that limit product menus—such as offering only proprietary products or a specific asset class—should be required to describe those limitations in the relationship summary.[337] Other examples include limitations based on products that involve third-party arrangements, such as revenue sharing and mutual fund service fees. We agree with

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335 *See* CFA Letter I ("But simply stating they offer "limited" investments is not enough, as that will mean different things to different investors."); Prudential Letter ("It is unclear what 'significantly limits' means for firms that offer predominantly, but not exclusively, proprietary products. It is also unclear what constitutes a 'small choice of investments.' Additional examples or more prescriptive instructions regarding when firms must disclose such limitations would be helpful."); CFA Letter I ("[F]irms should have to describe how they limit the selection of investments."); Wells Fargo Letter ("This requirement appears to be overly broad as no firm can offer all investments and we therefore recommend that this be limited to those broker-dealers that only offer one type of product.").

336 *See, e.g.*, New York Life Letter ("[T]he Commission's exclusive emphasis on cost in this prescribed sentence does not provide consumers of insurance products with clear and complete information."); Mutual of America Letter ("We believe that this focus on cost alone is not necessarily in the best interest of retail consumers, who may benefit from high-value products, such as variable annuities."); Lincoln Financial Group Letter (suggesting that either the Form CRS or Regulation Best Interest disclosure obligation should allow for descriptions of product benefits to retail investors as well as costs). Another commenter noted that the prescribed wording about other firms' offerings could raise First Amendment concerns. *See* CFA Letter I ("[R]equiring firms to compare their own services unfavorably to those of their competitors may raise First Amendment concerns."). *See supra* footnotes 77–85 and accompanying text.

337 The proposed instructions stated, "If you significantly limit the types of investments available to *retail investors* in any accounts, include the following . . ." Proposed Items 2.B.4. and 2.C.4. of Form CRS. In order to give firms more flexibility to describe limitations on products or investment types in the context of their business models, and to avoid potential confusion with the materiality threshold of Regulation Best Interest (which requires disclosure of all material facts relating to the type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer), we have eliminated the word "significantly" from the final instructions. Regulation Best Interest Release, *supra* footnote 47.

commenters who advocated for helping investors before entering into a relationship with a firm to understand whether a firm limits its product offerings, and to what extent.[338] In light of comments, we have determined, however, that the proposed prescribed wording may not allow all firms to describe limited investment offerings, if applicable, in a way that is accurate and helpful to investors, and are not requiring it in the final instructions.[339] Accordingly, we are revising the instructions to require firms to address whether or not they make available or offer advice only with respect to proprietary products or a limited menu of products or types of investments, and if so, to describe such limitations.[340] We believe that the final instructions address the same types of limitations on investments that the proposed instructions sought to address, but in a less prescriptive way, and allow firms to describe their investment offerings more accurately to reflect their scope of products and services.

Account Minimums and Other Requirements. The final instructions also include a requirement to explain whether or not the firm has any requirements for retail investors to open or maintain an account or establish a relationship, such as minimum account size or investment amount, which is a change from the proposal.[341] In response to our request for comments on such possible requirements, commenters recommended that we include this information in the

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338 *See* CFA Letter I; CFA Institute Letter I.

339 *See supra* footnotes 77–85 and accompanying text.

340 Item 2.C.(iii) of Form CRS.

341 Item 2.C.(iv) of Form CRS.

relationship summary.[342] In addition, a number of commenters submitting mock-ups included disclosures on account minimums in their forms.[343]

We agree that this is important for retail investors to understand because many firms offer a number of services that are only available to investors with higher account balances.[344] Furthermore, fee schedules may be tiered based on account balances.[345] Investors benefit from being aware of and seeing a range of options in the same context, as discussed above. We believe investors can use information about different account requirements for both current and future decision-making purposes. Thus, the final instructions require firms to address whether or not they have any requirements for retail investors to open or maintain an account or establish a relationship, such as a minimum account size or investment amount.

b. Additional Information

In a change from the proposal we are requiring firms to provide specific references to more detailed information about their services that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure (Items 4 and 7 of Part 2A or

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342 *See, e.g.*, NASAA Letter (stating that Form CRS should include a disclosure, specifying the minimum account size and include information on miscellaneous fees different categories of investors can expect to pay); *see also* Cetera Letter I (stating that firms should disclose as material conflict of interest whether or not they have established standards for the minimum or maximum dollar amount of various account types).

343 *See, e.g.*, Primerica Letter; Cetera Letter I.

344 *See, e.g.*, SIFMA Letter (stating that investment advisory services typically require a minimum account balance); ACLI Letter; Comment Letter of the National Association of Insurance and Financial Advisors (Aug. 2, 2018) ("NAIFA Letter").

345 *See, e.g.*, Cetera Letter II (mock-up) (explaining tiered fee schedule).

Item 4.A and 5 of Part 2A Appendix 1) and Regulation Best Interest, as applicable.[346] Broker-dealers that do not provide recommendations subject to Regulation Best Interest (*e.g.*, execution-only broker-dealers) are not required to prepare more detailed information about their services, but to the extent they do, must include references to such information in their relationship summaries.[347] The final instructions require firms to use text features to make this additional information more noticeable and prominent in relation to other discussion text.[348]

As with other references to additional information, firms may include hyperlinks, mouse-over windows, or other means of facilitating access to this additional information and to any additional examples or explanations of such services.[349] This allows firms to summarize their services while making available more detailed and fulsome information for retail investors, in keeping with the design of the relationship summary as a short, succinct disclosure with links to additional information, as commenters and investors asked. We believe that requiring firms to make retail investors aware of the services they offer, at a high level, and where retail investors can obtain more detailed information through layered disclosure, will best engage retail investors and help them make more informed decisions when choosing from among firms, services, or accounts.

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346 Item 2.C. of Form CRS. *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.C.1.

347 Item 2.C. of Form CRS. *See* Regulation Best Interest Release, *supra* footnote 47, at Sections II.A., II.C.1.

348 General Instruction 4.C. to Form CRS. For example, firms could use larger or different font; a text box around the heading or questions; bolded, italicized, or underlined text; or lines to offset the information from other sections.

349 Item 2.C. of Form CRS.

c. Conversation Starters

Firms will include in this section of the relationship summary three prescribed conversation starters for retail investors to ask their financial professional.[350] As discussed in Section II.A.4, these questions are taken from the Key Questions to Ask section in the proposed relationship summary, which a considerable majority of investors indicated were helpful.[351] Broker-dealers and investment advisers that are not dual registrants will include, respectively, "Given my financial situation, should I choose a brokerage service? Why or why not?" or "Given my financial situation, should I choose an investment advisory service? Why or why not?"[352] Dual registrants will include "Given my financial situation, should I choose an investment advisory service? Should I choose a brokerage service? Should I choose both types of services? Why or why not?"[353] These questions are largely the same as the first proposed Key Question but replace the terms "brokerage account" and "advisory account" with "brokerage service" and "investment advisory service," respectively.[354] This revision addresses comments that the concept of "accounts" may not align with all firms' business models and may cause

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350 Item 2.D. of Form CRS. Firms should keep in mind the applicability of the antifraud provisions of the federal securities laws, including section 206 of the Advisers Act, section 17(a) of the Securities Act, and section 10(b) of the Exchange Act and rule 10b-5 thereunder, in preparing the relationship summary, including statements made in response to the relationship summary's "conversation starters." *See supra* footnote 98 and accompanying text.

351 *See supra* footnotes 174–178 and accompanying text.

352 Items 2.D.(i) and 2.D.(ii) of Form CRS.

353 Item 2.D.(iii) of Form CRS.

354 *Cf.* Proposed Item 8.1 of Form CRS ("Given my financial situation, why should I choose an advisory account? Why should I choose a brokerage account?"). We did not receive specific comments on this question, though some commenters included it or a variation thereof in their mock-ups. *See, e.g.*, Betterment Letter I; IRI Letter.

investor confusion.[355] In addition, some commenters stated that it was inappropriate for the Commission to require firms to describe products and services that they do not offer and about which they may have limited or no expertise.[356] Although the proposed instructions permitted firms to modify the first Key Question to reflect the type of accounts they offer to retail investors, we are replacing it with three formulations that are explicitly tailored to firm type in order to clarify that firms are obligated to discuss only the services that they offer. Finally, we have rephrased the questions as "Should I choose [a/an brokerage/advisory] service? Why or why not?" rather than "Why should I choose [a/an brokerage/advisory] service?" to avoid a presumption that the relevant service will always be an appropriate service for the retail investor. The questions are designed to prompt a conversation relevant to the specific retail investor's circumstances.

All firms also will include the questions "How will you choose investments to recommend to me?" and "What is your relevant experience, including your licenses, education and other qualifications? What do those qualifications mean?"[357] These questions are nearly identical to proposed Key Questions numbers six and nine except, again, for the removal of the account concept from proposed Key Question number six, and a minor revision to proposed Key Question number nine to encourage retail investors to ask a broader question regarding the

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355 *See supra* footnote 80 and accompanying text.

356 *E.g.*, ACLI Letter; IAA Letter I.

357 Items 2.D.(iv) and 2.D.(v) of Form CRS.

financial professional's qualifications.[358] We believe that answers to these questions will be helpful to retail investors as they make their choices. In addition, a significant majority of participants from the RAND 2018 survey indicated that they would feel comfortable asking any of the Key Questions.[359] Although fewer participants indicated that they would feel "very comfortable" asking about the financial professional's experience and qualifications, compared with the other two questions,[360] we believe that including this question serves as a useful reminder both to investors who would feel comfortable and as encouragement to those who are hesitant that asking such a question is acceptable.

Requirements Removed from the Proposed Instructions. The final instructions do not include several specific requirements that were proposed in this item. First, the proposal would have required firms to describe their transaction-based fees and asset-based fees in this section, in addition to the more specific fee information required in a separate fee section.[361] We learned

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358 Proposed Key Question number six asked "How will you choose investments to recommend for my account?" Proposed Key Question number nine asked "What is your relevant experience, including your licenses, education and other qualifications? Please explain what the abbreviations in your licenses are and what they mean." Proposed Items 8.6 and 8.9 of Form CRS.

359 RAND 2018, *supra* footnote 13 (finding that at least two-thirds and up to 85% of survey participants indicated that they would be "somewhat comfortable" or "very comfortable" asking any of the Key Questions, including which account to choose and why, how investments would be selected for them, and what the financial professional's experience and qualifications were); *see also* Betterment Letter I (Hotspex) *supra* footnote 18 (reporting that 93% of survey participants who viewed a version of the sample standalone adviser relationship summary in the proposal indicated that they were somewhat or very likely to ask the suggested questions.).

360 RAND 2018, *supra* footnote 13.

361 *See* Proposed Items 2.B.1. ("Include the following (emphasis required): "If you open a brokerage account, you will pay us a ***transaction-based fee***, generally referred to as a commission, every time you buy or sell an investment.") and 2.C.1. ("State the type of fee you receive as compensation if the *retail investor* opens an investment advisory account. For example, state if you charge an on-going asset-based fee based on the value of cash and investments in the advisory account, a fixed fee, or some other fee arrangement.

from an investor study submitted by commenters that dispersing information on the same topic throughout several sections of the relationship summary or separating that information with an unrelated topic could confuse investors.[362] This illustrated the importance of establishing sufficient context and increasing the salience of related information by ensuring that it is kept together in the relationship summary. We agree that fee information should be provided together, and have eliminated fee disclosures from the Relationship and Services section to locate it with other fee information in an effort to reduce investor confusion.

In addition, the final instructions do not require firms to describe regular communications with retail investors, including frequency and method, as proposed. Comments were mixed on the proposed instruction. One commenter expressed the view that proposed Form CRS suggested that firms should contact advisory clients by phone or email every quarter and disagreed with this implication. The commenter recommended that instead of mandating the form or frequency of contact with clients, the Commission should continue to give advisory clients flexibility to communicate how and when they want, as long as investment advisers are meeting their obligations under the Advisers Act.[363] Another commenter noted that misunderstandings concerning broker-dealers' duty or intention to monitor accounts can be

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Emphasize the type of fee in bold and italicized font. If you are a *standalone adviser*, also state how frequently you assess the fee.") of Form CRS.

362 *See* Kleimann I, *supra* footnote 19 ("[W]hile the Brokerage Account was defined as using transaction-based fees and the Investment Advisory Account as using asset-based fees in the first section, in the Costs and Fees section, the Investment Adviser Services column also discusses transaction fees. This 'contradictory' repetition was confusing to participants.").

363 *See* Edward Jones Letter.

avoided by proper communications, most importantly at the time the relationship is formed.[364] Mock-ups submitted by commenters generally did not refer to or describe communications between the firm or financial adviser and the investor.[365] The proposal was not designed to mandate the form or frequency of contact with clients. Nonetheless, given these mixed responses, our goal of keeping the relationship summary focused on a limited amount of information, and to allow more flexibility for firms to describe their services more accurately and meaningfully, firms will not be required to describe the frequency and method of their regular communications with retail investors. Firms may include this information, however, to help investors better understand the services provided.

3. Summary of Fees, Costs, Conflicts, and Standard of Conduct

In response to comments, feedback from investors at roundtables and on Feedback Forms, and observations reported by the RAND 2018 report and other surveys and studies, we are adopting changes to the relationship summary's required discussion of fees, costs, conflicts of interest, and standard of conduct. Commenters generally supported the Commission's goal of providing investors with reliable and straightforward information about the fees they pay, the standard of conduct applicable to financial professionals, and conflicts of interest relating to financial professional compensation.[366] Some suggested that the fee disclosure should be more

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364 *See* Schnase Letter.

365 *But see* Cetera Letter II ("Regardless of the program chosen, your IAR is responsible for ongoing review of your account(s), regular communication with you . . . .").

366 *See, e.g.*, CFA Institute Letter I (noting that "we support efforts to help retail investors educate themselves on the differences between broker-dealers and investment advisers – in terms of services offered, fees they charge, conflicts of interest, and importantly, the standard of care under which each operates"); Fidelity Letter ("Form CRS should … inform investors of the types of fees they may incur and direct them, via a

prominent in the proposed relationship summary and located towards the front of the relationship summary and also suggested modifications to sections of the relationship summary addressing financial professional conflicts of interest and standards of conduct.[367]

Results of the RAND 2018 report and other surveys and studies showed that investors view information about fees and costs as one of the most important of the proposed sections of the relationship summary.[368] Investor feedback at roundtables and through Feedback Forms also showed the importance of fees and cost information to investors.[369] However, the RAND 2018 survey and other surveys and studies also indicated that the proposed relationship summary

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link, to more detailed disclosure."); Comment Letter of the Investment Adviser Association (Dec. 4, 2018) ("IAA Letter II") (describing "fees and expenses to be paid, legal obligations, conflicts of interest" as disclosure items that are "more critical than others"); Comment Letter of the University of Miami School of Law (Aug. 2, 2018) ("Investors should be provided with clear and concise information that fully and fairly discloses the specific charges he or she will incur as a result of the particular recommendation."); NAIFA Letter (agrees that clients should receive "early in the client-advisor relationship – all of the information in the SEC's proposal" which would include: "fees and charges … material conflicts of interest associated with a recommendation (to the extent known at the time of disclosure); [and] standards of conduct applicable to the services offered"); *see also* AARP Letter (recommending reformatting of Form CRS to meet "critical core components" including that "standard of care should be clear, concise and defined" [and] "fee structure should be straightforward and avoid technical jargon"); CCMC Letter (in connection with investor polling, noting that investors identify explaining "fees and costs," "own compensation," and "conflicts of interest" as "issues that matter most" to investors).

367 *See, e.g.*, mock-ups in IAA Letter I; Robinson Letter; SIFMA Letter; Fidelity Letter; Schwab Letter I.

368 RAND 2018, *supra* footnote 13 (more than 70% of survey respondents selected the fees and costs section as one of the most informative; this section was least likely to be selected as not informative); *see also* Cetera II Letter (Woelfel) *supra* footnote 17 (reporting that 88% of survey respondents agreed that it is very or somewhat important to cover "fees and costs associated with those services"); Schwab Letter I (Koski) *supra* footnote 21 (reporting that 63% of survey respondents ranked "costs I pay for investment advice" as one of the four most important things for firms to communicate); CCMC Letter (investor polling) *supra* footnote 21(describing "explaining fees and costs" as one of three issues that "matter most" to investors).

369 *See, e.g.*, Houston Roundtable; Atlanta Roundtable; Philadelphia Roundtable; Miami Roundtable; Washington, D.C. Roundtable; Denver Roundtable; Baltimore Roundtable; CFA Letter I; *see also* Feedback Forms Comment Summary, *supra* footnote 11 (responses to Question 2(c)) (over 80% of commenters graded the section on fees and costs as "very useful" or "useful").

presentation of fee and cost information could be difficult for investors to understand.[370] The RAND 2018 survey and other surveys and studies also suggested that investors found sections in the proposed relationship summary covering the obligations of financial professionals and conflicts disclosure less informative,[371] and indicated that investors could have difficulty understanding and synthesizing information about the obligations of financial professionals and the impact of conflicts of interest.[372] As discussed more fully below, we considered all of this feedback, as well as comments received, in redesigning the disclosures related to the topics.

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370 RAND 2018, *supra* footnote 13 (40% of survey respondents rated fees and costs section difficulty as "just right" while 35% rated the fees and cost section as difficult or very difficult; in qualitative interviews, participants generally found the section to be important, but also overwhelming and had trouble with language); *see also* Kleimann I, *supra* footnote 19 ("Participants expected to pay for transactions in a Brokerage Account or the quarterly fee for an Advisory Account, but they were surprised by the proliferation of additional fees … commented on the introduction of many new terms and wanted definitions…"); Cetera Letter II (Woelfel) *supra* footnote 17 (78% of survey respondents agreed strongly or somewhat agreed that fees and costs were clearly described, well below ratings for clarity of information about services and obligations).

371 *See* RAND 2018, *supra* footnote 13 (almost one quarter of survey respondents selected "our obligations to you" as one of the least informative sections, only one third selected the section as one of the two most informative; the conflicts of interest section was selected as one of the two most informative by only 15% of respondents and as one of the least informative by more than a third); *see also* Cetera Letter II (Woelfel), *supra* footnote 17 (largest percent of survey respondents (88%) strongly or somewhat agreed that the "our obligations to you" topic was important; smallest percent (81%) strongly or somewhat agreed that conflicts of interest was important); CCMC Letter (investor polling) *supra* footnote 21(describing "explaining fees and costs," "explaining own compensation," and "explaining conflicts of interest" as three issues that "matter most" to investors).

372 *See* RAND 2018, *supra* footnote 13 (in qualitative interviews, some participants struggled with understanding differing obligations for different account types and reconciling information in the conflicts of interest section with the "our obligations to you" section); Kleimann I, *supra* footnote 19 ("Few participants could define "fiduciary standard"; participants explaining firms' financial relationships that could create potential conflicts "had difficulty explaining how firms earned money from these relationships … often absent from these explanations was a discussion of the negative impact that these practices would have on them."); Betterment Letter I (Hotspex), *supra* footnote 18 (reporting survey results indicating that some investors viewing a version of the sample proposed standalone adviser relationship summary had difficulty answering correctly questions about financial professional obligations and conflicts of interest).

A new Item 3 will require the relationship summary to cover three areas: (i) fees and costs; (ii) standard of conduct and conflicts of interest; and (iii) financial professional compensation and related conflicts of interest. Some of the key elements of these disclosures include:

- *Integrated sections covering fees, costs, conflicts of interest, and standard of conduct.* We have modified the proposal by combining the fees and costs section and the sections discussing conflicts of interest and standard of conduct into one Item 3 that will require three consecutive sections. These sections will help illustrate the interconnectedness of fees, costs, conflicts, and standard of conduct, and will keep these related disclosures close in proximity to each other.
- *Distinct summaries of principal fees and costs other fees and costs, and other ways the firm makes money.* We are also requiring separate sections discussing certain fees and costs, with one section discussing principal fees and costs, another section discussing other fees and costs related to the firm's services and investments, and another section discussing other ways the firm and its affiliates make money. We are not requiring firms to discuss all of the fees and costs together as proposed, to address comments and feedback that the section was complicated and overwhelming. We are also requiring a firm to include cross-references to more detailed information about the firm's fees.
- *A description of the standard of conduct with conflicts.* We are placing the description of the standard of conduct under the same heading as a summary of conflicts in order to help retail investors better understand the relationship between the standard of conduct and conflicts.

- *Broadening the types of conflicts disclosure.* We are requiring firms to disclose information on the topics that were required in the proposal—*i.e.*, proprietary products, third-party payments (shelf space and revenue sharing arrangements), and principal trading. But we are requiring firms without these conflicts to disclose at least one material conflict. We are also requiring a firm to include cross-references to more detailed information about the firm's conflicts of interest.
- *Financial professional compensation.* We are adding a separate section that will require a firm to highlight how its financial professionals are compensated and the conflicts of interest those payments create. This disclosure will distinguish firm-level from financial professional-level conflicts.

The proposal would have included one section summarizing fees and costs, one section summarizing conflicts of interest, and one section discussing the applicable standards of conduct. The principal fees were also discussed at the beginning of the services section, and for standalone investment advisers and broker-dealers, the section discussing fees and costs and the section discussing conflicts of interest were separated by a section discussing comparisons between investment advisers and broker-dealers. Commenters suggested locating fee and conflict disclosures more closely together, and several sample relationship summaries submitted by commenters placed the fees and conflicts sections in close proximity to each other.[373] As noted, we learned from an interview-based study submitted by a commenter that investors could

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373 *See, e.g.*, LPL Financial Letter; Betterment Letter I; Primerica Letter; SIFMA Letter; Wells Fargo Letter; Schwab Letter I.

have trouble connecting related information when those sections were not closely located.[374] Observations in the RAND 2018 qualitative interviews and comments submitted on Feedback Forms also suggested that investors' level of understanding varied significantly with regard to the relationship between the applicable standard of conduct and conflicts, and that investors might be more confused by this relationship when the relationship summary placed these sections far apart from one another.[375] We agree that it is important to illustrate the relationship between fees, conflicts, and standards of conduct. We are therefore combining in Item 3 of the final instructions the discussions on fees and costs with discussions of firms' conflicts of interest, and combining the standard of conduct discussion with the discussion of certain other conflicts of interest.

a. Description of Principal Fees and Costs and Other Fees

Similar to the proposal, firms will be required to summarize the principal fees and costs that retail investors incur with respect to their brokerage and investment advisory accounts, and the conflicts of interest they create.

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374 *See supra* footnote 362 and accompanying text.

375 *See* RAND 2018, *supra* footnote 13 (in qualitative interviews, participants struggled to reconcile information in the conflicts of interest section with obligations section). Among commenters on Feedback Forms who indicated that the relationship summary was too technical or that topics could be improved, many commented that sections addressing fees and costs, obligations and conflicts of interest needed clarification or better explanation. *See* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 4). Some Feedback Form commenters suggested changes to the order of information about fees, conflicts and obligations or offered other comments suggesting that the order of the topics was confusing. *See* Anonymous28 Feedback Form ("Conflicts of Interest should come right after Obligations to You."); Asen Feedback Form ("Somewhat I would prefer to see conflicts before fees"); Lee2 Feedback Form (comment responding to Question 3(b), whether order is appropriate, "[c]onflicts seems buried too deeply"); Smith1 Feedback Form ("The transactions comment in the fees section seems like it would also fall under the conflicts of interst [sic] section").

As noted above, commenters generally supported the Commission's goal of providing investors with reliable and straightforward information about the fees they pay and suggested making this information more prominent and located towards the front of the relationship summary.[376] Similarly, observations in the RAND 2018 report, and other surveys and studies, and comments from investors at roundtables and in Feedback Forms, overwhelmingly supported including fee disclosure in the relationship summary and showed that investors believe that information about fees and costs is important to understanding their relationship with a financial professional.[377] The RAND 2018 survey reported, however, that survey participants were more likely to rate the proposed relationship summary section on fees and costs as "difficult" or "very difficult" to understand and would add more detail.[378] In the RAND 2018 qualitative interviews, participants generally understood that this section would provide information on the types of fees they could possibly pay, but also found the section overwhelming with the number of various types of fees and had some difficulty with language, including certain terms.[379] Some participants also did not appear to synthesize information about fees and conflicts of interest to

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376 *See supra* footnotes 366–367 and accompanying text.

377 *See supra* footnotes 368–369 and accompanying text.

378 *See* RAND 2018, *supra* footnote 13 (in the RAND 2018 survey about 40% rated the difficulty of the section on fees and costs as "just right" and 35% rated the section on fees and costs as "difficult" or "very difficult"; about 30% of survey respondents suggested adding more detail).

379 *See* RAND 2018, *supra* footnote 13 ("Participants struggled with terms in this section. … Words that participants flagged include 'markup,' 'markdown,' 'load,' 'surrender charges,' 'wrap fee' and 'custody.'").

be able to apply it.[380] Other surveys and studies, and comments provided on Feedback Forms, also indicate that investors both want additional information about fees and costs and found this information difficult to understand.[381] Several commenters also said that information on fees and costs was not straightforward and used too much technical jargon.[382] In addition, the IAC recommended that the Commission adopt a uniform, plain English document that covers basic information about fees and compensation, among other topics.[383] The Feedback Form commenters and observations reported in the RAND 2018 report and other surveys and studies reaffirms our view that it is critical for retail investors to better understand the fees and costs incurred with their investments and related conflicts of interest. This section has been revised to further our policy objective of helping investors better understand such fees, costs, and conflicts of interest.

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380 *See* RAND 2018, *supra* footnote 13 ("[O]ne participant could clearly put differences in fees related to each type of account [but] when asked about which type of financial professional has an incentive to encourage investors to buy and sell securities frequently … incorrectly answered.").

381 *See* Kleimann I, *supra* footnote 19 (finding that "[p]articipants expected to pay for transactions in a Brokerage Account or the quarterly fee for an Advisory Account, but they were surprised by the proliferation of additional fees. … Participants also commented on the introduction of many new terms); Cetera Letter II (Woelfel) *supra* footnote 17 (78% of survey respondents strongly or somewhat agreed that information on fees and costs was clearly presented, rating below sections describing the firm's obligations and the services that the firm provides.); Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 4) (41 commenters on Feedback Forms (44%) indicated that one or more topics on the relationship summary is too technical or could be improved; 23 included comments indicating that information about fees and costs is too technical or needed to be more clear).

382 *See e.g.*, IAA Letter I (stating that retail investors are unlikely to understand the use of "technical terms and industry jargon" with respect to fees in the relationship summary); *see also* AARP Letter; Fidelity Letter.

383 *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10.

Description of Principal Fees and Costs. First, using the heading "What fees will I pay?",[384] firms will summarize their principal fees and costs that retail investors will incur for brokerage or investment advisory services, including how frequently such fees are assessed and the conflicts of interest they create.[385] Broker-dealers must describe their transaction-based fees[386] and investment advisers must describe their ongoing asset-based fees, fixed fees, wrap fee program fees, or other direct fee arrangements.[387] The fees described by investment advisers should align with the type of fee(s) disclosed in response to Form ADV Part 1A, Item 5.E, but they should be summarized in a way that provides retail investors a high-level overview.[388]

Although the proposal required firms to include information about their principal fees and costs, much of the wording was prescribed. For instance, the proposed instructions included prescribed wording to describe transaction-based fees and asset-based fees and the incentives that each of those fees create.[389] The proposed instructions also required firms to use technical

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384 Item 3.A. of Form CRS.

385 Item 3.A.(i) of Form CRS.

386 Item 3A.(i)(a) of Form CRS.

387 Item 3.A.(i)(b) of Form CRS.

388 Item 3.A.(i)(b) of Form CRS. In addition, investment advisers must include information about each type of fee they report in Form ADV that is responsive to Item 3.A. of Form CRS.

389 Dual registrant broker-dealers, for example, were required to include the following wording on transaction based fees: "You will pay us a fee every time you buy or sell an investment. This fee, commonly referred to as a commission, is based on the specific transaction and not the value of your account." Proposed Item 4.B.1. of Form CRS. Dual registrant investment advisers were required to include the following wording on asset-based fees: "You will pay an on-going fee [at the end of each quarter] based on the value of the cash and investments in your advisory account." If the asset manager charged another type of fee instead of an asset-based fee, it was required to briefly describe that fee and how frequently it was assessed. Investment advisers that charged an ongoing asset-based fee would have been required to include the following: "The more assets you have in the advisory account, including cash, the more you will pay us.

terms and explain their definitions (*e.g.*, "mark-up" or "mark-down," "load," and "custody").[390] Additionally, firms providing advice about investing in wrap fee programs were required to include several more prescribed sentences.[391] Finally, dual registrants were required to state when a retail investor may prefer a brokerage or investment advisory service from a cost perspective,[392] and wrap fee program providers had to explain when a retail investor may prefer a wrap fee program.[393] Commenters argued that in many cases the prescribed wording was

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We therefore have an incentive to increase the assets in your account in order to increase our fees. You pay our fee [insert frequency of fee (e.g., quarterly)] even if you do not buy or sell." Broker-dealers would have been required to include the following: "The more transactions in your account, the more fees we charge you. We therefore have an incentive to encourage you to engage in transactions." Proposed Items 4.B.5. and 4.C.8. of Form CRS.

390 Broker-dealers were required to state the following (emphasis required): "With stocks or exchange-traded funds, this fee is usually a separate commission. With other investments, such as bonds, this fee might be part of the price you pay for the investment (called a '***mark-up'*** or '***mark down'***). With mutual funds, this fee (typically called a '***load'***) reduces the value of your investment." Proposed Item 4.B.2.(a) of Form CRS. Investment advisers were required to state, if applicable, that "a retail investor will pay fees to a broker-dealer or bank that will hold the retail assets and that this is called custody." Proposed Item 4.C.6. of Form CRS.

391 Investment advisers that provided advice to retail investors about investing in wrap fee programs were required to include the following (emphasis required): "We offer advisory accounts called ***wrap fee programs***. In a ***wrap fee program***, the asset-based fee will include most transaction costs and fees to a broker-dealer or bank that will hold your assets (called '***custody'***), and as a result wrap fees are typically higher than non-wrap advisory fees." If the investment adviser offered a wrap fee program as well as another type of advisory account, it was required to include: "For some advisory accounts, called ***wrap fee programs***, the asset-based fee will include most transaction costs and custody services, and as a result wrap fees are typically higher than non-wrap advisory fees."

392 Dual registrants were required to include the following: "An asset-based fee may cost more than a transaction-based fee, but you may prefer an asset-based fee if you want continuing advice or want someone to make investment decisions for you." Proposed Item 4.C.10. of Form CRS.

393 Investment advisers that provided advice to retail investors about investing in wrap fee programs were required to include the following (emphasis required): "You may prefer a wrap fee program if you prefer the certainty of a [insert frequency of the wrap fee (e.g., quarterly)] fee regardless of the number of transactions you have." Proposed Item 4.C.10. of Form CRS.

confusing and not accurate.[394] For example, several commenters indicated the proposed fee discussion was unnecessarily technical and suggested the relationship summary avoid the use of jargon (*e.g.*, terms like "asset-based fee" and "load") in this section.[395] Several roundtable participants also said that they did not understand these terms,[396] as did some participants in investor studies and surveys.[397] Other commenters noted that the wording in the proposal was too binary.[398] Another commenter argued that certain prescribed wording was obvious to retail investors and did not add value to the retail investor.[399]

In an effort to balance the goal of educating retail investors with the need to provide firms with enough flexibility to tailor the disclosure to their services and investments, we have decided

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394 *See, e.g.*, CFA Institute Letter I (suggesting that the Commission revise the proposed wording to reflect the effect on costs in a more even-handed manner); ACLI Letter (stating that the prescriptive nature of the disclosures does not sufficiently allow for diverse business models to be explained); IAA Letter I (stating that the prescribed language comparing investment advisers to broker-dealers does not include important information and may confuse retail investors, and that the prescribed language associated with fees based on assets under management, while technically correct, misses an important point—namely that an adviser earns more when the client's portfolio performs better and earns less when the portfolio performs less well aligns the adviser's interest with the client's interest, rather than the reverse); FSI Letter I (stating that prescribing language in the relationship summary may confuse retail investors); Comment Letter of Paul Hynes (Jul. 31, 2018) ("Paul Hynes Letter") (stating that the prescribed wording is inaccurate by suggesting that investment advisers can sell variable annuities); ACLI Letter (stating that the Fees and Costs section is replete with required statements that may be unnecessary/misleading).

395 CFA Letter I; AARP Letter; IAA Letter I.

396 *See, e.g.*, Miami Roundtable; Houston Roundtable; Philadelphia Roundtable.

397 *See* RAND 2018, *supra* footnote 13 (in qualitative interviews participants asked for definitions of "transaction-based fee," asset-based fee," and struggled with terms such as "mark-up," "mark-down," "load," surrender "charges" and "wrap fee"); *see also* Kleimann I, *supra* footnote 19.

398 *See, e.g.*, CFA Letter I; Margolis Feedback Form (stating that the wording assumed that a retail investor would pay either a transaction-based fee or an asset-based fee for a brokerage or advisory account, respectively, and did not capture other fee structures).

399 *See* Wells Fargo Letter.

to remove from the Instructions the prescribed wording we proposed about fees and costs.[400] Specifically we are replacing the prescribed wording with a requirement to describe the firm's principal fees and the conflicts of interest they create. We have also included examples in the instructions of statements that would describe certain principal fees. We have concluded, based on consideration of the comments and investor feedback, that the proposed requirements did not reflect the fees for all firms and, depending on firms' business models, could be confusing. Instead the relationship summary will focus on a high level summary of fees. Having considered comments, we believe this more flexible approach will better facilitate meaningful disclosure in the relationship summary, as well as conversations between the retail investor and his or her financial professional, and help the retail investor decide on the types of services that are right for him or her. Additionally, we believe that certain definitions and concepts explained in the proposed relationship summary can be better explained in other ways, such as through layered disclosure that explain technical terms as appropriate for the specific firm (*e.g.*, "hovers").[401] Further, requiring firms to draft their own descriptions will allow them to tailor the description to their particular business models, including the fees their prospective customers and clients will most commonly incur, which will make the discussion more accurate and relevant and further help facilitate retail investors' comprehension.

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400 As discussed further below, we are not eliminating all prescribed wording for this section and are requiring firms to include the following statement: "You will pay fees and costs whether you make or lose money on your investments. Fees and costs will reduce any amount of money you make on your investments over time. Please make sure you understand what fees and costs you are paying.".

401 Firms are also encouraged to fully explain any technical terms that they use to describe their fees. We also believe that Investor.gov can be a resource for this information, and the relationship summary will highlight Investor.gov/CRS where educational material is available.

In addition, we are not including the proposed prescribed wording with respect to wrap fee programs.[402] Instead, investment advisers that offer these services to retail investors should include disclosure about the relevant fees and conflicts of interest, and explain the program. We are including instructions encouraging investment advisers with wrap fee programs to explain that asset-based fees associated with the wrap fee program will include most transaction costs and fees to a broker-dealer or bank that has custody of these assets, and therefore are higher than a typical asset-based advisory fee.[403]

We also removed the proposed disclosures about which type of service or account is better for a retail investor. Specifically, the proposal would have required firms to include prescribed wording about when a retail investor may prefer paying a transaction-based fee or an asset-based fee.[404] Although some commenters did not object to the proposed prescribed wording and some included it in their mock-ups,[405] several commenters raised concerns.[406] For

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402 The proposal required certain prescribed wording describing wrap fee programs. *See* Proposed Item 4.C.3. of Form CRS.

403 Item 3.A.(i)(b) of Form CRS.

404 The proposal required standalone investment advisers and standalone broker-dealers to state that a retail investor may prefer paying "a transaction-based fee from a cost perspective, if you do not trade often or if you plan to buy and hold investments for longer periods of time." or "an asset-based fee if you want continuing advice or want someone to make investment decisions for you, even though it may cost more than a transaction-based fee." Proposed Items 5.A.4. and 5.B.6. of Form CRS. Dual registrant broker-dealers were required to include the following: "From a cost perspective, you may prefer a transaction-based fee if you do not trade often or if you plan to buy and hold investments for longer periods of time." Proposed Item 4.B.6. of Form CRS. Dual registrant investment advisers that charged an ongoing asset-based fee were required to include the following: "An asset-based fee may cost more than a transaction-based fee, but you may prefer an asset-based fee if you want continuing advice or want someone to make investment decisions for you." Proposed Item 4.C.10. of Form CRS.

405 *See, e.g.,* LPL Financial Letter; Betterment Letter I; IRI Letter.

406 *See supra* footnote 394.

example, one commenter argued that the required wording could be false and misleading, noting that the required statements do not take into account that transaction-based fees are not necessarily more affordable for buy-and-hold investors who do not trade often, many broker-dealers offer higher-cost investment products (*e.g.*, variable annuities, non-traded REITs, and private placements), and many investment advisers recommend investments with lower operating expenses than those sold by brokers.[407] We have concluded that the proposed required wording did not capture all of the information that, in certain circumstances, would be necessary to help retail investors reasonably assess whether a particular service and its associated fees will be better for them. Instead, the relationship summary provides information about what the firm offers and encourages discussion with conversation starters. Such a discussion—facilitated by Form CRS—is more appropriate between the financial professional and the retail investor about the firm's specific offerings and associated fees and conflicts, and the retail investor's specific circumstances.

The proposal also required firms to state whether their fees vary and are negotiable and to describe the key factors that would help a reasonable retail investor understand the fee that he or she is likely to pay for services.[408] In the RAND 2018 qualitative interviews, some participants were confused by the statement about fees being negotiable and most mock-ups commenters

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407 *See* CFA Letter I.

408 Proposed Items 4.B.3. and 4.C.5 of Form CRS. The instructions included examples of such key factors (for a broker-dealer, this may be how much the retail investor buys or sells, what type of investment the retail investor buys or sells, and what kind of account the retail investor has with a firm; for an investment adviser, this may include the services the retail investor receives and the amount of assets in the retail investor's account). Investment advisers were also required to state that a retail investor could be required to pay fees when certain investments are sold (*e.g.*, surrender charges for selling variable annuities).

submitted did not include this disclosure.[409] We did not include this requirement in the final instruction. It is important to instead focus the relationship summary on information about fees that retail investors identified as important to their assessment of firms. Given the comments and investor testing results showing that the fee section was technical and difficult to understand, we believe that the final instructions will help investors focus on the information the final instructions do require. We believe that removing information about negotiability should help achieve this objective.

In another modification from the proposal, we are requiring firms to discuss the conflicts of interest created by their principal fees and costs rather than prescribing specific wording about those conflicts. We are making this change in response to commenters, who pointed out that the conflicts of interest created by principal fees can vary in more ways than our prescribed wording contemplated.[410] Instead of prescribed wording, the final instructions include a requirement that firms explain the conflict of interest their principal fees create, as well as examples of how a firm may communicate certain conflicts of interest. These examples are the same conflicts the proposed instructions required. For instance, a broker-dealer could disclose its conflicts of interest related to transaction-based fees by stating that a retail investor would be charged more

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409 *See* RAND 2018, *supra* footnote 13 (noting that the phrase stating that fees are negotiable and may vary concerned participants, and many noted that it made them feel as if they pay too much). Similarly, *see* Anonymous28 Feedback Form ("If fees are negotiable, when is this done?"); *see also* mock-ups in IAA Letter I; Robinson Letter; Primerica Letter; LPL Financial Letter, SIFMA Letter; Schwab Letter I; Fidelity Letter.

410 *See, e.g.*, Comment Letter of Invesco Advisers, Inc. (Aug. 7, 2018) ("Invesco Letter"); Committee of Annuity Insurers Letter; IAA Letter I; *see also* CFA Institute Letter I (noting that investors "will most likely focus on the fees and costs discussion and should be alerted to the fact that in addition to different fee arrangements and structures, different practices and conflicts may also result in higher costs.").

when there are more trades in his or her account and that the firm may therefore have an incentive to encourage a retail investor to trade often.[411] Investment advisers that charge an asset-based fee could disclose related conflicts of interest by stating that the more assets in a retail investor's advisory account, the more the retail investor will pay in fees, and the firm may therefore have an incentive to encourage the retail investor to increase the assets in his or her account.[412] Firms that offer variable annuity and variable life insurance products could disclose that they have a financial incentive to offer a contract that includes optional benefit features, which may entail additional fees on top of the base fee associated with the contract, that they may encourage contract owners to select investment options with relatively higher fees, or that they may offer the contract owner a new contract in place of the one that he or she already owns. Finally, we also have included a note in the final instructions that an investment adviser receiving compensation in connection with the purchase or sale of securities should consider the applicability of the broker-dealer registration requirements of the Exchange Act and any applicable state securities statutes.[413]

Description of Other Fees and Costs. Firms also will be required to describe other fees and costs related to their brokerage and investment advisory services and investments, in addition to the firm's principal fees and costs, that the retail investor will pay directly or indirectly. Firms must list examples of the categories of the most common fees and costs that

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411 Item 3.A.(i).a. of Form CRS.

412 Item 3.A.(i).b. of Form CRS.

413 *See* Item 3.A.(i).b of Form CRS. This statement is consistent with Part 2A of Form ADV.

their retail investors will pay directly or indirectly.[414] Those fees and costs may include, for example, custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees.[415] With regard to product-level fees, in particular, firms may wish to highlight certain fees such as distribution fees, platform fees, shareholder servicing fees and sub-transfer agency fees, in order to enhance the retail investor's understanding of these fees to the extent applicable to the customer's transactions, holdings, and accounts.

We recognize that the fees and costs that a firm determines to be the most common will vary and depend on particular products and services the firm offers and the fee arrangements associated with those products and services. Generally, in making this determination, firms should consider, for example, the amount of the fee (including whether the fee varies based on options the investor may select such as optional benefits and the investment options that a contract owner may select in the context of variable annuities and variable life insurance products), the likelihood that the fee will be applicable, whether the fee is ordinarily assessed on a significant number of the firm's clients, whether the fee is associated with a product or service that the firm frequently recommends or provides, whether the fee is contingent upon certain events the investor should be made aware of, the effect on returns, and the magnitude of the conflict of interest it may create. For example, an investment adviser should consider discussing commissions that are charged when an investment is bought or sold. A firm that commonly

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414 Item 3.A.(ii) of Form CRS.

415 Item 3.A.(ii) of Form CRS.

offers an investment that includes a surrender fee—for example, a variable annuity or variable life insurance contract is sold as a long-term investment that may entail relatively high surrender fees—should consider disclosing that a retail investor could be required to pay fees when certain investments are sold.

The proposal similarly required firms to state that retail investors will pay other fees in addition to the firm's principal fees. Like the final instructions, the proposal required disclosure of the other fees related to the services or account such as custodian fees, account maintenance fees, and account inactivity fees, and included these other fees in the same section discussing the firm's principal fees.[416] The proposal also required that all firms disclose that certain investments imposed additional fees, including fees that reduce the value of investments over time (*e.g.*, mutual funds and variable annuities) and fees paid when an investment is sold (*e.g.*, surrender charges for selling variable annuities).[417] Observations reported from RAND 2018 qualitative interviews and another study indicated that some investors could become overwhelmed with the number of various types of fees and many were surprised that so many different types of fees could apply in addition to a firm's principal fee.[418] At the same time,

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416 Proposed Items 4.B.4. and 4.C.6. of Form CRS. Specifically, the proposal required broker-dealers to state, if applicable, that a retail investor will pay other fees in addition to the firm's principal fees, including, but not limited to, custodian fees, account maintenance fees and account inactivity fees. The proposal required investment advisers to state, if applicable, that a retail investor will pay transaction-based fees when it buys and sells an investment for the retail investor and that retail investors will pay, if applicable, custodian fees, and other fees such as those for account maintenance services.

417 Proposed Items 4.B.2.(b) and 4.C.4. of Form CRS.

418 RAND 2018, *supra* footnote 13 (qualitative interview results); Kleimann I, *supra* footnote 19. Similarly, *see* Anonymous02 Feedback Form ("Do companies charge all these fees? Maybe use words like 'may charge'"); Anonymous28 Feedback Form ("The section on fees might better be presented in a chart—no mention is made of front and backend loads.").

investors participating in surveys and studies and investors providing comments on Feedback Forms have indicated that more information would be helpful.[419] Industry commenters, commenters representing investors, and commenters on Feedback Forms, and roundtable participants supported some disclosure regarding product-level fees, though commenters differed in the level of suggested detail on such fees.[420] For instance, one commenter stated that the relationship summary should reveal all fees and commissions for all purchases.[421] Other commenters, however, believed that a link to the prospectus should sufficiently satisfy disclosure requirements regarding mutual fund fees and expenses.[422] Another urged the Commission to provide a list of examples of transaction-based fees.[423]

We agree that understanding these fees is important so that retail investors have the necessary information to evaluate between firms, firm types (*i.e.*, investment adviser, brokerage, or dually registered), and firm services, accounts, and products so that they can select what is

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419 *See* RAND 2018, *supra* footnote 13 (qualitative interview results), Kleimann I, *supra* footnote 19; Kleimann II, *supra* footnote 19 (in study testing investor reaction to alternate design of relationship summary, participants continued to focus on additional fees and wanted additional information on fees); *see also* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 5) (of 48 Feedback Forms with narrative comments suggesting additional information to be required in the relationship summary, 29 suggested that additional information about fees and costs would be helpful).

420 *See* Fidelity Letter; CFA Letter I; *see also* Anonymous11 Feedback Form ("…disclose specific fees for different types of securities"); Caddess Feedback Form ("description of brokers buying one 'loaded' fund and then selling it soon after to buy a more 'suitable loaded' fund is not vivid enough."); Fontaine Feedback Form ("More on the mutual fund loads and class shares Load"); Malone Feedback Form ("Suggest fees monthly associated with each fund by type"); Mennella Feedback Form ("In addition to paying a management fee what is the cost of the underlying investments such as mutual funds, liquid alternatives, seperately [sic] managed accounts, transaction costs, etc.?"); Houston Roundtable; Philadelphia Roundtable.

421 Comment Letter of Tony Greiner (Jul. 14, 2018).

422 Comment Letter of Oppenheimer Funds (Aug. 7, 2018) ("Oppenheimer Letter"); TIAA Letter.

423 Comment Letter of the Investment Company Institute (Aug. 7, 2018) ("ICI Letter").

right for them. We continue to believe drawing retail investors' attention to these additional fees is important because they have an impact on investors' investment returns over time. Accordingly, we are requiring disclosure of these types of fees and listing examples of categories as proposed. The final instructions, however, make clear that firms can use their own wording, and only require examples of the most common fees and costs. As discussed below, firms will be required to include cross-references to more specific information, and will be permitted to use tools to help investors learn about these fees and costs in an interactive way without overwhelming retail investors with the additional information. We believe that this approach balances providing short, understandable disclosures about additional fees and costs with investors' interest in understanding more about fees and costs.

Additional Information. Finally, in a change from the proposal, firms will be required to state: "You will pay fees and costs whether you make or lose money on your investments. Fees and costs will reduce any amount of money you make on your investment over time. Please make sure you understand what fees and costs you are paying."[424] The first sentence replaces a statement in the proposal that some investments impose additional fees that will reduce the value of the retail investor's investment over time. Given the importance of assisting investors to understand the impact of fees and costs, we are requiring prescribed wording in this instruction. The prescribed wording discloses to investors a key term under which a service will be offered,

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[424] Item 3.A.(iii) of Form CRS.

namely the fact that the service will not be free and that the cost of using the service will exist regardless of investment performance.[425]

Firms must also include specific cross-references to more detailed information about their fees and costs.[426] The cross-reference must, at a minimum, include the same information as, or contain information equivalent to that required by, the Form ADV Part 2A brochure (specifically Items 5.A., B., C., and D.) and Regulation Best Interest, as applicable.[427] If the firm is a broker-dealer that does not provide recommendations subject to Regulation Best Interest, to the extent it prepares more detailed information about its fees, it must include specific references to such information.[428] The final instructions require firms to use text features to make this additional information more noticeable and prominent in relation to other discussion text.[429] Firms may choose to provide a hyperlink, or other means of facilitating access, that leads directly to the relevant Regulation Best Interest disclosure or section of Form ADV, or they may choose to create an additional page that contains the same or equivalent information.[430] For example, a firm may decide to include information on a different website.

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425 *See Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) (upholding required disclosure of factual information about terms of service, including that clients would still be liable to litigation costs even if their lawsuits were unsuccessful).

426 Item 3.A.(iii) of Form CRS.

427 Item 3.A.(iii) of Form CRS.

428 Item 3.A.(iii) of Form CRS.

429 General Instruction 4.C to Form CRS. For example, firms could use larger or different font; a text box around the heading or questions; bolded, italicized, or underlined text; or lines to offset the information from other sections.

430 While drafting these disclosures for Form CRS, investment advisers also are encouraged to consider whether they can describe the information about fees more clearly in the Form ADV brochure in a more

The proposed instructions did not include a specific cross-reference to additional fee disclosure, but the proposal required a cross-reference in the Additional Information section about where the retail investor could find information about the services offered, and we requested comment on whether to require firms to include a fee schedule.[431] In the RAND 2018 survey, a potential hyperlink to information on fees, however, generated the most interest among survey participants.[432] Some industry commenters suggested that the relationship summary should permit hyperlinks to fee schedules, arguing that additional information would be helpful for retail investors, but that including the fee schedule itself would be unwieldy.[433] Another commenter, however, suggested requiring a fee schedule that includes typical breakpoints and information on likely and/or maximum fees.[434]

Given the feedback from investors that fee information is important, we believe that requiring specific references to more detailed information about fees balances the goals of the relationship summary, to highlight information covering several topics, with investors' interest in

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reader-friendly format. *See also* General Instructions 3. and 4. of Form CRS (instructions applicable to electronic delivery). For further discussion of these provisions, *see supra* Section II.A.3. and footnotes 156 and 158 and accompanying text, and Section II.B.2.(b) and footnotes 348–349.

431 Proposed Item 7.E. of Form CRS.

432 *See* RAND 2018, *supra* footnote 13 (58% of participants selecting "very likely" and another 32% selecting "somewhat likely" to click on a hyperlink relating to fees; no other potential hyperlink generated a majority with "very likely" usage among any investor or education subgroup). Other investor studies indicated that participants wanted descriptions of the hyperlinks to be more concrete in terms of what information they would find, and that, while some participants were interested in additional information, others admitted they would not follow the links because it was extra effort, they were uninterested, or the link did not itself suggest what would be there. *See* Kleimann II, *supra* footnote 19. In addition, numerous commenters supported layered disclosure. *See supra* footnote 31 and accompanying text.

433 *See* CFA Letter I; IAA Letter I; LPL Financial Letter.

434 *See* Morningstar Letter.

understanding more about fees. This approach will give retail investors information about the types of fees at a higher level and then offer more details, permitting the relationship summary to cover other important topics as well.[435] Including a fee schedule in the relationship summary could make it more difficult to also cover the other topics while maintaining short, digestible disclosures. Instead, we are not including a fee schedule in the relationship summary but are requiring cross references to balance providing a shorter document with giving retail investors easy access to more detailed information.

Conversation Starter. We are also adopting a conversation starter that is designed to prompt a more personalized discussion regarding the fees and costs that will impact the particular retail investor's account. A firm must include the following question for the retail investor to ask his or her financial professional: "Help me understand how these fees and costs might affect my investments. If I give you $10,000 to invest, how much will go to fees and costs, and how much will be invested for me?"[436]

As discussed above, the proposal included the following "Key Question," which was intended to serve as a conversation starter between the retail investor and the financial professional and to provide the investor an opportunity to receive a quantitative example of the impact of fees: "Do the math for me. How much would I expect to pay per year for an advisory account? How much for a typical brokerage account? What would make those fees more or

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435 *See supra* Section II.A.3.

436 Item 3.A.(iv) of Form CRS.

less? What services will I receive for those fees?"[437] The Proposing Release discussed the option of including an example of the impact of fees in the relationship summary, and requested comment on whether we should require an example showing how sample fees and charges apply to a hypothetical advisory account and a hypothetical brokerage account, as applicable.[438] We also requested comment on what assumptions firms should make in preparing such an example and how the information should be presented.[439]

Feedback from the RAND 2018 report, other surveys and studies, roundtables, and the Feedback Forms showed that retail investors want more information about fees and the impact of those fees on their investments.[440] At some of the roundtables, for example, participants discussed the utility of adding a hypothetical example in the relationship summary to illustrate fees.[441] Commenters on Feedback Forms also asked for more specific information about the

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437 Proposed Item 8 of Form CRS.

438 Proposing Release, *supra* footnote 5.

439 Proposing Release*, supra* footnote 5.

440 *See e.g.*, RAND 2018, *supra* footnote 13 (noting survey results finding that the fees and costs section was "the section for which the largest share of respondents suggest adding more detail" and investors were more likely than non-investors to suggest adding more detail to the section on fees and costs (31 percent versus 25 percent), and in qualitative interviews, "participants expressed that this section is overwhelming . . . and at the same time felt more information would be helpful."); Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 5) (narrative answers on 29 Feedback Forms indicated that additional information about fees and costs would be helpful).

441 *See* Washington, D.C. Roundtable (an investor stated that it would be useful for comparing understanding costs if hypothetical examples were given about how cost affects the investor's returns); Atlanta Roundtable (an investor stated that it would be helpful to know the cost of investing a hypothetical amount of money); and Philadelphia Roundtable (an investor stated that it would be helpful to see hypothetical broker and investment adviser fee arrangements for a given investment portfolio to aid in determining which arrangement may be more appropriate for the investor).

impact of fees on their investments, such as example fee calculations or ranges of fees.[442] Commenters supported including a question highlighting fees a retail investor pays.[443] Commenters, including commenters representing investors and individual investors, also overwhelmingly supported requiring more information to help retail investors understand the fees and costs associated with their investments, particularly specific examples about how those fees could affect them.[444] Several commenters, however, objected to the inclusion of the key question addressed above because of the operational challenges present in answering such a question with respect to a particular retail investor.[445] Some argued that anticipated fees are unknown for broker-dealer customers, while others believed that it is too difficult for firms to

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442 *See, e.g.*, Lee1 Feedback Form ("fees should tell me the fees I can expect to pay"); Anonymous03 Feedback Form ("Create a calculator . . . where the investor fills in the amount and the fees for both scenarios are calculated"); Anonymous06 Feedback Form ("Provide monetary examples. If you invest $100, then your fees are…"); Anonymous24 Feedback Form (requesting "more specific examples showing specific costs"); Baker Feedback Form ("Graphic and hypothetical examples could be helpful. Mary invests $50,000 with a broker-dealer and Jane invests $50,000 with an investment adviser and present some scenarios with each . . . As fees, commissions, etc. may vary and be negotiable, a range of typical, usual, main-stream commission charges and asset-based fees would be helpful to alert the client to possible overcharges."); Bhupalam Feedback Form ("What would make it better is if it has samples of costs in particular with each firm a client is dealing with."); Hawkins Feedback Form ("Including some ranges as to what to expect in fees could help. Also, including information as to the impact that increased fees have on investment returns, long term, would help the average investor."); Mennella Feedback Form ("I want to know what an investment is going to cost me over my time horizon ….").

443 *See* IAA Letter I; LPL Financial Letter; New York Life Letter; Primerica Letter; RAND 2018, *supra* footnote 13 (91% of participants indicated they were "very likely" or "somewhat likely" to ask a supplemental question that addressed the amount of a $1,000 investment that would go to fees and costs rather than being invested for them).

444 *See*, *e.g.*, CFA Institute Letter I; CFA Letter I; Betterment Letter I; Morningstar Letter; John Hancock Letter; Comment Letter of Barbara Greenwald (Jul. 12, 2018). *See, e.g.,* Anonymous25 Feedback Form ("give examples with numbers, showing examples of hypothetical accounts"); Baker Feedback Form ("Graphic and hypothetical examples would be helpful"); Coleman Feedback Form ("Need simple examples"); Manella Feedback Form ("I want to know what an investment is going to cost me over my time horizon"); Schreiner Feedback Form ("Provide a hypothetical example with industry standard fees …"); *see also* Atlanta Roundtable; Houston Roundtable; Washington, D.C. Roundtable.

445 *See supra* footnote 189.

build out systems for individualized fees.[446] Other commenters suggested eliminating this particular key question and instead requiring firms to include links to investor education materials prepared by the Commission.[447] Many commenters were concerned that this key question would impose new disclosure or recordkeeping requirements.[448]

Commenters that supported more fee disclosure had a range of suggestions as to how to include the additional information. For example, one commenter believed that if hypothetical or personal fee disclosures are included in the relationship summary, such disclosures should focus on helping investors understand the effect expenses have on an investment and should make clear that such an example is for educational purposes.[449] One individual advocated for more transparent fee information, suggesting the relationship summary provide individualized fees or a specific range of fees.[450] Another commenter noted that, in response to a previously commissioned report revealing participants' lack of knowledge about fees as well as their desire for a better understanding of fees, a general chart or graph that depicts the effects of fees on an account would be helpful for investors.[451] Another commenter included a sample mock

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446 *See* NSCP Letter; Edward Jones Letter (noting that given the range of services available, it would be very difficult for financial professionals to fully address this question at the outset of the relationship, particularly for investors selecting transaction-based services); TIAA Letter; LPL Financial Letter; Primerica Letter; ICI Letter; SIFMA Letter (noting most firms do not currently have systems in place to allow financial professionals to answer customer-specific questions).

447 *See* Prudential Letter.

448 *See* Edward Jones Letter; *see also supra* Section II.A.4.

449 *See* Invesco Letter (stating that this could be achieved by, for example, a side-by-side bar graph showing the growth of an investment gross of costs and net of costs).

450 *See* Wahh Letter.

451 *See* AARP Letter.

relationship summary with a numerical example of how the fees might impact a hypothetical account.[452]

Given the importance of fees, we want to encourage retail investors and their financial professionals to have a conversation to further discuss the particular fees and costs that would apply to the retail investor, and the impact fees and costs could have on the retail investor's investment returns over time, in order to promote investor understanding. After consideration of the comments received, we are adopting a conversation starter that is designed to elicit a more personalized discussion regarding the fees and costs that will impact the particular retail investor's account, while mitigating the concerns regarding the proposed "Do the math for me" question posed.[453] We believe that this conversation starter will allow financial professionals to tailor the conversation to the particular retail investor even if the financial professional does not provide precise fee information for that individual during the conversation. For instance, if the financial professional intends to recommend mutual funds to the retail investor, he or she may choose to discuss firm- and product-level fees that may apply. The financial professional should be in a position to explain the fees and costs relevant to that particular retail investor if the investor chooses a certain type of account and certain investment, even if the financial professional provides examples and estimated ranges rather than a precise prediction of how much the investor will pay. In addition, the financial professional should explain how those fees

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452 *See* Betterment Letter I (Hotspex), *supra* footnote 18 (noting that investors who viewed a redesigned version of the standalone adviser relationship summary appeared to appreciate the example of how fees would impact a hypothetical account).

453 *See supra* Section II.A.4.

and costs will work (for example, whether they are upfront charges, taken out of the initial investment amount, taken out over time, future charges, or charged in another manner) and how the fees and costs could impact the retail investor's investment returns over time. Firms may consider including calculators, charts, graphs, tables, or other graphics or text features to enhance an investor's understanding of these fees. Firms may also consider reviewing with their retail investors the impact of fees on the retail investor's account on a periodic basis.[454]

While we agree that examples are important to illustrate the potential impact of fees, we decline to require firms to provide a hypothetical example in the relationship summary.[455] Our intent with the proposed "Do the math for me" question was that it serve as a conversation starter and a prompt to encourage the retail investor to ask about the amount she would typically pay per year for the account, what would make the fees more or less, and what was included in those fees.[456] We believe that the conversation starter that is being adopted here is consistent with the proposal's intent to prompt retail investors to have a conversation with their financial professional about fees that may impact their investments and account while also addressing the concerns raised by commenters. We encourage firms to consider ways to provide more personalized disclosures to retail investors, and we will continue to consider whether to require more personalized fee disclosure, particularly as operational and technological costs fall.

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454 *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.C.1.a.

455 *See infra* Section IV.D.4 (Alternatives to the Relationship Summary) for a discussion on the inclusion of a hypothetical fee example.

456 Proposing Release, *supra* footnote 5.

b. Other Ways of Making Money, Standard of Conduct, and Conflicts of Interest

Firms will be required to include disclosure under a single heading describing their standard of conduct and a summary of certain firm-level conflicts, including the specific conflicts the proposal required.[457] The proposal required disclosure on both conflicts and the standard of conduct, but in separate sections. The final relationship summary requires discussion in one section of other firm-level revenues and conflicts of interest, and the applicable standard of conduct.[458]

We are placing these disclosures together, including the related conversation starter, because we believe they will more effectively allow retail investors to understand the standards of conduct for broker-dealers and investment advisers.[459] We are also modifying the requirements for the standard of conduct and conflict of interest disclosures, as discussed in more detail below.

We continue to believe it is important to highlight the presence of conflicts and their interconnectedness with how the firm makes money. We recognize that investment advisers,

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457 Item 3.B. of Form CRS. For broker-dealers, the heading will state "What are your legal obligations to me when providing recommendations? How else does your firm make money and what conflicts of interest do you have?"; for investment advisers, the heading will state "What are your legal obligations to me when acting as my investment adviser? How else does your firm make money and what conflicts of interest do you have?"; and for dual registrants that prepare a single relationship summary, the heading will state "What are your legal obligations to me when providing recommendations as my broker-dealer or when acting as my investment adviser? How else does your firm make money and what conflicts of interest do you have?".

458 *Id.*

459 In addition, retail investors may learn more about investment advisers, broker-dealers, and investing at Investor.gov/CRS, which will be referenced in a relationship summary's introduction. *See* Instruction to Item 1.B. of Form CRS.

broker-dealers, and their financial professionals have conflicts that affect their retail investor clients and customers and believe it is important to underscore this for retail investors.[460] Similarly, we continue to believe that it is important to provide retail investors with disclosure regarding a broker-dealer or investment adviser's legal obligations regarding the required standard of conduct in a way that is understandable for retail investors.

Standard of Conduct. As proposed, we are adopting a requirement that firms describe their legal standard of conduct using prescribed wording (the "standard of conduct disclosure").[461] In a change from the proposal, however, the final instructions modify both the

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460 *See infra* footnote 495 and accompanying text.

461 Under the proposal, broker-dealers that offer brokerage accounts to retail investors would have been required to include the following: "[We must act in your best interest and not place our interests ahead of yours when we recommend an investment or an investment strategy involving securities.] When we provide any service to you, we must treat you fairly and comply with a number of specific obligations. Unless we agree otherwise, we are not required to monitor your portfolio or investments on an ongoing basis." The bracketed wording would have been included only if the broker-dealer offered recommendations subject to Exchange Act Rule 15*l*-1. *See* Proposed Item 3.B.(1) of Form CRS. In addition, such broker-dealers would have had to include the following: "Our interests can conflict with your interests. [When we provide recommendations, we must eliminate these conflicts or tell you about them and in some cases reduce them]." The bracketed wording would only have been included if the broker-dealer offered recommendations subject to Regulation Best Interest. *See* Proposed Item 3.B.(2) of Form CRS.

Under the proposal, investment advisers that offer investment advisory accounts to retail investors would have had to include the following: "We are held to a fiduciary standard that covers our entire investment advisory relationship with you. [For example, we are required to monitor your portfolio, investment strategy and investments on an ongoing basis.]" The bracketed wording would have been omitted if the investment adviser did not provide ongoing advice. *See* Proposed Item 3.C.(1) of Form CRS. In addition, such investment advisers would have had to include the following: "Our interests can conflict with your interests. We must eliminate these conflicts or tell you about them in a way you can understand, so that you can decide whether or not to agree to them." *See* Proposed Item 3.C.(2) of Form CRS.

The section also required a statement that the firm's interests may conflict with a retail investor's interests and explain the firm's obligations with respect to those conflicts using prescribed wording. *See* Proposed Item 3 of Form CRS.

content of the standard of conduct disclosure[462] and its placement in the relationship summary. As discussed in more detail below, the final instructions require broker-dealers, investment advisers, and dual registrants to include a brief statement of the applicable standard of conduct.[463] In addition, as discussed above, this disclosure is required to be included in the conflicts of interest section rather than a separate standard of conduct section.

Most commenters did not object to the proposal's requirement that broker-dealers and investment advisers provide disclosure regarding their standards of conduct or that such disclosure be standardized.[464] Results of the RAND 2018 report and other investor studies and surveys indicate that retail investors view this information as helpful.[465] Similarly, commenters on Feedback Forms indicated that this information was useful.[466] In addition, the IAC recommended that investors would benefit from receiving uniform, plain-English disclosure documents with topics, such as, to the extent the Commission does not adopt a uniform fiduciary

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462 Form CRS also includes a conversation starter regarding broker-dealers and investment advisers' standards of conduct. *See infra* footnote 495 and accompanying text.

463 Item 3.B.(i) of Form CRS.

464 *See, e.g.*, AARP Letter; CFA Institute Letter I; IAA Letter II.

465 *See* RAND 2018, *supra* footnote 13 (almost one third of survey respondents selected this section as one of the two most useful; almost 60% would keep the length as is and over 15% would add detail); Cetera Letter II (Woelfel), *supra* footnote 17 (88% of survey respondents somewhat or strongly agreed "the firm's obligations to you" is a "very or somewhat important" topic); *see also* Schwab Letter I (Koski), *supra* footnote 21 ("obligations of the firm" ranked third where survey participants were asked to identify four topics as most important for a firm to communicate").

466 Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 2(b)) (36 commenters (39%) graded the "Our Obligations to You" section of the relationship summary as "very useful" and 42 commenters (45%) graded this section as "useful").

standard, "what is your legal obligation to me?"[467] Certain commenters, however, suggested that the Commission discuss generally applicable information, including standards of conduct, in investor educational materials instead of requiring firms to do so in their relationship summaries.[468] A number of these commenters argued that this wording might unintentionally create an implied contractual relationship subject to a customer's private right of action.[469] The prescribed language describing the standard of conduct broker-dealers and investment advisers owe to their customers and clients is not intended to create a private right of action.

Many commenters, however, found that the specific wording we proposed[470] did not effectively address investor confusion concerning legal duties applicable to broker-dealers and investment advisers. Commenters indicated that the proposed wording in this section was confusing and did not clarify the applicable legal standards.[471] Some commenters argued that this section included legal jargon inaccessible to retail investors.[472] Others believed that retail investors are unlikely to understand the difference between "best interest" and "fiduciary," with some suggesting that relationship summaries more clearly define the applicable legal standards

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467 IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10.

468 *See, e.g.*, Primerica Letter.

469 *See* ASA Letter; Primerica Letter; Transamerica Letter (requesting a statement from the Commission that any such private right of action was not intended).

470 *See supra* footnote 461.

471 *See, e.g.*, AARP Letter; Betterment Letter I; CFA Letter I.

472 *See* Comment Letter of Fisher Investments (Jul. 31, 2018) ("Fisher Letter"); *see also* Kleimann I, *supra* footnote 19; RAND 2018, *supra* footnote 13; Kleimann II, *supra* footnote 19.

or communicate the differences between "fiduciary" and "best interest."[473] Investment advisers also expressed concern that retail investors may "wrongly" view "best interest" as a higher standard of conduct as compared to the fiduciary standard.[474]

Investor feedback through surveys and studies and in comments at roundtables and on Feedback Forms also showed some confusion. For example, some participants in investor studies and at one of the roundtables did not understand why conflicts of interest existed if broker-dealers and investment advisers were held to the standards of conduct described.[475] Investor studies and surveys showed that participants varied in their understanding of differing obligations for different account types, some viewing brokerage accounts and advisory accounts as subject to similar standards of conduct but others interpreting the section as conveying that the two account types are subject to different standards.[476] Observations reported by the RAND 2018 report, other surveys and studies and comments received on Feedback Forms demonstrated

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473 *See, e.g.*, AARP Letter; CFA Letter I; Comment Letter of the Financial Planning Coalition (Aug. 7, 2018) ("Financial Planning Coalition Letter").

474 *See, e.g.*, Betterment Letter I; Fisher Letter; IAA Letter I; IAA Letter II.

475 *See* RAND 2018, *supra* footnote 13 (in qualitative interviews, participants felt that the conflicts of interest section contradicted the "Our Obligations to You" section); Miami Roundtable.

476 *See* RAND 2018, *supra* footnote 13; *see also* Kleimann I, *supra* footnote 19 ("Most participants did not draw a parallel between the 'best interest standard' of the Broker-Dealers and the 'fiduciary standard' of Investment Advisers. Rather, they drew a parallel between 'specific obligations' with Broker-Dealers and 'fiduciary standards' with Investment Advisers … [and] saw these two as similar regulatory obligations."); Betterment Letter I (Hotspex), *supra* footnote 18 (in a survey that tested participant's comprehension after viewing a version of the proposed sample standalone adviser relationship summary, only 26% correctly identified as false a statement that broker-dealers are held to a fiduciary standard; 71% correctly identified as true that an adviser (Betterment) would be held to a fiduciary standard).

that many participants did not understand the meaning of the word "fiduciary" in particular.[477] Investor studies also further observed that, when presented with alternative mock-ups of a relationship summary designed to clarify this section, some investors still struggled with understanding the legal obligations of brokers and advisers.[478]

We proposed this section to address investor confusion concerning legal duties applicable to broker-dealers and investment advisers and, in combination with the key questions about the financial professional's legal obligations, to encourage a conversation between the retail investor and the financial professional about applicable standards of conduct.[479] The prescribed wording was intended to promote consistency in communicating these standards to retail investors.[480]

We continue to believe that it is appropriate for the final instructions to require broker-dealers and investment advisers to describe their standards of conduct to investors, because, as discussed above, we believe that it is important to promote retail investors' understanding of these obligations. We also agree with commenters that requiring these firms to include

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477 *See, e.g.*, RAND 2018, *supra* footnote 13 ("Some participants had never heard of the word, whereas others had heard it but did not know what it meant in this context. Others thought the word "fiduciary implies acting in best interest …"); Kleimann I, *supra* footnote 19 ("Few participants could define 'fiduciary standard'"); *see also* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 4) (On 10 Feedback Forms, commenters specifically asked for a definition or better explanation of the term "fiduciary.").

478 *See, e.g.*, Kleimann II, *supra* footnote 19 (explains that, after redesign of obligations section participants still struggled to understand the implications of the fiduciary standard for advisers compared to the best interest standard for broker-dealers); Betterment Letter I (Hotspex), *supra* footnote 20 (almost one half of survey participants reviewing a version of the standalone adviser relationship summary designed by Betterment did not correctly identify as false a statement that broker-dealers are held to a fiduciary standard).

479 *See* Proposing Release, *supra* footnote 5, at n.114 and accompanying text.

480 Proposing Release, *supra* footnote 5, at n.115 and accompanying text.

prescribed disclosure regarding these standards of conduct is important in achieving this goal.[481] While the final instructions generally do not require prescribed disclosure in other contexts,[482] we believe that investors should be provided with a consistent articulation of their firm's legal obligations regarding their standard of conduct and that the rationale for allowing firms flexibility to tailor their disclosure in other aspects of the relationship summary does not apply with respect to the standard of conduct. In this regard, some commenters stated that Form CRS should be an educational document, which would be a standardized document published and maintained by the Commission.[483] While the content of disclosure regarding a firm's standard of conduct should be uniform, this disclosure should appear in the relationship summary, which must be delivered to all retail investors, rather than a separate SEC-staff-created and maintained publication. In addition, prescribing language for this disclosure does not raise the same concerns that commenters raised about prescribed language generally. For example, we are permitting more flexibility in how firms describe their fees and services in response to comments that some of the prescribed wording, for example, was not necessarily applicable to their business and could make investors confused.[484]

By contrast, a legal standard of conduct, whether through an investment adviser's

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481 *But see* footnotes 468–469 and accompanying text.

482 As discussed in more detail above, many commenters who believed that the final instructions should not require prescribed disclosure focused on other aspects of the relationship summary, such as disclosure regarding a description of a firm's services. *See supra* Section II.A.1.

483 *See, e.g.*, Primerica Letter.

484 *See supra* Section II.A.1. One commenter noted that requiring prescribed disclosure in some circumstances may not be accurate for all business models and could mislead investors. *See* CFA Letter I.

fiduciary duty, Regulation Best Interest, or both, will apply to all firms delivering the relationship summary that provide recommendations or investment advice, and prescribing language will avoid investor confusion when describing the applicable standard. Indeed, it may be confusing to investors comparing relationship summaries among prospective firms to see the same legal standard described differently among these firms. The required statements about the legal standard of conduct are disclosures of purely factual information about the terms under which the firms' services will be made available to investors.[485]

We have determined, however, that the proposed standard of conduct disclosure may not have appropriately addressed investor confusion. While the proposal was intended to provide retail investors with simple, easily understood disclosure, we agree with commenters and results from investor studies and surveys,[486] that the relationship summary could be revised in a manner that would be more beneficial to retail investors,[487] especially in light of the similarity between broker-dealers' and investment advisers' legal obligations to retail investors with respect to their standards of conduct when providing recommendations or advice under the rules and interpretations we are adopting concurrently.[488] In this regard, we have modified the standard of conduct disclosure to include it within the conflicts of interest section of the relationship summary and to contain simplified wording that is short, plain language, and user-friendly but

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485 *See Zauderer*, 471 U.S. at 651; *Milavetz*, 559 U.S. at 250.

486 *See supra* Section II.A.

487 *See, e.g.*, AARP Letter.

488 *See* Fiduciary Release, *supra* footnote 47; Regulation Best Interest Release, *supra* footnote 47.

still describes the key components of a broker-dealer's or investment adviser's standard of conduct when providing recommendations or advice.[489]

First, we are modifying the standard of conduct disclosure so that it is required to be provided under a modified heading[490] in the conflicts of interest section.[491] While broker-dealers' and investment advisers' legal obligations regarding their standard of conduct apply not just in the context of conflicts of interest,[492] we believe that requiring this disclosure to be included in the conflicts of interest section will provide a retail investor with a greater ability to discern how a particular legal obligation regarding a standard of conduct may affect him or her by describing the application of that obligation in the context of conflicts of interest, which was a primary concern for retail investors and commenters alike.[493] In addition, this placement is supported by observations reported in the RAND 2018 qualitative interviews and another study, which indicated that some participants struggled with how to reconcile the conflicts of interest section with the legal obligations section because they were discussed separately.[494]

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489 The final instructions provide that if a required disclosure or conversation starter is inapplicable or specific wording required by the instructions is inaccurate, firms may omit or modify that disclosure or conversation starter. *See* General Instruction 2.B. to Form CRS. We note that, like the proposal, the standard of conduct disclosure distinguishes between broker-dealers that provide recommendations subject to Regulation Best Interest and broker-dealers that do not provide recommendations subject to Regulation Best Interest. *See infra* footnote 507 and accompanying text.

490 Item 3.B. of Form CRS; *see also supra* footnote 457.

491 Item 3 of Form CRS.

492 *See* Regulation Best Interest Release, *supra* footnote 47 and Fiduciary Release, *supra* footnote 47.

493 *See* Proposing Release, *supra* footnote 5, at Section II.B.6; *supra* footnote 475 and accompanying text.

494 *See, e.g.*, RAND 2018, *supra* footnote 13 (noting that "[s]ome participants expressed appreciation that the firm was being transparent about its conflicts of interest, but many participants struggled with how to

Second, in the conversation starter relating to this section, we are requiring firms to include the following question: "How might your conflicts of interest affect me, and how will you address them?"[495] As discussed above, we believe that including questions for investors to ask their financial professionals is an important component of the relationship summary. This question also underscores for retail investors that investment advisers and broker-dealers have conflicts that may create incentives to put their interests ahead of the interests of their retail clients and customers.[496] As a corollary, it also underscores for retail investors how investment advisers and broker-dealers address these conflicts of interest in discharging their legal obligations regarding their standards of conduct to these investors. We believe that this requirement will improve a retail investor's understanding of the standard of conduct owed by his or her financial professional by helping the investor to better understand its application to him or her.

Unlike the proposal,[497] the final instructions do not require prescribed disclosure summarizing how a firm's standard of conduct would require it to address conflicts of interest. As discussed above, commenters found the proposal's standard of conduct disclosure confusing.[498] After considering comments and observations reported in surveys and studies, we

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reconcile the information in this section with the previous 'Our Obligations to You' section."); Kleimann I, *supra* footnote 19; *see also infra* footnote 505 and accompanying text.

495 Item 3.B.(iii) of Form CRS.

496 *See supra* Section II.A.4.

497 *See* Proposed Items 3.B.2. and 3.C.2. of Form CRS.

498 *See supra* footnote 471 and accompanying text. *See also* RAND 2018, *supra* footnote 13 (noting that one "participant pointed out that the obligations section had said that any conflicts of interest would be reduced

recognize that the proposed disclosures were confusing, particularly the prescribed disclosure attempting to explain concepts of full and fair disclosure, mitigation, and informed consent.[499] Accordingly, we are removing this wording to shorten the disclosure and to provide more focus on the rest of the disclosure required in this section, as we believe this should improve investor comprehension. We believe that clearly disclosing to investors that firms have an obligation to act in the best interest of a client or customer and also simultaneously have conflicts of interest is more important than describing the particular aspects of firms' general duty to disclose, mitigate, or obtain informed consent to conflicts, as applicable. Instead of this disclosure, we are requiring a conversation starter to encourage firms to discuss with retail investors how their standards of conduct require them to address conflicts of interests. In addition, we believe that the discussion prompted by the conversation starter accompanied by examples of conflicts of interest[500] will provide retail investors with specific illustrations of how a firm's standard of conduct can apply, which could encourage investors to ask more detailed questions about how firms address their conflicts.

Finally, we have modified the standard of conduct disclosure for broker-dealers and investment advisers to reduce the amount of required disclosure,[501] to focus the disclosure on the

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and disclosed [but] the conflicts of interest section does not mention disclosing or reducing conflicts); Kleimann II, *supra* footnote 19 ("Most participants did not understand how conflicts would be resolved … they read the disclosure as indicating that Brokerage Accounts were under no obligation to notify clients of a conflict …").

499 *See* Fiduciary Release, *supra* footnote 47 (discussing the concepts of full and fair disclosure, mitigation, and informed consent).

500 Item 3.B.(ii) of Form CRS.

501 Items 3.B.(i).a. and 3.B.(i).b. of Form CRS.

standard of conduct that applies to the provision of recommendations and advice,[502] and to require that portions of the disclosure be presented in bold and italicized font.[503] We believe that streamlining the standard of conduct disclosure and tailoring the disclosure to the type of firm providing such disclosure will clarify for retail investors the applicable legal standard of conduct to which their particular firm is subject when providing recommendations or advice or when providing broker-dealer services without recommendations.

Most commenters found the proposal's standard of conduct disclosure confusing because it included legal or technical words. For example, some commenters, and results from investor studies and surveys, indicated that many did not understand the meaning of "fiduciary" or had never heard of the word.[504] Accordingly, the modified standard of conduct disclosure both eliminates technical words, such as "fiduciary," and describes the standards of conduct of broker-dealers, investment advisers, or dual registrants using similar terminology in a plain-English manner. In particular, the final instructions use the term "best interest" to describe how broker-dealers, investment advisers, and dual registrants must act regarding their retail customers or clients when providing recommendations as a broker-dealer or acting as an investment adviser.[505] We believe that requiring firms—whether broker-dealers, investment advisers, or dual registrants—to use the term "best interest" to describe their applicable standard of conduct

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502 Item 3.B. of Form CRS (heading).

503 Items 3.B.(i).a., 3.B.(i).b., and 3.B.(i).c. of Form CRS.

504 *See supra* footnote 477 and accompanying text; *see also* CFA Letter I (citing to "man on the street" interviews suggesting that average investors do not understand the term "fiduciary"); Consumer Reports Letter (commenting on the RAND 2018 report).

505 Item 3.B.(i) of Form CRS.

will clarify for retail investors their firm's legal obligation in this respect, regardless of whether that obligation arises from Regulation Best Interest or an investment adviser's fiduciary duty under the Investment Advisers Act.[506] The modified language, however, highlights a key difference in when a firm must exercise its obligation—specifically, when providing a recommendation (in the case of a broker-dealer),[507] or when acting as an investment adviser,[508] or either providing a recommendation or acting as an investment adviser (in the case of a dual registrant).[509] Portions of the modified standard of conduct disclosure also are required to be

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506 *See* Fiduciary Release, *supra* footnote 47; Regulation Best Interest Release, *supra* footnote 47.

507 Item 3.B.(i).a. of Form CRS (requiring broker-dealers that provide recommendations subject to Regulation Best Interest to include (emphasis required): "***When we provide you with a recommendation***, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the recommendations we provide you. Here are some examples to help you understand what this means," and broker-dealers that do not provide recommendations subject to Regulation Best Interest to include (emphasis required): "We ***do not*** provide recommendations. The way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the services we provide you. Here are some examples to help you understand what this means.").

508 Item 3.B.(i).b. of Form CRS (requiring investment advisers to include (emphasis required): "***When we act as your investment adviser***, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you. Here are some examples to help you understand what this means.").

509 Item 3.B.(i).c. of Form CRS (requiring dual registrants that prepare a single relationship summary and provide recommendations subject to Regulation Best Interest to include (emphasis required): "***When we provide you with a recommendation as your broker-dealer or act as your investment adviser***, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the recommendations and investment advice we provide you. Here are some examples to help you understand what this means," and dual registrants that prepare a single relationship summary and do not provide recommendations subject to Regulation Best Interest to include (emphasis required): "We ***do not*** provide recommendations as your broker-dealer. ***When we act as your investment adviser***, we have to act in your best interest and not put our interests ahead of yours. At the same time, the way we make money creates some conflicts with your interest. You should understand and ask us about these conflicts because they can affect the services and investment advice we provide you. Here are some examples to help you understand what this means." Also requiring that *dual registrants* that prepare two separate

presented in bold and italicized font.[510] The final instructions are designed to provide retail investors with a clear understanding of when a firm's legal obligations regarding its standard of conduct is required to be discharged. In addition, with respect to broker-dealers, the modified standard of conduct disclosure, like the proposal,[511] distinguishes between broker-dealers that provide recommendations subject to Regulation Best Interest and broker-dealers that do not provide recommendations subject to Regulation Best Interest (*e.g.*, execution-only brokers). The modified standard of conduct disclosure also requires that broker-dealers, investment advisers, and dual registrants to state that conflicts of interest will remain despite the existence of these legal obligations, and to provide examples of these conflicts.[512] This change is designed to address commenters' concerns that we clarify for retail investors the interaction between broker-dealers' or investment advisers' legal obligations regarding their standards of conduct and their conflicts of interest.

Examples of Ways the Firm Makes Money and Conflicts of Interest. Following the standard of conduct prescribed wording, a firm must summarize the following ways in which it

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relationship summaries follow the instructions for broker-dealers and investment advisers in Items 3.B., 3.B.(i).a. and 3.B.(i).b.).

510 Items 3.B.(i).a. ("When we provide you with a recommendation" and "do not"), 3.B.(i).b. ("When we act as your investment adviser"), and 3.B.(i).c. ("When we provide you with a recommendation as your broker-dealer or act as your investment adviser," "do not," and "When we act as your investment adviser") of Form CRS.

511 *See* Proposed Item 3.B. of Form CRS.

512 Broker-dealers that do not provide recommendations subject to Regulation Best Interest will be required to include substantially the same conflict disclosure, except that it will reflect that conflicts of interest can affect the services provided, rather than referring to recommendations. *See* Items 3.B.(i).a. and 3.B.i.(c) of Form CRS.

and its affiliates make money from brokerage or investment advisory services and investments it provides to retail investors, to the extent they are applicable to the firm.[513] The specific wording is not prescribed, but firms must include specific information to describe each of the applicable conflicts.

- *Proprietary Products*: investments that are issued, sponsored, or managed by you or your affiliates;
- *Third-Party Payments*: compensation received from third parties when a firm recommends or sells certain investments;
- *Revenue Sharing*: investments where the manager or sponsor of those investments or another third party (such as an intermediary) shares with the firm revenue it earns on those investments; and
- *Principal Trading*: investments the firm buys from a retail investor, and/or investments the firm sells to a retail investor, for or from the firm's own accounts, respectively.[514]

If none of those conflicts apply to the firm, it must summarize at least one of its material conflicts of interest that affect retail investors. Firms will be required to explain the incentives created by each of these examples.[515]

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513 Item 3.B.(iv) of Form CRS.

514 Items 3.B.(iv)(a) through 3.B.(iv)(d) of Form CRS.

515 Item 3.B.(iv) of Form CRS.

The proposal would have required a firm to discuss these same enumerated topics, to the extent they were relevant. If none of the four specified conflicts applied to a firm, the firm was not required to discuss any other conflicts that applied to its business. The proposal did not require a firm to summarize other ways its affiliates made money from the services and products the firm provides to retail investors.

We are adopting a heading that specifically asks how else the firm makes money in an effort to further highlight the firm's financial incentives and emphasize that they are intertwined with conflicts. In a departure from the proposal, the relationship summary will not include an introductory sentence explaining that the firm benefits from the services it provides to the retail investor because we believe that the new heading and required content of this item make this sentence unnecessary. We are also expanding the required conflicts disclosures to ensure that firms without any of the enumerated conflicts will still summarize at least one other material conflict of interest. Firms will include the four enumerated conflicts (if applicable) that were in the proposal, or otherwise at least one material conflict of interest, and a specific cross-reference to more detailed information about conflicts. Firms with none of the enumerated conflicts should carefully consider their operations in their entirety when selecting a material conflict to disclose to retail investors. While we think it is unlikely that a firm will not have any material conflicts to disclose, if this item is inapplicable, firms may omit or modify this disclosure.[516]

Commenters generally believed that at least some conflicts disclosure was important to include in the relationship summary, but many suggested changes to the approach, including

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[516] General Instruction 2.B. of Form CRS.

fewer conflicts disclosures and increased use of layered disclosure.[517] Commenters generally supported requiring firms to disclose the types of conflicts of interest related to these financial incentives identified in the proposal, specifically disclosure regarding proprietary products,[518] compensation received from third parties,[519] revenue sharing,[520] and principal trading.[521]

Investor feedback, however, was mixed. Results from the RAND 2018 survey and another survey indicated that many survey participants did not find this section to be as informative as other sections,[522] and some participants in surveys and studies indicated that this section was "difficult" or "very difficult" to understand.[523] About 75% of Feedback Form commenters rated the conflicts of interest section as either "very useful" or "useful," while

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517 *See, e.g.,* IAA Letter I (suggesting leveraging disclosures made elsewhere on Part 2 of Form ADV); SIFMA Letter (suggesting leveraging disclosures that would be required by Regulation Best Interest); Fidelity Letter and Schwab Letter I (suggesting using examples of conflicts, with links to additional disclosure).

518 *See* Fidelity Letter; Schwab Letter I; SIFMA Letter.

519 *See, e.g.,* IFS Letter; IAA Letter I; Wells Fargo Letter; Primerica Letter (suggesting including in additional layered disclosure).

520 *See* Fidelity Letter (third-party revenue sharing agreements in mock-up).

521 *See* mock-ups in IAA Letter I; Primerica Letter; Wells Fargo Letter.

522 *See* RAND 2018, *supra* footnote 13 (conflicts of interest was selected as one of the two most informative sections by only 15% of survey respondents and selected as one of the two least informative by 36%); Cetera Letter II (Woelfel), *supra* footnote 17 (81% of survey respondents strongly or somewhat agreed that conflicts of interest is an important topic in the relationship summary, fewer than for any other topic); *see also* Margolis Feedback Form (stating that the conflicts of interest section is very confusing, particularly with respect to fee-sharing arrangements and referral fees).

523 *See* RAND 2018, *supra* footnote 13 (about one third of survey respondents found this section to be difficult or very difficult to understand; in qualitative interviews, participants demonstrated misunderstanding of how this section reconciled with the "obligations to you" section and how conflicts would be resolved); Kleimann I, *supra* footnote 19 (interview participants had difficulty explaining how firms earned money from financial relationships that could cause conflicts and were unclear how conflicts would be resolved); Betterment Letter I (Hotspex), *supra* footnote 18 (noting that further improvements could be made to improve respondents understanding of differences in conflicts).

narrative comments on the Feedback Forms suggested that the conflicts of interest disclosure could be clarified or otherwise improved.[524]

Several commenters suggested that we broaden the disclosures to require a firm to inform its retail investors of all of the conflicts related to its business.[525] Commenters also supported highlighting conflicts of interest stemming from affiliates,[526] and several commenters included disclosure about affiliates in their mock-ups.[527] One industry commenter expressed concern that including solely the proposed conflicts in isolation and on a standalone basis may lead investors to think these are the only meaningful conflicts.[528] Other commenters pointed out that if only the proposed conflicts were required to be included, then some firms would not include any conflicts

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524 Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 2(e) and Question 4). Among the 41 Feedback Forms with narrative comments suggesting that one or more topics were too technical or could be improved, 14 included a narrative comment suggesting clarification or more information about conflicts of interest. *See, e.g.,* Baker Feedback Form ("A sampling of possible conflict-of-interest situations is most desirable"); Bhupalam Feedback Form ("It doesn't clearly tell me whether the company will do this or not. In fact, it tells me that the company may do this and I should be fine with it."); Lee2 Feedback Form ("What can I expect and not expect about the independence and conflict-free nature of the advice"); Margolis Feedback Form ("While I agree that fee-sharing arrangements and referral fees need to be disclosed, your wording is confusing"); Schreiner Feedback Form ("highlight implications of conflicts of interest").

525 *See* CFA Institute Letter I; Trailhead Consulting Letter.

526 *See* Comment Letter of Jackson, Grant Investment Advisers, Inc. (Aug. 7, 2018) ("Jackson Grant Letter") (stating that other compensation (such as recommending proprietary products and products of affiliates) needs to be addressed for the investor to fully understand the potential for conflicts in any relationship).

527 *See* SIFMA Letter; Wells Fargo Letter; Schwab Letter I; Comment Letter of Ron A. Rhoades, Western Kentucky University (Dec. 6, 2018) ("Rhoades Letter"); Stifel Letter (mock-up); Cetera Letter I; Betterment Letter I; ASA Letter (mock-up).

528 IAA Letter I.

disclosures because their conflicts do not fall within the requisite categories.[529] Furthermore, one commenter proposed to allow firms to affirmatively state that they did not have any of these conflicts without further disclosure of the firm's other conflicts of interest.[530]

We continue to believe that the conflicts we identified in the proposal should be highlighted to retail investors in the relationship summary. Accordingly, we are including in the final instructions a requirement that firms describe these four conflicts to the extent that any of these conflicts apply to them. Like other sections in the relationship summary, this section will provide firms with more flexibility in the way in which they describe their particular conflicts so that they can tailor the summary to more accurately reflect their specific business. While we are maintaining the proposal's approach of requiring firms to provide information about certain types of conflicts applicable to them, we are not requiring firms to state as many specific details with respect to such conflicts.[531] For example, the proposed instructions would have required firms to provide specific examples of advising on proprietary or affiliated investments or investments paying the firm a share of revenue, and we have removed such requirements from the final instructions. Instead, the relationship summary will focus on four specific ways a firm could make money from retail investors' investments to highlight that firms have conflicts of interest and encourage retail investors to ask and learn more about them.

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529 *See* Paul Hynes Letter; Betterment Letter I (stating that their business model avoids the proposed conflicts of interest, and proposing an alternate "alignment of interest" section for the section on conflicts of interest).

530 Betterment Letter I (indicating that the firm had none of the proposed enumerated conflicts).

531 In addition, the IAC recommended that the Commission adopt a uniform, plain English document that covers basic information about conflicts of interest, among other topics. *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10.

Additionally, as some commenters pointed out, we agree that not mentioning any conflicts, or permitting the firm to affirmatively state that it has none of the enumerated conflicts, could lead retail investors to conclude that the particular firm does not have any material conflicts. Accordingly, the instructions require a firm that does not have any of the four required categories of conflicts to provide at least one example of the firm's conflicts of interest. Specially, the instructions require a firm to summarize at least one material conflict of interest that affects retail investors.[532] Firms are not expected to disclose every material conflict of interest, and should instead consider what would be most relevant for retail investors to know in deciding whether to select or retain the particular firm.

We determined to require an example of a conflict, rather than broadening the instruction to include all conflicts, as some commenters suggested. The language disclosing firms' standard of conduct and existence of conflicts includes wording to make explicit that the conflicts described in the relationship summary are examples. Firms will disclose at least one of their material conflicts of interest that impact their retail investors, and such a conflict is not limited expressly to financial conflicts. In addition, with respect to broker-dealers, this conflict disclosure (unlike the conflict disclosure obligation in Regulation Best Interest)[533] is not limited to conflicts associated with a recommendation.[534] To determine whether a conflict of interest

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[532] As discussed in Section II.A.1. above, if a required disclosure is inapplicable to a firm's business, a firm would be permitted to omit or modify that disclosure. General Instruction 2.B. We believe, however, that most firms will have at least one material conflict of interest that they would need to disclose.

[533] *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.C.1 (Disclosure Obligation).

[534] For instance, broker-dealers may include conflicts that affect product offerings to customers who do not obtain recommendations from the firm.

should be disclosed, a firm could consider, for example, the benefit to the firm or its affiliate or the cost to the retail investor.

We believe that an exhaustive list of conflicts in the relationship summary would not as effectively enhance investor understanding of conflicts. More details could inundate investors with information that makes it difficult for them to focus on the fact that conflicts exist and will impact them, and they may not focus on or may not realize the importance of the specific conflicts firms are required to summarize. We also agree with comments that disclosure of all conflicts would be too cumbersome[535] and lengthy for the relationship summary's intended purpose — that is, highlighting certain aspects of a firm and its services to help retail investors to make an informed choice and to find additional information about a topic. The approach we are adopting of requiring firms to provide examples will make retail investors aware that these types of conflicts exist, but will avoid providing a laundry list of conflicts. Taking into account all of these considerations, we believe that these examples of conflicts of interest should be highlighted for the investor. We recognize that this will be a high-level summary of conflicts and generally will not be a complete description. As discussed further below, we are requiring firms to include a link to additional information on their conflicts of interest.[536] This layered disclosure will facilitate investors' ability to review additional information on conflicts while balancing the high-level nature of the relationship summary.

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535 *See, e.g.*, CFA Letter I; SIFMA Letter; Prudential Letter.

536 Item 3.B.(iv) of Form CRS (Firms must include specific references to more detailed information about their conflicts of interest that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure and Regulation Best Interest, as applicable, and broker-dealers that do not provide recommendations subject to Regulation Best Interest, to the extent they prepare more detailed information about their conflicts, must include specific references to such information.).

Conversation Starter and Additional Information. To promote access to information about other firm conflicts, as well as to clarify for retail investors the application of their firms' standard of conduct as discussed above, firms will include a conversation starter prompting investors to ask about conflicts and a hyperlink to additional information. Specifically, firms must include the following question as a conversation starter: "How might your conflicts of interest affect me, and how will you address them?"[537]

The proposal included a longer key question asking about the most common conflicts of interest in the firm's advisory and brokerage accounts and how the firm will address those conflicts when providing services to the retail investor.[538] One commenter noted that this key question elicited the same information as provided elsewhere in the relationship summary.[539] We shortened the question to avoid this duplication. In addition, the firm's other conflicts will be disclosed as part of the summary of material conflicts or in the additional conflicts disclosure that firms will cross-reference. The new conversation starter is meant to complement these other disclosures and elicit more information about how specifically the firm's conflicts of interest could affect the retail investor.

Firms will also include specific cross-references to more detailed information about conflicts of interest that, at a minimum, includes the same or equivalent information to that

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537 Item 3.B.(iii) of Form CRS.

538 Proposed Item 8 of Form CRS. The proposal included the following question: "What are the most common conflicts of interest in your advisory and brokerage accounts? Explain how you will address those conflicts when providing services to my account."

539 *See* LPL Financial Letter.

required about a firm by the Form ADV, Part 2A brochure and/or Regulation Best Interest.[540] If a firm is a broker-dealer that does not provide recommendations subject to Regulation Best Interest, to the extent it prepares more detailed information about its conflicts, it must include specific references to such information.[541] Firms may include hyperlinks, mouse-over windows, or other means of facilitating access to this additional information and to any additional examples or explanations of such conflicts of interest.[542]

Over 60% of RAND 2018 survey respondents indicated that they would be "very likely" or "somewhat likely" to click on hyperlinks related to conflicts of interest.[543] While the proposal did not require firms to link to additional information with respect to their conflicts, several commenters suggested that the relationship summary include a link to all conflicts.[544] We believe that using layered disclosure through cross-references to a more detailed discussion of conflicts balances the Commission's objective of concise disclosure while providing interested investors with tools to easily access additional, useful information.

Many industry commenters also suggested that Regulation Best Interest's and Form CRS's conflicts disclosures be coordinated, and that any conflict disclosure obligations under

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[540] Item 3.B.(iv) of Form CRS.

[541] Item 3.B.(iv) of Form CRS.

[542] Item 3.B.(iv) of Form CRS. *See also* General Instructions 3. and 4. of Form CRS (instructions applicable to electronic delivery). For further discussion of these provisions, *see supra* Section II.A.3. and footnotes 156 and 158 and accompanying text, and Section II.B.2.(b) and footnotes 348–349

[543] RAND 2018, *supra* footnote 13. *But see* Kleimann II, *supra* footnote 19 (only one interview participant said he would use the link in the conflicts of interest section).

[544] *See, e.g.*, Fidelity Letter (mock-up); IAA Letter I (mock-up); *see also* Kleimann II, *supra* footnote 19 (redesigned relationship summary suggests a link to more information about conflicts).

Regulation Best Interest should be satisfied upon delivery of the relationship summary.[545] We recognize that broker-dealers may need to disclose additional conflicts or disclose additional conflicts at a point in time other than at the beginning of the relationship with an investor or other times the relationship summary is required to be delivered.[546] The relationship summary will provide a high-level summary for investors so that they can engage in a conversation with their financial professional about investment advisory or brokerage services, and so that the investors can choose the type of service that best meets their needs. Furthermore, as discussed above in Section II.A (Presentation and Format),[547] we believe it is essential to limit the length of the relationship summary and keep the disclosures focused, highlighting these topic areas while encouraging questions and providing access to additional information. As a result, we believe many firms may not be able to capture all of the necessary disclosures about their conflicts in this short summary disclosure.[548] The layered disclosure approach should strike a balance between alerting investors of these conflicts while keeping with the intended purpose of the relationship summary.

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545 *See, e.g.*, ACLI Letter; Cambridge Letter; Massachusetts Letter; FSI Letter I; MassMutual Letter; Schwab Letter I; SIFMA Letter; Transamerica Letter; *see also* Regulation Best Interest Release, *supra* footnote 47, at n.438 and accompanying text.

546 *See* Regulation Best Interest Release, *supra* footnote 47.

547 *See supra* Section II.A (Presentation and Format).

548 For example, investment advisers must make full and fair disclosure to all clients of all material facts relating to the advisory relationship, including conflicts of interest. *See* Fiduciary Release, *supra* footnote 47; General Instruction 3 to Form ADV Part 2. Broker-dealers subject to Regulation Best Interest must also provide full and fair disclosure of material facts, including all material facts relating to conflicts of interest that are associated with the recommendation. *See* Regulation Best Interest Release, *supra* footnote 47.

Finally, some commenters argued that the relationship summary should require firms to explain how conflicts will be mitigated or minimized, or that firms should be permitted to state that a particular firm has fewer conflicts than other firms.[549] While we agree that firms should have increased flexibility to describe conflicts, as discussed above, we are not permitting this additional disclosure. The purpose of this section is to highlight for investors that conflicts of interest exist.

c. Payments to Financial Professionals

Finally, in a change from the proposal, we are adding an additional section to Item 3 that requires a firm to include in its relationship summary the heading "How do your financial professionals make money?"[550] A firm will summarize how its financial professionals are compensated (including cash and non-cash compensation) and the conflicts of interest those payments create.[551] For example, the firm must, to the extent applicable, disclose whether financial professionals are compensated based on factors such as: the amount of client assets they service; the time and complexity required to meet a client's needs; the product sold (*i.e.*, differential compensation); product sales commissions; or revenue the firm earns from the financial professional's advisory services or recommendations.[552]

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549 *See* AARP Letter; Betterment Letter I.

550 Item 3.C. of Form CRS.

551 Item 3.C.(i) of Form CRS.

552 Item 3.C.(ii) of Form CRS.

In the Proposing Release, we asked if the relationship summary should include disclosure of compensation received by financial professionals and the related conflicts of interest such compensation might pose. Several commenters supported including disclosures related to the conflicts of interest that financial professionals' compensation arrangements create.[553] Several commenters suggested featuring financial professionals' compensation in the relationship summary, including in a separate section.[554] A number of commenters illustrated the importance of these disclosures by including sections discussing financial professionals' compensation in their mock-ups.[555] These disclosures generally included more detailed information about how broker-dealers and investment advisers earn money from various sources, in addition to what the retail investor may pay directly.

We have concluded that disclosure of conflicts of interest related to a financial professional's compensation is useful to highlight for retail investors in the relationship summary.[556] In particular, the commenters' mock-up disclosures highlighted the benefit of

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553 *See* Proposing Release, *supra* footnote 5 (requesting comments on whether there are other considerations related to fees and compensation that we should require firms to highlight for retail investors that were not captured in the proposal); *see also* Jackson Grant Letter; Schwab Letter I; SIFMA Letter; Stifel Letter.

554 *See, e.g.*, Schwab Letter I; SIFMA Letter; Stifel Letter; Jackson Grant Letter. One industry commenter also stated that we should focus on conflicts that result from a financial professional's financial compensation. SIFMA Letter (also stating this view is consistent with FINRA's 2013 Conflicts of Interest Report, which specifically identified financial compensation as the major source of conflicts of interest for associated persons); *see also* CCMC Letter (investor polling) *supra* footnote 21 (in connection with investor polling, noting that investors identify explaining "own compensation" as one of three "issues that matter most" to them).

555 *See* Primerica Letter and ASA Letter (including disclosure stating that financial professional compensation is typically affected by the amount of client assets the financial professional is responsible for and the fees and commissions those assets generate); *see also* SIFMA Letter and Schwab Letter I (including disclosure on how the firm pays professionals who provide investment advice).

556 *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.C.1.b.

separately summarizing financial professionals' compensation to help retail investors identify and assess these conflicts of interest that may affect the services they receive.[557] We believe that requiring specific information on financial professional compensation and conflicts related to that compensation will provide improved clarity from the proposal and better help retail investors understand these conflicts and how they might impact a financial professional's motivation. We also believe it is useful to specifically highlight this conflict for retail investors, as it is a different type of payment and a different type of conflict than a conflict at the firm level. We further believe that by placing this discussion directly after the discussion on fees, costs and conflicts, it will mitigate potential investor confusion. This approach is also consistent with Regulation Best Interest, which treats compensation to financial professionals and the conflicts of interest that such compensation creates as material facts that must be disclosed.[558]

4. Disciplinary History

The relationship summary will include a separate section about whether a firm or its financial professionals have reportable disciplinary history and where investors can conduct further research on these events.[559] Inclusion of a separate disciplinary history section is a change from the proposed relationship summary, where this information was included in the Additional Information section.[560] Certain commenters suggested that we remove the

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557 *See, e.g.,* Primerica Letter; SIFMA Letter; Schwab Letter I.

558 *See* Regulation Best Interest Release, *supra* footnote 47.

559 As proposed, we used the terms "legal or disciplinary events." However, we are adopting the terms "legal or disciplinary history" for greater precision.

560 *See* Proposing Release, *supra* footnote 5, at nn.270–71 and accompanying text.

requirement that firms disclose whether or not they have disciplinary history.[561] Similarly, some commenters suggested that any disciplinary information should simply direct retail investors to resources where they could review a firm's or a representative's disciplinary history, without any firm-specific information in the relationship summary.[562]

We have concluded, however, based on consideration of commenters and investor feedback received through surveys and studies, at roundtables and in Feedback Forms, to include the disciplinary history as a separate section of the relationship summary.[563] These comments emphasized the importance of disciplinary history information and advocated that it should be placed in a more prominent position than as part of the Additional Information section.[564] Commenters also generally supported firm-specific disclosure as to whether the firm has disciplinary history.[565] About 70% of commenters on Feedback Forms responded that they

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561 *See, e.g.*, Wells Fargo Letter (arguing that any firm-based aspect of disciplinary disclosure is not fair to representatives of the firm without any history of wrongdoing); *see also* ACLI Letter; New York Life Letter (arguing that any firm-specific disciplinary history disclosure would prejudice large firms).

562 *See, e.g.*, LPL Financial Letter (mock-up suggested that "[f]or free tools to research our firm, our financial advisors and other firms, including our disciplinary events…" investors should visit BrokerCheck or IAPD).

563 The IAC also recommended including disciplinary history in the relationship summary. *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10 ("[W]e encourage the Commission to develop an approach to disclosure of disciplinary record that makes it easier for investors to assess the significance of disclosed events, particularly for firms that may have a large number of relatively insignificant technical violations.").

564 *See, e.g.*, CFA Letter I ("The required disclosure regarding disciplinary events does not give adequate prominence to this issue."); NASAA Letter ("The descriptor 'Additional Information' is too vague to describe the important information in this section [and] should be recast as 'Disciplinary History and Customer Rights and Remedies . . . ."); Trailhead Consulting Letter ("Legal and Disciplinary Actions are very important for an investor to consider and should not be 'hidden' in an Additional Information section. This information deserves its own separate section."); IAA Letter.

565 *See, e.g.*, CFA Letter I ("We believe this information is important enough to be highlighted under its own separate heading, 'Do you have a disciplinary record?'").

would seek out additional information about a firm's disciplinary history.[566] Similarly, more than 70% of investors surveyed in the RAND 2018 report reported that they were "very likely" or "somewhat likely" to look up the disciplinary history of a financial professional.[567]

However, results from investor studies and surveys and investor comments on Feedback Forms supported the concern that the Additional Information section may not provide enough salience. For example, in the RAND 2018 survey, the Additional Information section was most often selected as one of the two least useful sections of the proposed relationship summary.[568] On Feedback Forms, commenters rated the Additional Information section as "very useful" or "useful" less often than any other section of the relationship summary.[569] One investor study

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566 *See* Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 3(e)). Some commented that, before viewing the relationship summary, they had not known that they could ask or how to check. *See, e.g.*, Anonymous02 Feedback Form ("did not know how to do that"); Anonymous03 Feedback Form ("I looked up my advisor while reading through the summary"); Anonymous26 Feedback Form ("Now I know where to go"); Anonymous29 Feedback Form ("I didn't know if asked – they had to answer"); *see also* Philadelphia Roundtable (investor participant noting that "checking your broker's disciplinary record" is "something that people should do").

567 *See* RAND 2018, *supra* footnote 13 ("More than 40 percent of respondents reported being very likely to look up the disciplinary history based on the information provided in the Relationship Summary, and another 35 percent reported being somewhat likely to look it up. Only 5 percent reported being not at all likely to do so."); *see also* Kleimann II, *supra* footnote 19 (study participants who viewed a redesigned form reported that they would research the company they are doing business with"); *but see* Schwab Letter I (Koski), *supra* footnote 21 (only 20% of survey participants selected "How to find disciplinary information about a firm or its representatives" when asked to select the four most important topics for a firm to communicate, from a list of 11 topics).

568 *See* RAND 2018, *supra* footnote 14 (Additional Information section rated as one of the two "least informative" sections by 66% of respondents; only 3% selected it as one of the two "most informative"); *see also* Cetera Letter II (Woelfel), *supra* footnote 17 (84% of survey respondents strongly or somewhat agreed that the "how to find additional information about a broker/adviser" and "how to find additional information about the firm," fewer than for most other topics out of a series of nine topic options).

569 Feedback Forms Comment Summary, *supra* footnote 11 (summary of responses to Question 2(f)) (Additional Information section rated as "not useful" or "unsure" by more commenters (20%) and "very useful" by fewer commenters (32%) relative to other sections of the relationship summary).

suggested a reason for these mixed results, finding that participants would skip the Additional Information section, in part because they did not understand that the websites in the section would allow them to review the disciplinary history of the investment adviser or broker-dealer that they were considering.[570] Comments on Feedback Forms similarly suggest that information about how to research a firm's disciplinary information should be presented more prominently and more simply in the relationship summary.[571] After taking comments into consideration, we believe that a separate disciplinary history section is appropriate, with a requirement that firms explicitly state whether or not they have legal or disciplinary history so that investors can find the information in the summary with ease.

The section will begin with the heading: "Do you or your financial professionals have legal or disciplinary history?" Firms will answer "yes" or "no," depending upon whether they or one of their financial professionals have a triggering event enumerated in the instructions, as discussed below. The proposed relationship summary required a statement that the firm has legal and disciplinary events but did not require an affirmative statement that a firm or its financial professionals did not have disclosable events. We are requiring a "No" answer in the

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570 *See* Kleimann I, *supra* footnote 19; *see also* Kleimann II, *supra* footnote 19 (noting that interview responses to links in the relationship summary "suggest that use is dependent on perceived relevance … Some of that relevance can be built in with more specific descriptions of what can be found at the link.").

571 Some commenters on Feedback Forms suggested moving the Additional Information section forward in the relationship summary. *See* Anonymous14 Feedback Form ("Recommend add this to beginning of the pamphlet"); Durgin Feedback Form ("Additional info needs to be moved up"); Salkowitz Feedback Form ("Move this section to near the beginning"); Starmer2 Feedback Form ("put Key Questions and Additional Info up front to stimulate a conversation."). Others commented that the presentation should be clearer. *See, e.g.*, Anonymous28 Feedback Form ("Would be better titled 'How to find out about us' or 'Other information you need to know'"); Anonymous29 Feedback Form ("plain language"); Calderon Feedback Form ("say expressly where that information is found, with linked URL's"); Shepard Feedback Form ("the easier it is to access, the better"); Baker Feedback Form ("Please explain IAPD").

final instructions where applicable, given the importance of disciplinary history and to provide a complete answer to the question in the heading.

Regardless of whether firms report a "Yes" or "No" answer as to whether they or their financial professionals have legal or disciplinary history, the relationship summary will direct the retail investor to visit Investor.gov/CRS to research the firm and its financial professionals, as proposed.[572] This is responsive to RAND 2018 survey results, which indicated that 37% of investors did not know where to research disciplinary history.[573] Directing retail investors to the search tool is also consistent with the Commission's Office of Investor Education and Advocacy initiative to encourage retail investors to do background checks on financial professionals and is intended to increase awareness of available search tools.[574] In addition to disciplinary history, the search tools also can provide useful information regarding registration and licensing and financial professional employment history.

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572 Item 4.D.(i) of Form CRS. Investor.gov includes a search function that searches the databases Web CRD® and IARD, and this search will direct an investor to BrokerCheck and/or IAPD, as appropriate, where the investor can research disciplinary history.

573 *See* RAND 2018, *supra* footnote 13. By contrast, 19% of surveyed investors cited the time and effort required and 10% of surveyed investors indicated that they would not look up a firm or financial professional's disciplinary history because the information was not very important to the investor. *Id.* We believe this is also consistent with the IAC's recommendation to "look at whether it might be beneficial to adopt a layered approach to [disciplinary history] disclosures, with the goal of developing a more abbreviated, user-friendly document for distribution to investors." IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10.

574 *See* https://www.investor.gov/research-before-you-invest.

The triggering events for a statement that a firm does have legal or disciplinary history are the same as proposed.[575] Following the heading, firms will be required to state "Yes" in response to the heading questions if they currently disclose or are required to disclose (i) disciplinary information per Item 11 of Part 1A or Item 9 of Part 2A of Form ADV,[576] or (ii) legal or disciplinary history per Items 11A–K of Form BD ("Uniform Application for Broker-Dealer Registration")[577] except to the extent such information is not released to BrokerCheck pursuant to FINRA Rule 8312.[578] Regarding their financial professionals, firms will determine

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575 *See* Proposed Item 7.B. of Form CRS. In the proposal, firms with such events would have been required to state the following: "We have legal and disciplinary events." *Id.* For reasons discussed *supra*, we believe the question-and-answer formatting will make the relationship summary more useful to investors.

576 Item 4.B. of Form CRS. Generally, investment advisers are required to disclose on Form ADV Part 2A any legal or disciplinary event, including pending or resolved criminal, civil and regulatory actions, if it occurred in the previous 10 years, that is material to a client's (or prospective client's) evaluation of the integrity of the adviser or its management personnel, and include events of the firm and its personnel. *See* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (Jul. 28, 2010) [75 FR 49233 (Aug. 12, 2010)], at 22–27 ("Brochure Adopting Release"). Items 9.A., 9.B., and 9.C. provide a list of disciplinary events that are presumptively material if they occurred in the previous 10 years. However, Item 9 requires that a disciplinary event more than 10 years old be disclosed if the event is so serious that it remains material to a client's or prospective client's evaluation of the adviser and the integrity of its management.

577 Item 11 of Form BD requires disclosure on the relevant Disclosure Reporting Page ("DRP") with respect to: (A) felony convictions, guilty pleas, "no contest" pleas or charges in the past ten years; (B) investment-related misdemeanor convictions, guilty pleas, "no contest" pleas or charges in the past ten years; (C) certain SEC or the Commodity Futures Trading Commission ("CFTC") findings, orders or other regulatory actions (D) other federal regulatory agency, state regulatory agency, or foreign financial regulatory authority findings, orders or other regulatory actions; (E) self-regulatory organization or commodity exchange findings or disciplinary actions; (F) revocation or suspension of certain authorizations; (G) current regulatory proceedings that could result in "yes" answers to items (C), (D) and (E) above; (H) domestic or foreign court investment-related injunctions, findings, settlements or related civil proceedings; (I) bankruptcy petitions or SIPC trustee appointment; (J) denial, pay out or revocation of a bond; and (K) unsatisfied judgments or liens. Some of these disclosures are only required if the relevant action occurred within the past ten years, while others must be disclosed if they occurred at any time.

578 Under FINRA Rule 8312, FINRA limits the information that is released to BrokerCheck in certain respects. For example, pursuant to FINRA Rule 8312(d)(2), FINRA shall not release "information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority." We believe it is

whether they need to include an affirmative statement based on legal and disciplinary information on Form U4,[579] Form U5,[580] or Form U6.[581] In particular, firms will be required to state "Yes" if they have financial professionals for whom disciplinary history is reported per Items 14 A through M on Form U4, Items 7A or 7C through F on Form U5,[582] or Form U6 except to the extent such information is not released to BrokerCheck pursuant to FINRA Rule 8312.[583] Firms that do not have disclosable events for themselves or their financial professionals in connection with these provisions will state "No" in answer to the heading.[584]

As noted above, several commenters opposed the approach of requiring firms to indicate in their relationship summaries whether they or their financial professionals have disciplinary history, questioning the value of the disclosure to retail investors,[585] or citing to prejudicial or

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appropriate to limit disclosure in the relationship summary to disciplinary information or history that would be released to BrokerCheck.

579 Form U4 (Uniform Application for Securities Industry Registration or Transfer) requires disclosure of registered representatives' criminal, regulatory, and civil actions similar to those reported on Form BD as well as certain customer-initiated complaints, arbitration, and civil litigation cases.

580 Form U5 (Uniform Termination Notice for Securities Industry Registration) requires information about representatives' termination from their employers.

581 Form U6 (Uniform Disciplinary Action Reporting Form) is used by SROs, regulators, and jurisdictions to report disciplinary actions against broker-dealers and associated persons. This form is also used by FINRA to report final arbitration awards against broker-dealers and associated persons.

582 Item 7(b) of Form BD (Internal Review Disclosure) is not released to BrokerCheck by FINRA, pursuant to FINRA Rule 8312(d)(3).

583 Item 4.B.(iii) of Form CRS.

584 Item 4.C. of Form CRS.

585 *See* NSCP Letter ("NSCP members believe that extending the disclosure of disciplinary history to be included in Form CRS would add additional administrative burden and costs outweighing any true benefit to the customer."); Wells Fargo Letter ("such a broad statement will add no value").

competitive concerns.[586] These firms recommended that the relationship summary include only a prompt for investors to research the disciplinary history of the firm or financial professional, directing them to Investor.gov/CRS.[587]

We recognize that the disciplinary history of firms and their financial professionals is already publicly available, as commenters have noted. From studies and investor feedback, however, we also understand that investors view disciplinary history as significant to their decision of whether or not to engage with a firm or a financial professional, but in many cases are unaware of the need for researching or the tools available to research whether disciplinary history exists.[588] Highlighting disciplinary history in this way provides information to retail investors before they enter into a relationship with a particular firm and financial professional and a "yes" response will alert retail investors that there is disciplinary history they may want to

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586 *See* Wells Fargo Letter (arguing that the statement will lead clients to draw unfair conclusions about both the firm and its financial professionals); New York Life Letter (arguing that the statement prejudices larger, established firms that will usually have a small number of disclosure events to report for current or former registered representatives); ACLI Letter (same).

587 *See* Wells Fargo Letter; New York Life Letter; ACLI Letter.

588 *See*, *e.g.*, Staff of the Securities and Exchange Commission, *Study Regarding Financial Literacy Among Investors as Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Aug. 2012), at iv, v, xiv, 37, 73, 121–23 and 131–32, at nn.317–19 and accompanying text, *available at* https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf ("917 Financial Literacy Study") ([A]bout 76.5% of the online survey respondents reported that, in selecting their current adviser, they did not use an SEC-sponsored website to find information about the adviser. 73% of respondents stated that they would check IAPD if they were made aware of its existence. Of that subset—those who reported not using an SEC-sponsored website—approximately 85.2% indicated that they did not know that such a website was available for that purpose. Of that majority (*i.e.*, a further subset)—those who were unaware of such a website—approximately 73.5% reported that they would review information about their adviser on an SEC-sponsored website if they knew it were available); *see also* RAND 2018, *supra* footnote 13 (when investors were asked why they would not look up disciplinary history, 37 percent of all respondents indicated that they did not know where to get the information, whereas 19 percent of all respondents indicated that it would take too much time or effort).

research, review, or discuss with their financial professional.[589] As there is no required waiting period between the delivery of the relationship summary to the retail investor and the time that the retail investor may enter into a relationship with or an order placed by a firm, highlighting the disciplinary information allows the retail investor time to consider any disciplinary history before moving forward or to monitor the relationship or financial professional more closely if the retail investor decides to move forward at that time. By basing this disclosure on information that is already reported elsewhere and also requiring the relationship summary to include details about where to find more information, we give retail investors the tools to learn more about firms and financial professionals.

We are not persuaded by commenters who believed that these disclosures are unduly prejudicial or would have sufficient competitive concerns and argued that we should not require this information. Firms or financial professionals would have the opportunity to provide more information about and encourage retail investors to ask follow-up questions regarding the nature, scope, or severity of any disciplinary history, so that retail investors have the information they need to decide on a relationship. In particular, financial professionals who themselves have no disciplinary history can make clear that a "Yes" disclosure in response to the heading question relates to the firm and other personnel (if applicable) and not to them. While we recognize that larger firms might be more likely to respond affirmatively to this question than smaller firms, we have determined to require this disclosure because we believe that, on balance, the potential benefit to the retail investor of seeing at a glance whether a firm or its financial professionals

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589 *See* Miami Roundtable (investor noting that she had gone on Investor.gov to learn about the disciplinary history of her financial professional and noting that she was "happy when [she] checked" the website).

have disciplinary history (which may encourage the investor to conduct further research or monitor the relationship or financial professional more closely) justifies requiring the disclosures notwithstanding the concerns raised by commenters, particularly given the importance that commenters placed on disciplinary history.

A few commenters suggested revisions to the specific events that would trigger a disciplinary event disclosure in the proposed relationship summary.[590] We have considered these comments but have determined to adopt the triggers as proposed. As noted in the Proposing Release, those disclosable events are those that we believe may generally assist retail investors in evaluating the integrity of a firm and its financial professionals.[591] Additionally, these triggering events are already disclosed on existing systems for other regulatory purposes. As such, there will not be additional regulatory burdens for a determination of disciplinary history for the purposes of the relationship summary.

Different requirements between other aspects of Form ADV or Form BD and the relationship summary also could cause confusion and compliance uncertainty. One commenter suggested basing the relationship summary disciplinary disclosure around a standardized set of events that would trigger disclosures specific to the relationship summary.[592] This approach may have led to advisers or broker-dealers having publicly listed disclosure events on BrokerCheck or

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590 *See* CFA Institute Letter I ("For parity and comparability, we suggest requiring that the specific events that would trigger disclosure under these requirements be the same for both investment advisers and broker-dealers"); Comment Letter of the Business Law Section of the State Bar of Texas, Investment Funds Committee (Aug. 7, 2018) (advocating that an investment adviser disclose that it has a disciplinary event only based on Item 9 of Part 2A of Form ADV, rather than both Items 9 and 11).

591 *See* Proposing Release, *supra* footnote 5, at nn.271–73 and accompanying text.

592 *See* CFA Institute Letter I.

IAPD yet answering "No" to a question of whether they or their financial professionals have legal or disciplinary history. We believe that result could have been confusing or misleading to retail investors. By contrast, the approach we adopt allows for consistency across public information as to whether or not a firm or financial professional has a disciplinary event and leverages existing disclosure reporting systems. We believe that this consistency justifies not adopting a standardized set of events triggering disclosure on the relationship summary. Furthermore, the statement encouraging retail investors to visit Investor.gov/CRS for more information will help retail investors to more easily learn and compare additional details from the firms themselves and from their existing disclosures.[593]

Firms also will include the following conversation starter: "As a financial professional, do you have any disciplinary history? For what type of conduct?"[594] This conversation starter is intended to take the place of a similarly worded key question.[595] However, because this item's heading asks a similar question about disciplinary history with respect to the firm, we believe that the conversation starter would be most useful specifically with respect to the financial professional. This question will allow retail investors to assess that financial professional's disciplinary history as well as engage in further discussion about those events or any events applicable to the firm. In addition, this conversation starter is designed to encourage a discussion about any differences between the firm's disciplinary history and that financial professional's

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593 Item 4.D. of Form CRS.

594 Item 4.D.(ii) of Form CRS.

595 *See* Proposed Item 8.8 of Form CRS ("Do you or your firm have a disciplinary history? For what type of conduct?"); *see also supra* Section II.A.4 (discussing removal of the "Key Questions to Ask" section).

history, if applicable (*e.g.*, if the financial professional has no disciplinary history while his or her firm has reportable discipline necessitating a "Yes" response to the heading question).

5. Additional Information

At the end of the relationship summary, firms will state where the retail investor can find additional information about their brokerage or investment advisory services, as proposed.[596] This information should be disclosed prominently at the end of the relationship summary. However, unlike the proposed relationship summary, the adopted instructions do not prescribe the different references that a broker-dealer and investment adviser must include for such direction and do not require a heading for the section.[597] This approach is consistent with our intent to provide firms additional flexibility to provide information most useful to retail investors.[598] In addition, removing the prescribed wording from this section avoids potentially duplicative disclosure, as the Introduction now includes a statement that free and simple tools are available to research firms and financial professionals at Investor.gov/CRS. Investor.gov

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596 *See* Proposed Item 7.E. of Form CRS. We are also requiring a statement of where retail investors can request a copy of the relationship summary.

597 As proposed, broker-dealers would have had to state that, to find additional information, retail investors should visit BrokerCheck, the firm's website, and the retail investor's account agreement. In addition, broker-dealers would link to a portion of their website with up-to-date information and a link to BrokerCheck. If the firm did not have a public website, the broker-dealer would have been required to include a toll-free telephone number where retail investors could request up-to-date information. *See* Proposed Item 7.E.1. of Form CRS.

Investment advisers would have had to state that, to find additional information, retail investors should see the firm's Form ADV brochure on IAPD on Investor.gov and any brochure supplement the firm provides. If the adviser maintains its current Form ADV on a public website, it would have had to state the website address. If the adviser had no such website, a link to adviserinfo.sec.gov would have had to be provided as well as a toll-free telephone number where retail investors could request up-to-date information. *See* Proposed Item 7.E.2. of Form CRS.

598 *See supra* footnotes 76–83 and accompanying text.

provides investors access to search for firms on BrokerCheck and IAPD, references to both of which would have been required in prescribed wording in the proposed relationship summary.[599] The flexibility is also responsive to observations reported in surveys and studies and comments from investors at roundtables and on the Feedback Forms indicating that investors found the proposed "Additional Information" section less helpful compared to other sections in the relationship summary.[600] Consistent with our layered disclosure approach, we encourage hyperlinks, QR codes, or other means of facilitating access for retail investors to obtain additional information.[601]

We also are not adopting the proposed requirement that firms include information on how retail investors should report complaints about their investments, investment accounts, or financial professionals in the relationship summary.[602] While some commenters supported

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599 *See* Item 1.A. of Form CRS. As discussed above, we are requiring firms to include the reference to Investor.gov/CRS in the Introduction in part to highlight to retail investors the ability to research firms and financial professionals as well as the ability to review educational materials at the website. *See supra* Section II.B.1.

600 *See supra* footnote 568–569 and accompanying text; *see also* Philadelphia Roundtable (confusion regarding the difference between FINRA and the Commission as well as a statement that there are "too many Websites" in the Additional Information section).

601 *See supra* Section II.A.3.

602 The proposal included the following instruction in the Additional Information section: "To report a problem to the SEC, visit Investor.gov or call the SEC's toll-free investor assistance line at (800) 732-0330. [To report a problem to FINRA, [ ].] If you have a problem with your investments, investment account or a financial professional, contact us in writing at [insert your primary business address]." If you are a broker-dealer or *dual registrant*, include the bracketed language. It is your responsibility to review the current telephone numbers for the SEC and FINRA no less often than annually and update as necessary." Proposed Item 7.D. of Form CRS.

including information on how retail investors could report complaints,[603] others disagreed with this approach[604] or suggested that it may not be information that is as critical at the beginning of a relationship.[605] Commenters submitting their own mock-ups of the relationship summary likewise took different approaches as to whether or not to include this information.[606]

We are requiring a conversation starter in this part of the relationship summary, which incorporates and adapts a key question from the proposal: "Who is my primary contact person? Is he or she a representative of an investment adviser or a broker-dealer? Who can I talk to if I have concerns about how this person is treating me?"[607] With required text features to highlight this conversation starter, as well as information from the Introduction to direct retail investors to

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603 *See, e.g.*, NASAA Letter (suggesting that the Additional Information section be recast as "Disciplinary History and Customer Rights and Remedies" and include, among other things, a discussion of the legal rights and the remedies available to customers in the event of breach (including whether the customer will be subject to mandatory arbitration) and contact information for regulators where investors may file complaints or ask questions about disciplinary history); *see also* Philadelphia Roundtable (investor expressing that she would like to know where to file a complaint, but not realizing that the desired information was on the proposed relationship summary).

604 *See* Wells Fargo Letter ("We also don't agree that Form CRS needs to get into details on how an investor can report a problem. Such a disclosure is outside of the overall purpose of the summary and will detract from both the readability and length of the document.").

605 *See* Trailhead Consulting Letter ("[T]his document is encouraged or required to be delivered prior to entering into a relationship or transaction, so hopefully problems have yet to occur. The account statements or investment adviser reports should include statements informing investors how to report a problem."). *But see* Cetera Letter II (Woelfel) (86% of survey respondents strongly or somewhat agreed that "how to report a problem with your investments" was an important topic to be discussed in the relationship summary and 84% of survey respondents strongly or somewhat agreed that "how to report a problem with a financial professional" was an important topic; within a range of 88% to 81% of ratings for 9 different topics).

606 *Compare, e.g.*, LPL Financial Letter (including hyperlinks to BrokerCheck and IAPD in part "to report a problem" in mock-up) and IAA Letter I (no reference to problems or reporting complaints in mock-up).

607 Item 5.C. of Form CRS. In comparison, the analogous proposed key question was "Who is the primary contact person for my account, and is he or she a representative of an investment adviser or a broker-dealer? What can you tell me about his or her legal obligations to me? If I have concerns about how this person is treating me, who can I talk to?" Proposed Item 8.10 of Form CRS.

Investor.gov/CRS, we believe that retail investors will be able to find information on who to contact and how to report a complaint to the firm at the appropriate time, and Investor.gov includes links to submit questions and complaints to the Commission. In light of the mixed feedback from commenters and the changes to the form designed to enhance flexibility and usability, we are not requiring firms to include more detailed information about submitting complaints, as proposed, to enable the disclosures in the relationship summary to focus on other information about the firm and its services.

We are also requiring firms to include a telephone number where retail investors can request up-to-date information and request a copy of the relationship summary.[608] This differs from the proposal, which required only those firms that do not have a public website to include a toll-free number that retail investors may call to request documents.[609] Some of the commenter mock-ups included a telephone number even though the firms maintained a public website.[610] A commenter who recommended including a contact telephone number in the relationship summary did not specify that it must be toll-free and we received a mock-up with a placeholder for a telephone number that was not specifically toll-free.[611]

After consideration of these comments and mock-ups, we determined that all firms should include a telephone number in the relationship summary. We continue to believe it is important for retail investors to have firm contact information in the event that they would like to

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608 Item 5.B. of Form CRS.

609 *See* Proposed General Instruction 8.(a) to Form CRS.

610 *See*, *e.g.,* Fidelity Letter (mock-up) and Primerica Letter (mock-up).

611 *See* IAA Letter I and Primerica Letter (mock-up).

request disclosures and there is no public website for that firm that the investor may easily access. In addition, we anticipate that requiring all firms to include a telephone number will more readily accommodate retail investors who prefer communicating with firms over the phone and will facilitate their requests for up-to-date information and a copy of the relationship summary. If firms do not already have a toll-free telephone number, they will not be required to obtain one to comply with the requirements of the relationship summary. Firms will have the flexibility to decide whether or not the telephone number they provide in their relationship summary will be toll-free.

6. Proposed Items Omitted in Final Instructions

The proposal included two sections that we are not adopting as separate sections in the relationship summary.[612] As discussed above, the relationship summary will not include a separate section for "Key Questions to Ask;" instead, the topics covered by the proposed key questions will be integrated throughout the relationship summary as headings to items or as "conversation starters."[613]

The relationship summary will also not include the Comparisons section for investment advisers and broker-dealers, as proposed. Standalone broker-dealers would have been required to include the following information, using prescribed wording, about a generalized retail

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612 In addition to the reasons discussed below, removing these sections also may help alleviate concerns from commenters that the proposed relationship summary was trying to "do too much." *E.g.*, Schwab Letter I; SIFMA Letter; Comment Letter of UBS Global Wealth Management (Aug. 7, 2018) ("UBS Letter"); *see also* AARP Letter (suggesting that the relationship summary be shortened to avoid "information overload"); CFA Institute Letter I (the proposed relationship summary is "too wordy, lacks design elements that engage the reader, and, in many respects, is too nuanced for the average retail investor who is trying to understand the differences between broker-dealers and investment advisers").

613 *See supra* Section II.A.4.

investment adviser: (i) the principal type of fees; (ii) services investment advisers generally provide; (iii) the applicable legal standard of conduct; and (iv) certain incentives based on an investment adviser's asset-based fee structure. For standalone investment advisers, this section would have required them to include parallel categories of information regarding broker-dealers.[614]

Many commenters opposed including discussions comparing investment advisers and broker-dealers. Some commenters stated that it was inappropriate for the Commission to require firms to describe products and services that they do not offer and about which they may have limited or no expertise.[615] Other commenters had concerns with the prescribed wording, which they said may increase investor confusion or be misleading with prescribed wording that would not reflect the likely relationship that an investor would have with a specific firm.[616] Some commenters believed that the wording in the comparison section favored broker-dealers over investment advisers.[617] Others indicated that the comparisons should allow for discussions regarding insurance products.[618] As an alternative, some commenters suggested that the Commission include the information intended for the proposed Comparison section on the

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614 *See* Proposed Item 5 of Form CRS.

615 *See, e.g.*, ACLI Letter.

616 *See* IAA Letter I (arguing that the wording of the section was "too boilerplate" and would prohibit firms from providing useful information about what the specific investor's relationship would be with a firm).

617 *See* CFA Letter I (arguing that "there are a number of statements … that many, if not most, advisers would likely object to" in the prescribed wording); IAA Letter I.

618 *See* New York Life Letter; Northwestern Mutual Letter.

Commission's website as educational material,[619] and that firms could link to the educational material from their relationship summaries.[620] Given such concerns and suggestions, a number of mock-ups did not include a comparison section.[621]

Comments on Feedback Forms indicated that this section was less useful than other sections of the relationship summary; fewer commenters rated this section as either "very useful" or "useful" compared to the other sections of the relationship summary.[622] Many narrative comments on Feedback Forms relating to this section (even from those who graded the section as "useful") indicated that these commenters did not find this section informative and wanted more information to help them compare firms.[623] Feedback on this section from the RAND 2018 report and other surveys and studies was limited because the RAND 2018 report, and other surveys and studies, generally focused on the sample proposed dual registrant relationship summary. However, in a survey that focused on the standalone investment adviser relationship

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619 *See* IAA Letter I; Schnase Letter; Pickard Djinis and Pisarri Letter.

620 *See, e.g.*, SIFMA Letter; Schwab Letter I.

621 *See, e.g.*, IAA Letter I; SIFMA Letter; Schwab Letter I. Other mock-ups included a "first level" disclosure that involved generalized comparisons between investment advisers and broker-dealers, with the relationship summary including firm-specific information. *See* LPL Financial Letter; Primerica Letter.

622 Twenty-nine commenters (about 30%) on Feedback Forms rated the comparison section as "Very Useful"; 39 (about 40%) rated it as "Useful"; 17 (almost 20%) responded that they did not find this section useful or were unsure. *See* Feedback Forms Comment Summary (responses to Question 2(d), *supra* footnote 11.

623 *See, e.g.,* Anonymous07 Feedback Form ("Any example of how you use either or both for achieving goals"); Anonymous13 Feedback Form ("... list what is the same for both, as much is, then only list differences in separate columns. What I really want is what's the differences"); Brantley Feedback Form ("when is it best to use each type of account - maybe some examples"); Coleman Feedback Form ("…a word that suggests when one type of relationship would be more beneficial"); Hawkins Feedback Form ("There are so many different account types and investment options. More information needed"); Murphy Feedback Form ("Too complicated to follow"); Schreiner Feedback Form ("highlight differences").

summary, most survey respondents indicated that this section was not useful in helping them to understand differences between firms.[624]

We have determined not to require a separate Comparisons section in the relationship summary for broker-dealers and investment advisers that are not dual registrants. In lieu of the separate section with prescribed wording, the final instructions include several requirements that will help facilitate comparisons among firms. First, each relationship summary will be required to provide answers to the same questions in a standard order.[625] Second, dual registrants will be required to provide either a combined relationship summary describing both brokerage and advisory services, presenting the information with equal prominence and in a manner that facilitates comparison of the two types of services or, alternatively, will be required to provide separate relationship summaries that clearly distinguish and facilitate comparison of the firm's brokerage and investment advisory services.[626] Similarly, a firm that has an affiliate providing brokerage or advisory services may choose to prepare a single relationship summary, or two separate relationship summaries, discussing the services provided by both firms, but only if the

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624 *See* Betterment Letter I (Hotspex), *supra* footnote 18 (only 23% of survey respondents indicated that the disclosure on a version of the sample proposed standalone adviser relationship summary helped them to understand how other investment firms differed from Betterment).

625 *See supra* Section II.A.2.

626 *See supra* Section II.A.5. Additionally, and as noted above, firms that prepare two separate relationship summaries must deliver both relationship summaries to each retail investor with equal prominence and at the same time, without regard to whether the particular retail investor qualifies for those retail services or accounts. *See id.*; *see also* General Instruction 5.A. to Form CRS.

relationship summary or summaries are designed in a manner that facilitates comparison of the brokerage and investment advisory services.[627]

These changes enhance the relationship summary's usability and design and, we believe, will improve comparisons among firms by retail investors using the relationship summaries. The relationship summaries will have differentiated, firm-specific information in a comparable format as compared to the proposed approach of requiring prescribed and more generalized information. We believe this comparability and differentiation among firm relationship summaries will enhance usability for retail investors. In addition, removing the prescribed wording allows firms to describe their services and fees more accurately while simultaneously mitigating concerns commenters raised regarding potentially misleading or inappropriate prescribed wording. Investors seeking more general information about investment advisers and broker-dealers will know they can refer to educational materials that are available on the Commission's website, Investor.gov, and elsewhere for investor research and education, including Investor.gov/CRS, which the relationship summary's Introduction must reference.[628]

C. Filing, Delivery, and Updating Requirements

We are adopting the filing, delivery, and updating requirements with several modifications from the proposal. Firms will file copies of their relationship summaries with the Commission, will update the disclosures when the information becomes materially inaccurate, and will communicate any changes to retail investors who are existing clients or customers. The

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627 *See* General Instruction 5.B.(i) to Form CRS.

628 *See* Item 1.B. of Form CRS.

delivery requirements are designed to ensure a relationship summary is provided before or at the time a retail investor enters into a relationship with the firm and when changes are made to the services the firm provides.

We made several modifications to the proposed requirements in response to comments, in order to make it easier for retail investors to discern changes in updated relationship summaries, streamline the filing requirements, and provide greater clarity regarding several of the delivery requirements. As described further below, some of the key revisions include:

- *Broker-Dealer Initial Delivery Obligations.* Broker-dealers will be required to deliver the relationship summary before or at the earliest of: (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor, instead of before or at the time the retail investor first engages the broker-dealer's services, as proposed. We encourage delivery of the relationship summary to new or prospective clients or customers at the first possible opportunity, including the initial point of contact.

- *Other Delivery Obligations.* Firms will deliver the relationship summary to existing retail investor clients and customers before or at the time firms open a new account that is different from the retail investor's existing account, as was proposed. In addition, firms will deliver the relationship summary when they recommend that the retail investor roll over assets from a retirement account, or when they recommend or provide a new service or investment outside of a formal account (*e.g.*, variable annuities or a first-time purchase of a direct-sold mutual fund through a "check and application" process). In response to commenters' concerns, these changes are intended to replace the

proposed instruction that firms deliver the relationship summary when making changes to an existing account that would "materially change the nature and scope" of the firm's relationship with the retail investor with more concrete delivery triggers.

- *Highlighting Changes.* In a change from the proposal, we are adding a requirement that firms delivering updated relationship summaries to existing clients or customers also highlight the most recent changes by, for example, marking the revised text or including a summary of material changes. This additional disclosure must be filed as an exhibit to the unmarked amended relationship summary (but would not be counted toward the two-page or four-page limit, as applicable).

- *New Filing Requirements*. As proposed, we are requiring that firms file the relationship summary using a text-searchable format. However, in response to comments received, we are also requiring that the filings contain machine-readable headings to enhance the ability to compare information submitted by different firms. Also in response to comments, which we solicited on this topic, we are changing the system that broker-dealers will use to file Form CRS from EDGAR, as proposed, to Web CRD®. Dual registrants will be required to file their relationship summaries using both IARD and Web CRD®.

Finally, we are revising the definition of retail investor to align more closely with the definition of "retail customer" in Regulation Best Interest. As discussed, below, we do not believe that this results in substantive changes in the definition as proposed.

1. Definition of Retail Investor

For purposes of Form CRS, "retail investor" is defined as "a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for

personal, family or household purposes."[629] The proposal defined the term retail investor as "a prospective or existing client or customer who is a natural person (an individual), including trusts or other similar entities that represent natural persons, even if another person is a trustee or managing agent." This definition was different from the definition of "retail customer" in proposed Regulation Best Interest[630] because the relationship summary was intended for an earlier stage of the relationship between an investor and a financial professional, and we thought it would be beneficial for all natural persons to receive information to facilitate their account choices.[631]

Many commenters recommended that we use a single definition for both "retail investor" and "retail customer" because consistent definitions would facilitate compliance and administrative efficiency.[632] Commenters were concerned that differences between the definitions could result in a requirement to deliver the relationship summary to broker-dealer

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629 General Instruction 11.E. to Form CRS.

630 *Compare* Proposed Exchange Act rule 15*l*-1(b)(1) (defining retail customer to mean "a person, or the legal representative of such person, who: (A) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (B) Uses the recommendation primarily for personal, family, or household purposes.").

631 Proposing Release, *supra* footnote 5, at Section II, at n.29.

632 *See* Committee of Annuity Insurers Letter ("a standardized definition … would be more efficient and enable firms to more easily comply"); ICI Letter ("a single definition … would provide important administrative efficiencies, facilitate compliance, and avoid confusion"); *see also* Bank of America Letter; CFA Letter I; Cetera Letter I; Fidelity Letter; Comment Letter of Franklin Resources, Inc. (Aug. 6, 2018); Invesco Letter; Comment Letter of Morgan Stanley Smith Barney, LLC (Aug. 7, 2018) ("Morgan Stanley Letter"); Oppenheimer Letter; Comment Letter of Raymond James Financial (Aug. 7, 2018) ("Raymond James Letter"); SIFMA Letter; TIAA Letter; Transamerica Letter.

customers who may not be "retail customers" for purposes of Regulation Best Interest.[633] Many commenters further recommended that the definitions of "retail investor" and "retail customer" should both be conformed to rules issued by FINRA, which use a net worth test to distinguish institutional and "retail" customers.[634] Commenters also asked us to clarify that the relationship summary need not be delivered to certain professionals retained to represent a natural person[635] and address whether participants in workplace retirement plans will be retail investors who should receive the relationship summary.[636]

In response to comments, the final instructions adopt a definition of retail investor that is consistent with the definition of retail customer in Regulation Best Interest, but differs to reflect differences between the relationship summary delivery requirement and the obligations of broker-dealers under Regulation Best Interest, including that the relationship summary is required whether or not there is a recommendation and covers any prospective and existing clients and customers (*i.e.*, a person who "seeks to receive or receives services") of investment advisers as well as broker-dealers.[637] Specifically, under Regulation Best Interest, retail

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633 *See, e.g.*, SIFMA Letter; TIAA Letter.

634 *See, e.g.*, SIFMA Letter (referring to FINRA Rule 2210); Cetera Letter I; Investacorp Letter; Morgan Stanley Letter; TIAA Letter; UBS Letter; Wells Fargo Letter.

635 *E.g.*, Comment Letter of the American Bankers Association (Aug. 7, 2018) ("American Bankers Association Letter"); IAA Letter I; ICI Letter; Oppenheimer Letter; Prudential Letter; T. Rowe Letter; Wells Fargo Letter.

636 *E.g.*, Comment Letter of Empower Retirement (Aug. 2, 2018) ("Empower Retirement Letter"); Fidelity Letter; Comment Letter of Groom Law Group (Aug. 7, 2018) ("Groom Law Letter"); IAA Letter I; ICI Letter; IRI Letter; Invesco Letter; Comment Letter of the National Association of Government Defined Contribution Plans (Aug. 7, 2018) ("NAGDA Letter"); Oppenheimer Letter; Comment Letter of SPARK Institute, Inc. (Aug. 7, 2018) ("SPARK Letter"); T. Rowe Letter.

637 *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.B.3.c.

customer will be defined as "a natural person, or the legal representative of such natural person, who: (A) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (B) uses the recommendation primarily for personal, family, or household purposes."[638] Like the definition of retail customer in Regulation Best Interest, the definition of retail investor in the final instructions includes natural persons[639] who seek to receive or receive services "primarily for personal, family or household purposes" and the "legal representatives of such natural persons." In addition, we provide an interpretation on who would be considered to be a "legal representative" for purposes of this definition.

The proposed definition of retail investor did not include the phrase "personal, family or household purposes." No commenters addressed whether or not to include this phrase in the Form CRS definition of retail investor, other than commenting generally that they supported conforming both definitions. Commenters did comment and request clarification of this aspect of the definition of "retail customer" in Regulation Best Interest.[640]

We believe the final definition of retail investor remains consistent with our objective to provide all natural persons with information to facilitate their understanding of their choices among firms and types of accounts. Firms will be required to deliver the relationship summary

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638 Exchange Act Rule 15*l*-1(b)(1).

639 The proposed definition used the language "a natural person (an individual)." While the final definition excludes the parenthetical reference to "an individual," we do not intend any substantive change because a reference to a natural person typically includes any individual.

640 *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.B.3a (describing comments).

to individuals seeking brokerage and investment advisory services in connection with any of the many different reasons that an individual may seek these services, including, for example, retirement, education and other personal, family or household saving and investing objectives. The final definition of retail investor will exclude natural persons seeking these services for commercial or business purposes, such as, for example, where an employee seeks services for an employer or an individual seeks services for a small business or on behalf of another non-natural person entity such as a charitable trust. However, firms must deliver the relationship summary to natural persons who might be seeking services for a mix of personal and commercial or other non-personal purposes, such as a sole proprietor or small business owner who may engage a firm or financial professional for multiple accounts and for personal as well as business purposes. Where firms do not know whether a natural person is seeking services for something other than personal, family, or household purposes at the beginning of a relationship, they may treat that natural person as a retail investor for purposes of delivery of the relationship summary.[641]

As in the proposal, the final retail investor definition will capture natural persons without any distinction based on net worth. While a number of commenters argued that firms should not be required to deliver a relationship summary to investors that meet certain asset or net worth thresholds,[642] others opposed narrowing the definition based on a net worth test or other test.[643]

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641 As explained in Regulation Best Interest Release, *supra* footnote 47, at Section II.B.3a, we interpret "personal, family or household purposes" as used in the definition of retail customer to mean *any* recommendation to a natural person for his or her account, and we believe that, pursuant to the Care Obligation of Regulation Best Interest, broker-dealers are able to obtain sufficient facts to determine the purpose for which a recommendation will be used.

642 For example, SIFMA's comments refer to FINRA Rule 2210, which treats accounts of natural persons with $50 million or more in assets as institutional investors; SIFMA explains that these investors are "among the wealthiest and most sophisticated customers and often have multiple professional fiduciaries and advisers,

We continue to believe that the retail investor definition should not distinguish based on a net worth or other asset threshold test and that all individual investors would benefit from clear and succinct disclosure regarding key aspects of available brokerage and advisory relationships. As noted in the proposal, section 913 of the Dodd-Frank Act defines "retail customer" to include natural persons and legal representatives of natural persons without distinction based on assets or net worth.[644] Further, we believe that it also may be impractical to include a net worth or other test based on asset thresholds in the definition because it could be difficult for firms to determine a retail investor's net worth at the outset of the relationship when the relationship summary must be provided.

To conform definitions, the final definition of retail investor substitutes the language "the legal representative of such natural person" for language in the proposal referring to "a trust or other similar entity that represents natural persons, even if another person is a trustee or managing agent of the trust."[645] We believe this is a clarification and not a substantive change from the proposal because it retains coverage of trusts and other similar legal entities that

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apart from their broker-dealer relationships" and "do not function as 'retail customers'"; *see also* Cetera Letter I; Investacorp Letter; Morgan Stanley Letter; TIAA Letter; UBS Letter; Wells Fargo Letter. Other commenters suggested different tests of financial sophistication, *e.g.*, Advisers Act Rule 205-3 definition of "qualified clients" (a $2 million net worth test), *see* Comment Letter of American Investment Council (Aug. 7, 2018) ("American Investment Council Letter"); Comment Letter of Loan Syndications and Trading Association (Aug. 7, 2018); Comment Letter of the Managed Funds Association Alternative Investment Management Association (Aug. 7, 2018); or the section 2(a)(51) of the Investment Company Act definition of "qualified purchaser" ($5 million net worth test). *See* Fidelity Letter; Pickard Djinis and Pisarri Letter.

643 *See, e.g.*, Morningstar Letter ("any unequal distribution of this information would be arbitrary"); *see also* AARP Letter; CFA Letter I; Trailhead Consulting Letter.

644 Proposing Release, *supra* footnote 5, at Section II, at text accompanying nn.31–32.

645 General Instruction 11.E. to Form CRS.

represent natural persons, and the proposal contemplated that certain legal representatives, *e.g.*, a trustee or managing agent, would receive a relationship summary on behalf of a trust or other similar legal entity. Further, we clarify that we interpret a "legal representative" of a natural person to cover only non-professional legal representatives (*e.g.*, a non-professional trustee that represents the assets of a natural person and similar representatives such as executors, conservators, and persons holding a power of attorney for a natural person).[646] In referring to non-professional legal representatives, we intend to capture persons who are acting on behalf of natural persons and are not regulated financial services professionals retained by natural persons to exercise independent professional judgment. This responds to those commenters who argued that it should not be necessary to provide a relationship summary to regulated professionals in the financial services industry, such as registered investment advisers and broker-dealers, corporate fiduciaries (*e.g.*, banks, trust companies and similar financial institutions) and insurance companies, and the employees or other representatives of such advisers, broker-dealers, corporate fiduciaries and insurance companies.[647] Accordingly, non-professional legal representatives would not include such regulated financial services professionals. We agree with these commenters that delivery of the relationship summary to such regulated financial services professionals retained by natural persons to exercise independent judgment will not further our

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646 *See* ICI Letter (recommending that the Commission "make explicit in the definition of 'retail investor' that a 'legal representative' of a natural person "means an executor, conservator, or a person holding a durable power of attorney for a natural person").

647 *See, e.g.*, American Bankers Association Letter; Bank of America Letter; IAA Letter I; Invesco Letter; ICI Letter; Oppenheimer Letter; Prudential Letter; T. Rowe Letter.

objective of facilitating retail investors' understanding of their account choices.[648] Importantly, however, this will not relieve firms or financial professionals retained to represent the assets of natural persons from their own obligations to deliver the relationship summary to clients or customers who are retail investors.

Commenters offered varying points of view about whether participants of workplace retirement plans should be treated as retail investors who receive the relationship summary. Some recommended that the definition of retail investor should include plan participants.[649] Others argued against delivering a relationship summary to plan participants, explaining that a relationship summary would confuse participants and would duplicate other required disclosures.[650] Several commenters suggested that only plan participants that choose to retain a firm or financial professional in connection with assets in his or her plan account should receive a relationship summary.[651] Commenters also asked us to clarify whether the definition of retail investor would include participants in plans not subject to ERISA, such as governmental or other

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[648] *See, e.g.*, American Bankers Association Letter; Bank of America Letter; IAA Letter I; Invesco Letter; ICI Letter; Oppenheimer Letter; Prudential Letter; T. Rowe Letter.

[649] *See* ICI Letter; Invesco Letter; Oppenheimer Letter; Trailhead Consulting Letter; *see also* IRI Letter (permit delivery of Form CRS using media approved by the plan sponsor).

[650] *See* Empower Retirement Letter (noting that plans covered by ERISA "have named fiduciaries responsible for ensuring each plan is operated in the best interest of plan participants … [and who] are already obligated pursuant to ERISA §404a-5 to provide participants with detailed disclosures related to those investment choices."); Groom Law Letter (noting that "the decision to engage a broker- dealer for purposes of providing services to the plan is made at the plan sponsor level and not at the participant level); Comment Letter of Principal Financial Group (Aug. 7, 2018) ("Principal Letter").

[651] *See* T. Rowe Letter (noting that Form CRS should apply "if an individual chooses to retain a broker-dealer or advisor to provide recommendations or management regarding his or her retirement plan accounts … [but] "if a plan fiduciary selects a broker-dealer or adviser to provide such services to its plan participants … we do not think Form CRS should apply); Prudential Letter; SPARK Letter.

non-ERISA workplace retirement plans meeting requirements under section 403(b) or 457 of the Internal Revenue Code of 1986, as amended ("Internal Revenue Code" or "Code"), and individual retirement accounts ("IRAs") (including SEPs and SIMPLE IRAs).[652]

In response to comments, we are clarifying that the relationship summary applies when retail investors seek services for their retirement accounts as well as non-retirement accounts because retirement savings is a personal, household or family purpose. Accordingly, the definition of retail investor will include a natural person seeking to select and retain a firm to provide brokerage or advisory services for his or her own retirement account, including but not limited to IRAs and individual accounts in workplace retirement plans, such as 401(k) plans and other tax-favored retirement plans.[653] For example, firms will be required to deliver a relationship summary to plan participants seeking advice about whether to take a distribution from a 401(k) plan or other workplace retirement plan and how to invest that distribution. Similarly, a firm will be required to deliver a relationship summary to a plan participant seeking to retain the firm to provide brokerage or advisory services for the participant's individual

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652 *See* ICI Letter; Invesco Letter; Oppenheimer Letter; T. Rowe Letter.

653 Such IRAs include, for example, individual retirement accounts and individual retirement annuities described by section 408(a) and (b) of the Internal Revenue Code, "simplified employee pensions" (or (SEPs) described by section 408(k) of the Code, and simple retirement accounts described by section 408(p) of the Code (SIMPLE IRAs). In response to commenters, we also clarify that workplace retirement plans include any arrangement available at a workplace that provides retirement benefits or allows saving for retirement, including, for example, any 401(k) plan or other plan that meets requirements for qualification under Code section 401(a), deferred compensation plans of state and local governments and tax-exempt organizations described by Code section 457, and annuity contracts and custodial accounts described by Code section 403(b). Likewise, the definition of retail investor includes natural persons seeking brokerage or advisory services for other tax-favored savings arrangements such as an Archer Medical Savings Account described by Code section 220(d), a Health Savings Accounts described by Internal Revenue Code section 223(d) and any similar tax-favored health plan saving arrangement, a Coverdell education savings account described by Code section 530 and a qualified tuition program or "529 plan" established pursuant to Code section 529.

account held in a 401(k) plan or other workplace retirement plan.[654]

However, participants in 401(k) plans and other workplace retirement plans will not be retail investors for purposes of the Form CRS delivery obligation when making certain ordinary plan elections that do not involve selecting or retaining a firm to provide brokerage or advisory services. We understand, for example, that participants in workplace retirement plans generally do not choose the firm that provides brokerage or advisory services in connection with certain ordinary plan elections, such as whether to enroll in the plan, make or increase plan contributions, or how to allocate contributions and plan account balances among a designated menu of plan investment options. We designed the relationship summary to assist investors in understanding their choices when they seek to engage a firm to provide brokerage and advisory services. Even if a financial professional or other firm representative assists a participant directly, *e.g.*, at an enrollment meeting or through a call center interaction, the participant generally would not be making the type of account or firm choice contemplated by a relationship summary because the plan's sponsor or another representative designated by the terms of the plan (*e.g.*, a trustee or other fiduciary or other responsible party) (a "plan representative") already has selected the firm, has negotiated the terms of service, and remains responsible for supervising the firm.[655] We

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654 For example, we understand that, although not common, some 401(k) plans and other individual account plans provide participants total discretion to choose an investment adviser or broker-dealer to provide services for their individual plan account. *See, e.g.*, 29 CFR 2550.404c-1(f), Example 9.

655 This approach differs from our approach to defining retail customer for purposes of Regulation Best Interest to recognize differences between the relationship summary requirement and the obligations of broker-dealers under Regulation Best Interest. As discussed in the Regulation Best Interest Release, *supra* footnote 47, at Section II.B.3.a, a participant receiving recommendations for the participant's individual account held in a 401(k) or other workplace retirement plan would be a retail customer for purposes of Regulation Best Interest.

agree with commenters that delivering a relationship summary under these circumstances could be confusing to participants and duplicative of already required disclosures. Accordingly, plan participants should not be viewed as "seeking or receiving services" for purposes of the Form CRS definition of retail investor when they are merely electing among plan features offered by firms and financial professionals retained and supervised by a plan representative. This includes a participant's decision to invest his or her account balance through an in-plan self-directed brokerage account option or to select an in-plan managed account service option, where a plan representative retains and supervises the broker-dealer or investment advisory firm providing such services to the plan.

Finally, commenters asked us to address whether workplace retirement plans and their representatives (*e.g.*, plan sponsors, trustees, and other fiduciaries) and service providers will be retail investors entitled to receive Form CRS. In the proposal, we excluded workplace retirement plans and their representatives from the definition of retail investor.[656] Most commenters agreed with this approach; some noting that workplace retirement plans and their representatives would not benefit from receiving a Form CRS.[657] Two commenters argued that workplace retirement plans and their representatives should receive Form CRS.[658]

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656 Proposing Release, *supra* footnote 5, at Section II.

657 *See* IAA Letter I ("Institutional trusts such as employee benefit or pension plans … would not benefit from a Form CRS"); T. Rowe Letter ("… where a plan fiduciary selects a broker-dealer or adviser to provide such services to its plan participants … we do not think Form CRS should apply. ERISA and governmental plans are already subject to extensive disclosures to participants and rules related to conflicts. Consequently, a Form CRS in this context would be duplicative of existing disclosures and cause potential confusion, without providing any additional benefits"); *see also* Comment Letter of the American Retirement Association (Aug. 3, 2018) (professional investment experts retained by a plan to perform investment advisory services in a fiduciary capacity should not be included); Fidelity Letter ("establish a uniform definition … [that] excludes ERISA and non-ERISA employer sponsored retirement plans

We understand that plan representatives of workplace retirement plans typically are not seeking or receiving services primarily for personal, family or household purposes when they consider whether to engage a broker-dealer or investment adviser to provide services to a retirement plan established, maintained and operated by an employer to provide pension or retirement savings benefits to employees. Further, the relationship summary—designed to provide succinct information relevant to individual retail investors—is not designed to facilitate account and firm choices by the representatives of these workplace retirement plans. In this regard, we understand that plan representatives typically seek brokerage and advisory services bundled together with, or that will be complimentary with, other services supporting the plan's establishment, maintenance and operation, such as plan design, recordkeeping and other administrative services, and compliance services to meet applicable requirements under the Internal Revenue Code and ERISA (or applicable state law for non-ERISA governmental plans).[659]

Accordingly, the final definition of retail investor does not include most workplace retirement plans or their plan representatives seeking services for a plan established, maintained and operated by an employer to provide pension or retirement savings benefits to employees,

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regardless of size, as well as their sponsors, trustees and advisers …"); ICI Letter (a retail investor should not include retirement plans, their sponsors or trustees or plan fiduciaries); NAGDA Letter (requesting clarification); Prudential Letter ("'retail investor' for purposes of Form CRS should not include retirement plan representatives"); Transamerica Letter (same).

658 *See* Comment Letter of Fisher Investments (Dec. 13, 2018) ("many individuals overseeing retirement plans … would benefit from a better understanding of concepts in proposed Form CRS"); Trailhead Consulting Letter.

659 *See, e.g.*, Groom Law Letter (describing business models of firms offering brokerage and advice services to plans together with other services); SPARK Letter (same).

because such plans and their representatives are not seeking services primarily for personal, family or household purposes. We note, however, that some plan representatives may participate under their employer's workplace plan, *e.g.*, in the case of a workplace IRA or other workplace retirement plan is established and maintained by a sole proprietor or other self-employed individual that includes one or more employees in addition to the plan representative. If a plan representative who decides the services arrangements for a workplace retirement plan is a sole proprietor or other self-employed individual who will participate in the plan, the plan representative also would be a retail investor seeking services for personal, family or household purposes and must receive a copy of the firm's relationship summary.[660]

2. Filing Requirements

As proposed, all broker-dealers and investment advisers will file their relationship summaries with the Commission, and the relationship summaries will be accessible via the Commission's public website, Investor.gov,[661] in addition to each firm's website. There are several reasons we are requiring the relationship summaries to be filed with the Commission. First, the public will benefit by being able to access any firm's relationship summary by using one website, Investor.gov. This should make it easier to make comparisons across firms.

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660 This is consistent with the final definition of retail customer for purposes of Regulation Best Interest, which to the extent that the plan representative who decides services arrangements is a sole proprietor or other self-employed individual who will participate in the plan, the plan representative will be a retail customer for purposes of Regulation Best Interest to the extent that the plan representative receives recommendations directly from a broker-dealer primarily for personal, family or household purposes. *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.B.3a.

661 For broker-dealers, relationship summaries will be filed through Web CRD®, and for investment advisers, relationship summaries will be filed through IARD. Investors will be able to access relationship summaries using BrokerCheck and IAPD, the public interfaces of Web CRD® and IARD, respectively, and through the Commission's Investor.gov website, which has a search tool that links to both BrokerCheck and IAPD.

Second, some firms may not maintain a website, and therefore their relationship summaries will not otherwise be accessible to the public. Third, by having firms file their relationship summaries with the Commission, Commission staff can more easily monitor the filings for compliance. Commenters generally supported requiring broker-dealers and investment advisers to file their relationship summaries with the Commission.[662]

We are requiring that the filing be in a text-searchable format, as proposed, and in addition, the final instructions will require that the filing be structured with machine-readable headings. Two commenters advocated that the relationship summary should be filed not only in a text-searchable, but also machine-readable, format,[663] in response to our solicitation for comment on filing formats. Both commenters stated that this would allow third parties to develop online comparison tools, making it easier for retail investors to compare firms with one another, including across key categories, such as fees.[664] We agree that requiring this formatting will enable investors and other data users, industry participants, and the Commission and

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662 *See, e.g.*, CFA Letter I; Schnase Letter; Trailhead Consulting Letter; Institute for Portfolio Alternatives Letter.

663 *See* CFA Letter I ("[P]ast experience regarding investors' limited use of existing databases, such as IARD and BrokerCheck, cautions against placing too much reliance on investors' accessing the documents directly. We therefore urge the Commission to require that the documents be filed, not just in a text-searchable format, but in a machine-readable format."); Schnase Letter ("[T]he data contained in the Relationship Summary should be required to be filed in a structured data format, so the document can be utilized as a stand-alone human-readable document and serve as the source for a machine-readable data set.").

664 CFA Letter I ("We can envision a time when third parties could develop online tools to help investors search for a firm or account that meets their preferred parameters, much like the tools Kelly Blue Book or Edmunds provide to help car buyers narrow their selections."); Schnase Letter ("Retail investors may not be able or inclined to build their own algorithms and spreadsheets to manipulate machine-readable data themselves, but third-party providers will likely step in when demand exists to provide investors publicly accessible comparison tools fueled by the machine-readable data made available by the SEC.").

Commission staff to better collect and analyze reported information and facilitate the development of tools to aggregate and compare the information. We are requiring that only the headings be machine-readable, given that firms will use their own wording in the narrative responses for each of the relationship summary items, and the responses will not be uniform. The machine-readable, structured headings could, for example, be implemented in PDF by creating a bookmark for each of the headings of the relationship summary that matches the text of the heading and that has the heading as its destination. We believe this promotes aggregation and comparison of responses to specific items across different relationship summaries but also limits the costs of preparing the relationship summary. This is consistent with the Commission's ongoing efforts to modernize our forms by taking advantage of technological advances both in the manner in which information is reported to the Commission and how it is provided to investors and other users.[665] These instructions are not intended to require firms to prepare a relationship summary in paper format. A firm that prepares and delivers a relationship summary only in an electronic format could, for example, file a rendering of the electronic disclosures with the Commission.

In a change from the proposal, broker-dealers will file through Web CRD® instead of EDGAR. Investment advisers will file their relationship summaries through IARD in the same

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665 *See, e.g.*, Inline XBRL Filing of Tagged Data, Advisers Act Release No. 10514 (Jun. 28, 2018) [83 FR 40846] (Aug. 16, 2018); Optional Internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (Jun. 5, 2018) [83 FR 29158] (Jun. 22, 2018) ("Shareholder Reports Release"); Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)].

manner as they currently file Form ADV Parts 1A and 2A, as proposed.[666] Whether dual registrants prepare a single relationship summary or two, they will file their relationship summaries using both IARD and Web CRD®.[667] We are requiring filing of the relationship summary through Web CRD® and IARD because they are currently used by and familiar to broker-dealers and investment advisers, respectively. This should minimize the systems changes firms would need to make, because they would not need to establish new systems in order to file their relationship summaries with the Commission. One commenter supported using EDGAR for analyzing and comparing fee information.[668] Several commenters, however, generally preferred Web CRD®, arguing that Web CRD® is more accessible for broker-dealers, which already make filings through Web CRD®, and that Web CRD® data provided on BrokerCheck is more familiar to retail investors.[669] In light of comments, we have determined that requiring broker-dealers to file their relationship summaries through Web CRD® should streamline broker-

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666 General Instruction 7.A.(i) to Form CRS. Several commenters supported using IARD as the filing system for investment advisers. *See, e.g.*, Trailhead Consulting Letter; Schnase Letter. Investment advisers may instead file a paper copy of the Form ADV with the Commission if they apply for a hardship exemption by filing Form ADV-H.

667 General Instruction 7.A.(i) to Form CRS. Information for investment advisers on how to file with IARD is available on the SEC's website at www.sec.gov/iard. Information for broker-dealers on how to file through Web CRD® is available on FINRA's website at http://www.finra.org/industry/web-crd/web-crd-system-links. *See* General Instruction 7.A.(ii) to Form CRS.

668 *See* Morningstar Letter (advocating for fee information to be filed in a standard table with brief examples "in the EDGAR system in a standardized data format facilitating analysis and comparison").

669 *See* Schnase Letter ("[I]t is not clear why BDs should be filing their Relationship Summary through a different filing system than IAs (IARD, which is operated by FINRA) and through a different filing system than BDs already use for Form BD (CRD, also operated by FINRA)."); NASAA Letter ("[B]roker-dealers should file Form CRS on the WebCRD platform maintained by FINRA for its BrokerCheck reports (and which is related to IARD)."); Institute for Portfolio Alternatives Letter ("CRD and its public-facing BrokerCheck is a system familiar to both the brokerage industry as well as investors. We believe that CRD/BrokerCheck will address potential investor confusion and streamline broker requirements.").

dealer filing requirements relative to requiring broker-dealers to file on EDGAR. Broker-dealers already use Web CRD® for filing their own registration records and those of their associated persons, and retail investors already can find broker-dealers' disciplinary history and other information on BrokerCheck. In addition, Investor.gov already has a prominent search tool on its main landing page that links to BrokerCheck and IAPD, which investors can use to search for information about firms and financial professionals. This minimizes the implementation changes needed to make relationship summaries easily accessible through Investor.gov because new search tools would not need to be created and existing search tools could be linked to the Investor.gov/CRS webpage referenced in the relationship summary.

We also received comment that dual registrants should file only on one system, instead of on both EDGAR and IARD as proposed.[670] One commenter, however, implicitly supported the requirement that dual registrants file on two systems.[671] The final instructions require dual registrants to file their relationship summaries using both systems— Web CRD® and IARD.[672] This approach ensures a complete and consistent filing record for each firm and facilitates the Commission's data analysis, examinations, and other regulatory efforts. Firms offering brokerage or investment advisory services through affiliates will follow the same filing requirements as standalone firms.

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670 *See, e.g.,* Prudential Letter ("The Commission should clarify that a single filing [for dual registrants], in either IARD or EDGAR, would constitute compliance with the filing requirement.").

671 *See* Schwab Letter III (providing sample Form CRS instructions for dual registrants to file on IARD and EDGAR).

672 General Instruction 7.A.(i) to Form CRS.

For investment advisers, we are also adopting clarifications in the General Instructions to Form ADV that relate to the amending and filing of the relationship summary.[673] First, investment advisers may file an amended relationship summary as an other-than-annual amendment or by including the relationship summary as part of an annual updating amendment, within the 30 days in which they are required to file the amendment.[674] Second, the instructions provide that advisers may, but are not required to, submit amended versions of their relationship summary as part of their annual updating amendment and include additional technical references to implement this instruction.[675] Third, we added provisions to mirror the requirements of the General Instructions to Form CRS as to when amendments and exhibits showing changes to Part 3 must be made and filed.[676] We believe that investment advisers will benefit from these clarifications. Finally, we are adopting certain amendments to the General Instructions to Form ADV to add conforming technical changes and references to the Form ADV, Part 3.[677]

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673 *See infra* Section II.C.4 generally for a discussion of amendments to the relationship summary.

674 *See* amended General Instruction 4 to Form ADV (revised to add the following language: "If you are registered with the SEC, you must amend Part 3 of your Form ADV within 30 days whenever any information in your relationship summary becomes materially inaccurate by filing with the SEC an additional other-than-annual amendment or by including the relationship summary as part of an annual updating amendment."). *Compare* Proposed General Instruction 4 to Form ADV ("You must amend your relationship summary and file your relationship summary amendments in accordance with the Form ADV, Part 3 (Form CRS), General Instructions, 6.").

675 *See* amended General Instruction 4 to Form ADV (revised with language that investment advisers must update responses to all items "in Part 1A, 1B, 2A and 2B (as applicable)," and "You may, but are not required, to submit amended versions of the *relationship summary* required by Part 3 as part of your *annual updating amendment.*").

676 *See infra* footnotes 769–774, 781–783, and accompanying text.

677 *See* amended General Instruction 3 to Form ADV (indicating that Form ADV, as amended to add Part 3, now contains five instead of four parts); amended General Instruction 4 to Form ADV ("Part 3 requires advisers to create a relationship summary (Form CRS) containing information for retail investors. The

3. Delivery Requirements

a. Form of Delivery

The final instructions provide, as proposed, that firms will be able to deliver the relationship summary (including updates) within the framework of the Commission's existing guidance regarding electronic delivery.[678] This framework consists of the following elements: (i) notice to the investor that information is available electronically; (ii) access to information comparable to that which would have been provided in paper form and that is not so burdensome that the intended recipients cannot effectively access it; and (iii) evidence to show delivery, *i.e.*, reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws.[679] In the Proposing Release, we also provided proposed guidance that a firm would be able to deliver the relationship summary to new or prospective clients or customers in a manner that is consistent with how the retail investor requested information about the firm or financial professional, and that this method of initial

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requirements in Part 3 apply to all investment advisers registered or applying for registration with the SEC, but do not apply to exempt reporting advisers. Every adviser that has retail investors to whom it must deliver a relationship summary must include in the application for registration a relationship summary prepared in accordance with the requirements of Part 3 of Form ADV. See Advisers Act Rule 203-1."); amended General Instruction SEC's Collection of Information section (removing "promptly" to reflect filing requirements for relationship summary changes).

678 *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)] ("96 Guidance"); *see also* Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] ("2000 Guidance"); and Use of Electronic Media for Delivery Purposes, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] ("95 Guidance"). Recognizing the growth of different forms of electronic media, other technological developments, and the passage of time since these releases were issued, the Commission plans to revisit its existing guidance regarding electronic delivery.

679 96 Guidance, *supra* footnote 678.

delivery for the relationship summary would be consistent with the Commission's electronic delivery guidance.[680] We have included this provision in the final instructions to provide additional clarity and certainty on what is permissible for initial delivery of the relationship summary.[681] This approach applies only to the initial delivery of the relationship summary to new or prospective clients or customers, and not to any other delivery obligation of any other required disclosure. With respect to existing clients or customers, as proposed, firms should deliver the relationship summary in a manner consistent with the firm's existing arrangement with that client or customer and with the Commission's electronic delivery guidance. The above delivery instructions are based on the assumption that retail investors are able to access and prefer to receive communications and disclosures through the same medium in which they request information from the firm or financial professional. If this assumption is not correct, retail investors can request a copy of the relationship summary in a format they prefer, as discussed below, and can establish their delivery preferences with the firm once they have entered into a relationship.

Numerous commenters expressed support for electronic delivery, including for modifications to the instructions to make electronic delivery a more accessible option for the

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680 *See* Proposing Release, *supra* footnote 5, at nn.344–45 and accompanying text; *see also* 2000 Guidance, *supra* footnote 678, at 65 FR 25845–46; 96 Guidance, *supra* footnote 678, at 61 FR 24647; and 95 Guidance, *supra* footnote 678, at 60 FR 53461.

681 General Instruction 9.B. to Form CRS ("You may deliver the relationship summary to new or prospective clients or customers in a manner that is consistent with how the *retail investor* requested information about you or your financial professional.").

relationship summary as well as other disclosures.[682] A number of commenters further advocated for the "notice plus access" model, in which posting the relationship summary to the firm's website, in combination with a notice to the retail investor that the relationship summary is available there, would constitute delivery.[683] Some of these commenters argued that this approach should suffice for delivery, even if the retail investor had not previously consented to electronic delivery in an affirmative way.[684] A few commenters cited to the Commission's recently adopted rule 30e-3 under the Investment Company Act[685] as a possible model for delivering the relationship summary.[686] Some of these commenters also advocated for a more comprehensive updating of the Commission's guidance concerning electronic delivery, not just

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682 *See, e.g.*, CFA Institute Letter I ("Whatever design is finalized for CRS, it should accommodate electronic delivery to investors. We also believe a design with interactive components is needed in today's electronically savvy investor base."); TIAA Letter ("the SEC could make the disclosure requirements in . . . Form CRS more flexible, such that broker-dealers have more options with respect to the method of delivery of required disclosures. . . ."); MassMutual Letter; SIFMA Letter; SPARK Letter; Morgan Stanley Letter; Cetera Letter II; Fidelity Letter.

683 *See, e.g.*, Primerica Letter; Cetera Letter II; Schwab Letter (advocating a notice plus access model for annual or more frequent updates to the relationship summary); Pickard Djinis and Pisarri Letter; IAA Letter I; SIFMA Letter; MassMutual Letter; Comment Letter of the Money Management Institute (Aug. 7, 2018) ("MMI Letter"); Wells Fargo Letter.

684 *See, e.g.*, LPL Financial Letter (supporting an implicit consent model on the basis that, among other things "It simply is not feasible to obtain an investor's affirmative consent to electronic delivery before the investor makes a final decision about the [investment relationship]"); FSI Letter I (supporting a negative consent model, rather than an opt-in approach); IAA Letter I (supporting an implied consent model).

685 17 CFR 270.30e-3 (Internet availability of reports to shareholders); Shareholder Reports Release, *supra* footnote 665.

686 *See, e.g.*, T. Rowe Letter ("In cases where no email address is on file with the firm, we think a notice and access protocol akin to Rule 30e-3 is appropriate."); SPARK Letter ("The SEC has recently demonstrated a willingness to embrace electronic disclosure as the default delivery method for other disclosures and we encourage the SEC to consider whether the disclosures added by the SEC's Proposal, including Form CRS, should be able to tap into the benefits of electronic delivery.").

for the relationship summary but for other disclosures as well.[687] Commenters advocating for more widespread use of electronic delivery cited to arguments including the potential cost savings and improved security of delivery to investors.[688]

On the other hand, some commenters expressed reservations about a notice plus access equals delivery approach and supported the Commission's proposed approach.[689] The RAND 2018 survey and another investor survey also showed mixed results relating to electronic delivery, with many participants indicating that they would prefer to receive the disclosures in paper.[690] Similarly, the IAC has stated that nearly half of investors (49%) still prefer to receive paper disclosures through the mail, compared with only 33% who prefer to receive disclosures electronically, either through email (27%) or by accessing them online (6%).[691] Additionally, we

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687 *See, e.g.*, LPL Financial Letter ("Modern communication practices underscore the need for the Commission to provide more flexibility to broker-dealers and investment advisers to satisfy their document delivery obligations by delivering materials to customers and clients who have *implicitly* consented to electronic delivery as well as to current customers and clients who have *affirmatively* consented to electronic delivery in a manner contemplated by the existing guidance."); SPARK Letter ("strongly urges the SEC to permit . . . electronic delivery as the default delivery method for satisfying the disclosure requirements under [Regulation Best Interest, as well as Form CRS]."); Cetera Letter II ("We believe that adoption of Reg. BI and the Form CRS represents something of a watershed moment. . . ."); Pickard Djinis and Pisarri Letter; IAA Letter I; MMI Letter.

688 *See, e.g.*, Cetera Letter II (asserting that electronic delivery is safer and more environmentally friendly); IRI Letter; SPARK Letter; Primerica Letter.

689 CFA Letter I ("We greatly appreciate that, in discussing this issue, the Release specifically references the obligation to provide 'evidence to show delivery.' This should help to clarify that firms could not meet the disclosure requirement simply by making the disclosures accessible on a public website and providing notice of their availability, under an 'access equals delivery' model. . . ."); AARP Letter ("The SEC should prohibit advisers from simply providing an electronic address for disclosures. . . . A paper copy should be provided to the retail investor.").

690 *See supra* footnote 699.

691 IAC Electronic Delivery Recommendation, *supra* footnote 153 (citing FINRA Investor Education Foundation, *Investors in the United States 2016* (Dec. 2016), *available at* http://www.usfinancialcapability.org/downloads/NFCS_2015_Inv_Survey_Full_Report.pdf). While the

are aware, based on our filing data, that a number of firms do not host public websites and would not be able to make available an updated, electronic version of their relationship summary for their retail investors at all times.[692] Some commenters noted that some retail investors may lack readily available internet access.[693]

The relationship summary is designed to be delivered when a retail investor selects a firm or financial professional and which services to receive, including updated versions upon certain events when retail investors are again making decisions about whether to invest through an advisory account or a brokerage account. These selections affect all of the retail investor's subsequent investments under that relationship. In comparison, documents such as shareholder reports and prospectuses typically relate to investment decisions on single products; once the product is purchased, reporting is most commonly delivered at regular intervals, unlike the relationship summary. We are preserving an investor's ability to receive the relationship

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FINRA 2016 Investors Study was conducted prior to the Form CRS proposal (and does not specify what disclosure materials are contemplated in the survey, *e.g.*, shareholder reports, summary prospectuses, statutory prospectuses, account statements, etc.), it presents general investor survey data regarding investor disclosure preferences.

692 Based on IARD system data, 8.4% of investment advisers with individual clients do not report at least one public website.

693 *See, e.g.,* Comment Letter of C. Frederick Reish (Sept. 12, 2018); SIFMA Letter (acknowledging that firms would need to provide linked disclosures to customers and prospective customers who do not have internet access); LPL Financial Letter (citing Investment Company Institute, 2015 Investment Company Fact Book, (55th ed. 2015), at 129, *available at* https://www.ici.org/pdf/2015_factbook.pdf. The study found the following with respect to internet access in mutual fund owning households: (i) head of household age 65 or older, 14% lack access; (ii) education level of high school diploma or less, 16% lack access; and (iii) household income of less than $50,000, 16% lack access.).

summary in paper, by maintaining the protections provided by the Commission's electronic delivery guidance.[694]

We recognize the benefits to retail investors of receiving the relationship summary as early as possible when considering a firm or financial professional and that electronic communication can facilitate earlier delivery, provided that retail investors can readily access the form of communication used. As noted above, we have adopted the instruction that delivery of the relationship summary to new or prospective clients or customers in a manner that is consistent with how that retail investor requested information about the firm or financial professional would be consistent with the Commission's electronic delivery guidance.[695] This approach applies only to the initial delivery of the relationship summary to new or prospective clients or customers, and not to any other delivery obligation of any other required disclosure. Moreover, to ensure that a relationship summary delivered electronically is noticeable for retail investors and not hidden among other disclosures, we are adopting a new instruction that a relationship summary delivered electronically must be presented prominently in the electronic medium and must be easily accessible for retail investors.[696] For example, a firm can use a direct link or provide the relationship summary in the body of an email or message.[697] We are

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694 *See supra* footnote 678.

695 *See* Proposing Release, *supra* footnote 5, at nn.344–45 and accompanying text; *see also* 2000 Guidance, *supra* footnote 678, at 65 FR 25845-46; 96 Guidance, *supra* footnote 678, at 61 FR 24647; and 95 Guidance, *supra* footnote 678, at 60 FR 53461.

696 General Instruction 10.C. to Form CRS.

697 General Instruction 10.C. to Form CRS.

also requiring firms to post the current version of the relationship summary prominently on their public website, if they have one, as proposed.[698]

We understand that, while many investors prefer receiving disclosures about investment advice in electronic format, many also value the option to receive them in paper.[699] We are adopting several additional requirements relating to relationship summaries in paper format. First, in a relationship summary that is delivered in paper format, firms may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information.[700] Second, if a relationship summary is delivered in paper format as part of a package of documents, the firm must ensure that the relationship summary is the first among any documents that are delivered at that time, substantially as proposed.[701] All firms will be required to make a copy of the relationship summary available upon request without charge.[702] However, we are not requiring that firms make the relationship summary available in paper format. We

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698 Advisers Act rule 204-5(b)(3) and Exchange Act rule 17a-14(c)(3); General Instruction 10.A. to Form CRS. The most recent versions of firms' relationship summaries will be accessible through Investor.gov. Firms will be required to include in their relationship summaries a phone number where investors can request up-to-date information and (if applicable) request a copy of the relationship summary. *See* Item 5.B. of Form CRS. Firms also could include their relationship summaries on other electronic media, such as mobile apps and other similar technologies.

699 *See* RAND 2018, *supra* footnote 13 (when surveyed about how and when they would prefer to receive the relationship summary, "two-fifths reported that they would be most likely to view a paper document"); Schwab Letter I (Koski) *supra* footnote 21 (26% of survey participants preferred to receive disclosures about investment advice on paper; 46% preferred online or digital disclosures with the option for paper).

700 General Instruction 3.B. to Form CRS.

701 General Instruction 10.D. to Form CRS. *Cf.* Proposed General Instruction 8.(c) to Form CRS ("If the relationship summary is delivered on paper and not as a standalone document, you must ensure that the relationship summary is the first among any documents that are delivered at that time.").

702 General Instructions 1.C. to Form CRS.

understand that some firms' business models – for example, those of advisers providing automated investment advisory services and broker-dealers that provide services only online – are based on delivering substantially all disclosures and conducting substantially all correspondence with clients and customers electronically. We do not intend to change these practices and believe that retail investors that prefer paper communications will have the opportunity to establish relationships with firms that accommodate paper delivery.

b. Initial Delivery

The final instructions require an investment adviser registered with the SEC to deliver a relationship summary to each retail investor before or at the time the firm enters into an investment advisory contract, even if the agreement is oral, as proposed.[703] The timing for standalone investment advisers to deliver the relationship summary to new or prospective retail clients generally tracks the initial delivery requirement for Form ADV Part 2A.[704] As described further below, we are changing the instruction for broker-dealers to require delivery before or at earliest of one of three triggers.[705] In comparison, under the proposal, broker-dealers would have

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703 General Instruction 7.B.(i) to Form CRS. The final instructions for investment advisers are streamlined from the proposal, but remain substantively the same. Compare to Proposed Advisers Act rule 204-5(b)(1) and Proposed General Instruction 5.(b) to Form CRS ("You must give a relationship summary to each retail investor, if you are an investment adviser, before or at the time you enter into an investment advisory agreement with the retail investor, or if you are a broker-dealer, before or at the time the retail investor first engages your services. *See* Advisers Act rule 204-5(b)(1) and Exchange Act rule 17a-14(c)(1). You must deliver the relationship summary even if your agreement with the retail investor is oral."). We replaced the word "agreement" with "contract" to mirror the wording in the current Advisers Act rules and Form ADV instructions. *See, e.g.,* Item 5.D of Part 2.A. of Form ADV. We also clarified that the delivery requirements apply to investment advisers registered with the SEC.

704 *See* General Instruction 1 to Part 2A of Form ADV.

705 General Instruction 7.B.(ii) to Form CRS ("If you are a broker-dealer, you must deliver a relationship summary to each retail investor, before or at the earliest of: (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities; (ii) placing an order for the retail

delivered the relationship summary before or at the time the retail investor first engages their services.[706] Under the final rules, dual registrants, and affiliated broker-dealers and investment advisers that jointly offer their services to retail investors, must deliver at the earlier of the initial delivery triggers for an investment adviser or a broker-dealer, including a recommendation of account type.[707] This applies whether the dual registrant or affiliated firms prepare one single relationship summary describing both brokerage and investment advisory services, or two separate relationship summaries describing each type of service.

Some commenters supported keeping the initial delivery requirements as proposed.[708] Other commenters expressed concern that under the proposal, the relationship summary would be delivered only after the investor has already made a decision about which firm to engage and which type of account to open, and recommended variations on the proposed initial delivery requirements, including mandating even earlier delivery.[709] The variations include, for example,

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investor; or (iii) the opening of a brokerage account for the retail investor."). As described below, dual registrants will continue to deliver the relationship summary at the earlier of the requirements for investment advisers or broker-dealers. General Instruction 7.B.(iii) to Form CRS ("A dual registrant must deliver the relationship summary at the earlier of the timing requirements in General Instruction 7.B.(i) or (ii).").

706 *See* Proposed Exchange Act rule 17a-14(c)(1); Proposed General Instruction 5.(b) to Form CRS.

707 General Instruction 7.B.(iii) to Form CRS ("A dual registrant must deliver the relationship summary at the earlier of the timing requirements in General Instruction 7.B.(i) or (ii).").

708 *See, e.g.*, Trailhead Consulting Letter; Schnase Letter (agreeing that the relationship summary should be required to be delivered along the lines proposed in the Proposing Release); SIFMA Letter ("For the initial delivery most brokerage firms likely will include [the relationship summary] with account applications or other account opening materials, while investment advisers will include it with their Form ADV.").

709 *See, e.g.*, CFA Letter I; CFA Institute Letter I; AARP Letter; NASAA Letter; Consumers Union Letter; Consumer Reports Letter. In the RAND 2018 survey, *supra* footnote 13, 70% of respondents reported that they would prefer to receive the relationship summary at the outset of the relationship, *i.e.,* "before or at the time you first engage the investment professional" and slightly more than 30% of respondents would prefer

delivery at the point of first contact or inquiry between the retail investor and firm, whenever possible;[710] at the earlier of when a customer contacts the firm or enters into an advisory agreement or engagement of services;[711] and upon the first interaction with a prospective retail investor.[712] For dual registrants, one commenter recommended requiring delivery no later than the point at which a recommendation is made regarding which type of account to open.[713] One commenter asserted that the Commission should not permit delivery "at" the time of service but rather should always require delivery "before" the provision of service.[714] The IAC recommended providing "a uniform, plain English disclosure document . . . to customers and potential customers of broker-dealers and investment advisers at the start of the engagement, and periodically thereafter."[715]

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to receive the relationship summary "before the investment professional first recommends a transaction or investment strategy"; *see also* Schwab Letter I (Koski), *supra* footnote 21 (when asked "[w]hich of the following best describes your preference for when you would like to receive information about how a Brokerage Firm or a Registered Investment Adviser (RIA) does business with you?", 41% preferred "[a]t or before I open my account, plus any updates on an annual basis," 22% preferred "[a]vailable on an ongoing basis, such as on a firm's website," 19% preferred at "[a]t or before I open my account only," and 17% preferred "[e]very single time I receive investment advice.").

710 *See* CFA Letter I.

711 *See* CFA Institute Letter I.

712 *See* AARP Letter.

713 *See* CFA Letter I.

714 *See* NASAA Letter.

715 *See* IAC Broker-Dealer Fiduciary Duty Recommendations, *supra* footnote 10.

A few commenters supported requiring a period of time between delivery of the relationship summary and the beginning of the relationship.[716] One commenter suggested allowing time for retail investors to review the relationship summary, subsequent to delivery when the firm first interacts with a retail investor.[717] A number of investors at Commission-held roundtables also supported a waiting period.[718] Other commenters, however, opposed a mandated delay between delivery of the relationship summary and engaging in services.[719]

Various commenters explained logistical and recordkeeping issues if firms were required to deliver the relationship summary at first contact or prior to engaging a firm's services.[720] For example, one commenter stated that it would not be feasible to obtain an investor's affirmative consent to electronic delivery before the investor decides to engage the firm.[721] Tracking whether or not prospective customers had consented to electronic delivery of the relationship summary would be difficult because prospective customers who do not open accounts would not

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716 *See, e.g.*, AARP Letter; CFA Institute Letter I; NASAA Letter.

717 *See* AARP Letter.

718 *See, e.g.*, Houston Roundtable, at 51 (one investor suggesting a "cool-off period"); Washington, D.C. Roundtable, at 58 (at least two investors supporting a "lapse" of time between receipt of a relationship summary and having to sign it).

719 Comment Letter of John Neil Conkle (Aug. 7, 2018) (arguing that a waiting period is not necessary for the relationship summary to fulfill its purpose); Edward Jones Letter (arguing that a waiting period could harm investors by preventing them from meeting IRA contribution or rollover deadlines, for example, or at a minimum cause frustration); SIFMA Letter (arguing that the relationship summary is designed to be contemporaneously read and understood).

720 *See, e.g.*, Edward Jones Letter (asserting that requiring firms to record the delivery of the relationship summary to prospective clients that subsequently become clients would impose a significant burden without providing meaningful benefits to investors); SIFMA Letter ("[I]t would be very burdensome and not practical in many instances to keep track of Forms CRS that are provided to retail investors who never seek to establish a relationship with a firm."); Primerica Letter; LPL Financial Letter.

721 *See* LPL Financial Letter.

have account numbers or other unique identifiers for the firm's recordkeeping purposes.[722] Other commenters argued that keeping records of when a relationship summary was given to a prospective retail investor would be unnecessarily burdensome for firms and would likely provide *de minimis* benefits.[723] Still other commenters discussed the difficulty of defining when a customer first engages the firm's services, the terminology used in the proposal.[724]

We encourage investment advisers and broker-dealers to deliver the relationship summary far enough in advance of a prospective retail investor's final decision to engage the firm to allow for meaningful discussion between the financial professional and retail investor, including by using the conversation starters, so that the retail investor has time to understand the relationship summary and to weigh available options. We believe that prospective clients or customers would benefit from receiving the relationship summary as early as possible when deciding whether to engage the services of a firm or financial professional. In response to comments on initial delivery, including those relating specifically to broker-dealers, we are modifying the broker-dealer initial delivery requirements, as discussed below. However, we are declining to mandate a delivery requirement based on first contact or inquiry, or to impose a waiting period. First, "first contact or inquiry" may include circumstances that are not limited to the seeking of investment services, such as business interactions for other purposes or social interactions, and therefore could create compliance uncertainty. Second, we believe the

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722 *See* LPL Financial Letter.

723 *See infra* footnote 803; *see also infra* footnotes 798–816 and accompanying text regarding recordkeeping requirements.

724 *See, e.g.*, Fidelity Letter; SIFMA Letter; Primerica Letter; TIAA Letter.

availability of each firm's relationship summary through Investor.gov and on its own website, if the firm has one, helps to address the concern that investors will not have the opportunity to review and compare relationship summaries before entering into an investment advisory contract or receiving services from a broker-dealer.[725] Third, some investors may not want to wait to begin services,[726] and those who do can always take as much time as needed to review the relationship summary and wait to sign an advisory agreement or begin receiving brokerage services at a later time. Fourth, firms will be permitted to deliver the relationship summary well before they enter into an advisory agreement or provide brokerage services, and as noted, we encourage firms to deliver the relationship summary early in the process. Finally, dual registrants, and affiliated broker-dealers and investment advisers that jointly offer their services to retail investors, must deliver their relationship summaries at the earlier of the delivery triggers for broker-dealers or investment advisers. To the extent the initial delivery requirements for a broker-dealer are earlier than the delivery requirements would be for an investment adviser, the earlier requirements will apply to an investment adviser that is a dual registrant or that offers services jointly with a broker-dealer affiliate. We believe this will provide a significant benefit to retail investors, given the substantial percentage of regulatory assets under management

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725 *See* CFA Institute Letter I ("We strongly support the requirement that firms with public websites must post their CRSs on their sites in an easily accessible location and format. . . . Investors can review the disclosures provided there before deciding on a service provider and showing up for a meeting. Then when presented with the CRS 'before or at the time' of entering into an agreement or engaging a firm's services, an investor will have already had an opportunity to review the disclosures and come armed with questions.").

726 *See, e.g.*, Edward Jones Letter (stating that some investors have a very specific timeframe for opening a new account, such as meeting an IRA contribution or rollover deadline); SIFMA Letter (stating that requiring a waiting period would frustrate a retail customer's efforts to begin his or her relationship with a financial services provider).

("RAUM") managed by dual registrants and investment advisers with broker-dealer affiliates, relative to the total RAUM managed by investment advisers overall.[727]

To facilitate earlier delivery, as discussed above, the final instructions allow firms to deliver the relationship summary to a new or prospective client or customer in a manner that is consistent with how the retail investor requested information about the firm or financial professional, clarifying that this approach would be consistent with the SEC's electronic delivery guidance.[728] We believe this approach alleviates concerns expressed by commenters that obtaining the consent of prospective clients or customers to receive electronic delivery and maintaining records of that consent would be challenging.[729] While we recognize recordkeeping burdens relating to the delivery of the relationship summary to prospective clients – for example, we are not imposing a delivery requirement upon first contact or inquiry by a retail investor, as discussed above – we disagree that they are insurmountable and would outweigh the benefits to retail investors. As discussed further in Section II.E. below, investment advisers and broker-dealers have experience with similar recordkeeping requirements.[730] Moreover, we believe there is considerable benefit to retail investors in receiving the relationship summary before deciding

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727 As of December 31, 2018, 1,878 SEC-registered investment advisers report in their Form ADV an affiliate that is a broker-dealer also registered with the SEC. These 1,878 SEC-registered investment advisers manage approximately $58.48 trillion, or approximately 70% of total RAUM managed by SEC-registered investment advisers. Furthermore, 359 SEC-registered investment advisers that are also dually-registered as broker-dealers manage approximately $5.18 trillion, or 6.12% of total RAUM. Thus, SEC-registered investment advisers that report registered broker-dealer affiliates and dual registrants together manage over 75% of RAUM. *See also infra* footnotes 855, 888–889, and accompanying text.

728 General Instruction 10.B. to Form CRS.

729 *See supra* footnotes 720–722 and accompanying text.

730 *See infra* footnotes 809–810 and accompanying text.

to engage a firm, to allow time for questions and discussion with the financial professional, to understand the relationship summary, and to weigh available options.

Commenters suggested modifications to the proposed initial delivery requirements specifically for broker-dealers. Several commenters requested that we require broker-dealers to deliver the relationship summary at the point of first contact, inquiry, or interaction with a retail investor.[731] A number of commenters also raised questions about the meaning of "engaging the services" of a broker-dealer, noting that it was unclear when that may ultimately occur and that it is a new and undefined concept in the context of a customer relationship with a broker-dealer.[732] Other commenters suggested that we exclude or exempt certain types of broker-dealers that provide limited services to retail investors from the requirement to deliver the relationship summary or from the requirements of Form CRS more generally.[733]

In response to these concerns, we are modifying the initial delivery requirements for broker-dealers. Instead of "at the time the retail investor first engages a broker-dealer's services," broker-dealers will be required to deliver the relationship summary to each retail investor before or at the earliest of: (i) a recommendation of an account type, a securities

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731 *See* CFA Institute Letter I; AARP Letter; and NASAA Letter.

732 *See* Primerica Letter; SIFMA Letter; and Fidelity Letter.

733 *See, e.g.,* Fidelity Letter (recommending "that the SEC exclude limited-purpose broker-dealers acting solely as mutual fund general distributors from the obligation to deliver Form CRS to direct mutual fund investors that invest on an unsolicited basis, and shareholders investing through an intermediary (such as a full service broker-dealer or bank) that has an independent obligation to deliver such information to its client" and suggesting "that the SEC explicitly exempt from the Form CRS requirement certain categories of broker-dealers, including clearing firms, principal underwriters, and distributors of mutual funds, as these firms do not have a direct relationship with the end investor based on their business models"); ICI Letter; Wells Fargo Letter; Invesco Letter; ACLI Letter; Comment Letter of Great-West Financial (Aug. 6, 2018); T. Rowe Letter and Oppenheimer Letter.

transaction, or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor.[734] We believe that these more concrete initial delivery triggers for broker-dealers avoid the uncertainty of when a retail investor first engages a broker-dealer's services and include scenarios that encompass earlier delivery, in response to commenters' concerns.

As noted, the proposal would have required broker-dealers to deliver the relationship summary before or at the time the retail investor first engages the firm's services. This proposed requirement was intended to capture the earliest point in time at which a retail investor engages the services of a broker-dealer, including instances when a customer opens an account with the broker-dealer, or effects a transaction through the broker-dealer in the absence of an account, for example, by purchasing a mutual fund through the broker-dealer via "check and application". The proposed rule would not have required delivery to a retail investor to whom a broker-dealer makes a recommendation, if that retail investor did not open or have an account with the broker-dealer, or that recommendation did not lead to a transaction with that broker-dealer.[735] If the recommendation led to a transaction with the broker-dealer who made the recommendation, the retail investor would have been considered to be "engaging the services" of that broker-dealer at the time the customer places the order or an account is opened, whichever occurred first. Instead, in response to comments advocating for earlier delivery, the final requirement expands on the proposed initial delivery requirement and potentially pushes it earlier, to require delivery (even

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734 *See* Exchange Act rule 17a-14(c)(1); General Instruction 6.B.(ii) to Form CRS.

735 Proposing Release, *supra* footnote 5.

where a brokerage account has not been established) before or at the time a broker-dealer recommends an account type, a securities transaction, or an investment strategy involving securities without regard to whether the retail investor acts on the recommendation. We believe that revising the delivery requirement in this way will give retail investors the opportunity to consider the information included in the relationship summary earlier in the process of determining whether to establish a brokerage relationship with the broker-dealer, as well as in evaluating the recommendation.

Compared to the proposal, the final requirement also pushes earlier the time at which broker-dealers must deliver the relationship summary in instances in which the retail investor does not open an account but still engages in a securities transaction such as the "check and application" example described above. Under these circumstances, broker-dealers must deliver the relationship summary before or at the time an order is placed for the retail investor, instead of before or at the time the transaction is effected, as proposed. This delivery obligation would be triggered to the extent this type of transaction were unsolicited, because, as described above, if a recommendation preceded this type of transaction, delivery would have been triggered before or at the time of the recommendation.

To the extent the broker-dealer had not already made a recommendation of an account type, a securities transaction or an investment strategy involving securities, or placed an order for the retail investor, delivery would be triggered before or at the time the retail investor opens a brokerage account with the broker-dealer. As revised, we believe that the initial delivery triggers for broker-dealers avoid the uncertainty of the proposed initial delivery standard and include scenarios that encompass earlier delivery, in response to commenters' concerns.

In response to the comments requesting exemptions or exclusions from the relationship summary obligations generally and the delivery obligations for certain broker-dealers that engage in limited activities, we are clarifying that we do not intend for the Form CRS requirements to apply to certain types of relationships between a broker-dealer and a retail investor. Pursuant to Exchange Act Rule 17a-14, the scope of the Form CRS requirement applies "to every broker or dealer registered with the Commission pursuant to section 15 of the Act that ***offers services to a retail investor***" (emphasis added). Solely for purposes of Form CRS, we are describing here the types of relationships between a broker-dealer and a retail customer that we would not consider to be "offer[s] [of] services to a retail investor".

Specifically, clearing and carrying broker-dealers that are solely providing services to third party or affiliated introducing broker-dealers would not be considered to be offering services to a retail investor for purposes of Exchange Act Rule 17a-14, and would not be subject to the Form CRS requirements when acting in such capacity. As described above, the relationship summary is designed to make it easier for *retail investors* to get the facts they need when deciding among investment firms or financial professionals and the accounts and services available to them. When a retail investor is establishing or has a relationship with an introducing broker-dealer, we believe that the retail investor would benefit most from focusing on that broker-dealer's services, fees, standard of conduct, conflicts of interest and disciplinary history. In these circumstances, we believe that receiving an additional relationship summary from a clearing or carrying broker-dealer could create confusion and detract from the goals of this disclosure.

Additionally, we would not consider a broker-dealer that is serving solely as a principal underwriter to a mutual fund or variable annuity or variable life insurance contract issuer to be

offering services to a retail investor for purposes of Exchange Act Rule 17a-14, when acting in such capacity. As with clearing and carrying broker-dealers, broker-dealers serving solely as principal underwriters do not typically establish the kind of relationship with retail investors that Form CRS has been designed to address. To the extent such broker-dealers interact with a retail customer in a different capacity (beyond serving as a principal underwriter to the mutual fund or variable contract that the retail investor owns), we believe the nature of their relationship could become one where delivery of the Relationship Summary would be useful. Accordingly, Form CRS's obligations would apply in those instances.[736]

We are adopting as proposed the approach to delivery for dual registrants, whereby they must deliver the relationship summary to a new or prospective retail investor at the earlier of the delivery triggers applicable to investment advisers and broker-dealers.[737] One commenter argued that a dual registrant should be required to deliver the relationship summary at the earlier of providing an investment recommendation or the time a retail investor opens an account with the firm.[738] We believe that the broker-dealer initial delivery requirements, as adopted, accommodate this comment. Another commenter asserted that dual registrants should be required to deliver the relationship summary no later than when a recommendation is made as to

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[736] For example, we would expect the requirements of Form CRS to apply in the event the broker-dealer makes a recommendation of an account type, securities transaction or investment strategy involving securities, the retail investor places an order for the purchase of different securities, or the retail investor opens a new brokerage account with the broker-dealer.

[737] Advisers Act rule 204-5(b)(1) and Exchange Act rule 17a-14(c)(1); *see also* General Instruction 7.B.(iii) to Form CRS.

[738] *See* State Farm Letter.

the type of account to open.[739] We believe that the final initial delivery requirements accommodate this comment also. Broker-dealers will be required to deliver the relationship summary before or at the earliest of (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities, (ii) placing an order for the retail investor, or (iii) the opening of a brokerage account for the retail investor.[740] Investment advisers will be required to deliver the relationship summary before or at the time of entering into an investment advisory contract with the retail investor.[741] Dual registrants will be required to deliver the relationship summary when recommending an account type to the retail investor if it is the earliest occurrence among the initial delivery triggers for broker-dealers and investment advisers, which we believe will typically precede the opening of a brokerage account or entering into an investment advisory contract.[742]

c. Additional Delivery Requirements to Existing Clients and Customers

We are adopting requirements for firms to re-deliver the relationship summary to existing clients and customers under certain circumstances, with some modifications from the proposal. We continue to believe that these investors will benefit from being reminded of the information contained in the relationship summary, including about the different services and fees that the firm offers, when they are again making decisions about whether to invest through an advisory

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739 *See* CFA Letter I.

740 *See* Exchange Act rule 17a-14(c)(1); General Instruction 7.B.(ii) to Form CRS.

741 *See* Advisers Act rule 204-5(b)(1); General Instruction 7.B.(i) to Form CRS.

742 *See* General Instruction 7.B.(iii) to Form CRS.

account or a brokerage account. Specifically, after an initial delivery of the relationship summary to existing clients and customers who are retail investors, firms will be required to deliver the most recent version of the relationship summary to a retail investor if they (i) open a new account that is different from the retail investor's existing account(s); (ii) recommend that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommend or provide a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account, for example, the first time purchase of a direct-sold mutual fund or insurance product that is a security through a "check and application" process, *i.e.*, not held directly within an account.

In comparison, as proposed, the instructions would have required a firm to deliver a relationship summary to existing clients or customers when: (i) a new account is opened that is different from the retail investor's existing account, or (ii) changes are made to the existing account that would materially change the nature and scope of the relationship. The proposed instructions provided that whether a change was material for these purposes would depend on the specific facts and circumstances and gave as examples transfers from an investment advisory account to a brokerage account, transfers from a brokerage account to an investment advisory account, and moves of assets from one type of account to another in a transaction not in the normal, customary or already agreed course of dealing.

In the RAND 2018 survey, 50% of respondents reported that they would like to receive an updated relationship summary "whenever there is a material change in the Relationship Summary, such as a change in fees or commission structure," about 30% would prefer to receive the relationship summary periodically and almost 40% preferred to receive the summary on

request.[743] One commenter supported the additional delivery requirements to existing clients and customers as proposed, agreeing that investors are again making decisions about relationships and account types under these circumstances and would benefit from the information the relationship summary provides.[744] Another commenter recognized the value of delivering the relationship summary to existing clients and customers but recommended specific limitations to the requirements.[745] One commenter supported once a year or periodic updates and continued availability of a current version on a firm's website,[746] while another commenter opposed any requirement to provide periodic updates.[747] Several commenters argued that some or all of the additional delivery requirements are not necessary, given the prior initial delivery and online availability of relationship summaries.[748] A few commenters argued that the

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743 RAND 2018, *supra* footnote 13.

744 *See* CFA Letter I ("We support this proposal and agree with the Commission that, in these instances, 'retail investors are again making decisions about whether to invest through an advisory account or a brokerage account and would benefit from information about the different services and fees that the firm offers to make an informed choice.'").

745 *See* SIFMA Letter (arguing that a "material change" should be defined as changes from an advisory account to a brokerage account or vice versa, and not include asset movements from one type of account to another or "other material changes").

746 *See* Schwab Letter I; Schwab Letter III.

747 *See* CFN Letter.

748 *See, e.g.,* LPL Financial Letter ("It is not clear what additional benefits obtain from delivering an identical copy of a document an investor has already received."); SIFMA Letter ("[W]e do not believe these additional trigger points [other than changing from one type of account to another] are necessary because customers will receive Form CRS at periodic intervals throughout the relationship, and customers will have continual online access to a firm's Form CRS via a website posting, making the need to "push out" the Form CRS at additional points unnecessary."); Institute for Portfolio Alternatives Letter ("We suggest that delivery of a new or updated Form CRS with every transaction would be excessive, impractical and without commensurate investor benefit"); UBS Letter ("If a client already has both a brokerage account and an advisory account and is transferring assets from one to another . . . the client already would have the critical disclosures applicable to both account types . . . .").

additional delivery requirements could confuse investors because of either an apparent duplication or difference from delivery requirements of existing disclosures.[749] One commenter also stated that the proposed additional delivery requirements could overwhelm investors in a counterproductive way.[750] Furthermore, commenters requested additional guidance or examples for what would "materially change" the relationship.[751]

In addition, some commenters expressed concerns about administrative and operational burdens relating to the proposed additional delivery requirements.[752] For example, one commenter asserted that firms would be required to build entirely new operational and supervisory processes to identify asset movements divorced from any account opening process

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749 *See, e.g.,* Comment Letter of AXA (Aug. 7, 2019) ("[E]xisting customers have already decided which firm to work with, so requiring firms to send the Relationship Summary to those customers is likely to cause customer confusion."); Pickard Djinis and Pisarri Letter ("The disharmony between the existing ADV brochure delivery requirements and the proposed requirements under Rule 204-5 are likely to confuse clients. . . ."); UBS Letter ("[R]eceiving the Form CRS again in such circumstances would likely lead to confusion rather than an improved understanding.").

750 *See* SIFMA Letter ("Providing Form CRS to investors beyond [changes from one type of account to another] could overwhelm them with duplicative or redundant information," making it "less likely they will digest the information.").

751 *See, e.g.*, Prudential Letter ("[M]ore guidance is needed on this point; additional examples of triggering events would provide clarity."); TIAA Letter ("SEC should identify additional instances beyond account changes that would trigger re-delivery."); Cambridge Letter (requesting further guidance on a material change to the nature and scope of the relationship and encouraging SEC to provide a broad set of examples); SIFMA Letter ("[I]t is not clear what 'other material' changes or assets movements 'not in the normal, customary, or already agreed course of dealing' would be"); Institute for Portfolio Alternatives Letter (requesting guidance on what facts and circumstances would trigger a "material" change and require delivery of a new, or updated, Form CRS); Comment Letter of Sorrento Pacific Financial, LLC (Aug. 7, 2018).

752 *See* SIFMA Letter; LPL Financial Letter; Institute for Portfolio Alternatives Letter; Pickard Djinis and Pisarri Letter (additional delivery requirements "would impose unjustifiable administrative burdens on advisers, the majority of whom are small businesses.").

that could trigger an additional delivery requirement.[753] This commenter also argued that the review that would be required prior to effecting potentially triggering asset movements could cause delays that are detrimental to the retail investor.[754] Similarly, another commenter explained that most of the proposed additional delivery triggers would be relatively easy to identify and address through existing processes, such as new account openings and when a brokerage account is converted to an investment advisory account and vice versa.[755] Other potential delivery triggers, however, such as investments of inheritances or proceeds of a property sale, or a significant migration from savings to investment, would present operational challenges and compliance costs.[756] These commenters recommended limiting additional delivery requirements to circumstances in which a brokerage account is converted to an investment advisory account and vice versa.[757]

We disagree that delivery of the relationship summary to existing clients and customers is unnecessary if the investor has already received one. As noted above, when investors are again making decisions about whether to choose an investment advisory or brokerage account, we

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753 *See* SIFMA Letter (explaining that, because additional delivery triggers could be divorced from any account opening process, entirely new operational and supervisory processes would need to be designed (i) to identify potentially triggering asset movements; (ii) to review for whether a proposed asset movement is not in the normal, customary, or already agreed course of dealing; and (iii) depending on whether delivery were required, create and preserve either a record of the delivery or of the conclusion that no such delivery was required).

754 *See* SIFMA Letter.

755 *See* LPL Financial Letter.

756 *See* LPL Financial Letter (explaining that its existing systems are not designed to monitor and record dates of non-ordinary course events or to distinguish those events from routine account changes).

757 *See* SIFMA Letter; LPL Financial Letter.

believe they will benefit from being reminded that different options are available and where they can get more information to inform their choice. We are not requiring that the relationship summary be delivered at periodic intervals or at every transaction; thus we disagree with comments that the additional delivery obligations will not provide commensurate benefit to investors, or will confuse or overwhelm investors. We are therefore adopting additional delivery requirements that apply to a firm's existing clients and customers, with some modifications from those proposed.

First, as proposed (and supported by two commenters as noted above), we are adopting the requirement that a firm deliver the relationship summary when opening any new account that is different from the retail investor's existing account(s).[758] Second, in response to comments we are replacing the proposed standard of "materially change the nature and scope of the relationship" with two, more specific and easily identifiable, triggers that we believe would not implicate the same operational or supervisory burdens described by commenters to meet the proposed requirement.[759] Instead, firms will be required to deliver a relationship summary to existing clients and customers when recommending that the retail investor roll over assets from a retirement account, or recommending or providing a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account, for example, the first-time purchase of a direct-sold mutual fund or insurance product (*e.g.*, variable annuities) that is a security through a "check and

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[758] General Instruction 9.A. to Form CRS.

[759] *See supra* footnotes 752–757 and accompanying text.

application" process, *i.e.*, not held directly within an account.[760] While these requirements will still impose operational and supervisory burdens, we believe they are more easily identified and monitored, such that firms will not need to create new systems or processes to the extent that commenters said would be necessary to comply with the proposed "material change" standard. These more specific triggers are intended to provide investor protection under these circumstances in a more cost-effective manner, while still addressing the objectives that the "material changes" language sought to address, that is, to ensure that a firm does not switch existing customers or clients into accounts or services without explaining or giving them the opportunity to consider other available options.[761] Also, as proposed, we are adopting the instruction that firms must deliver the relationship summary to a retail investor within 30 days upon the retail investor's request.[762] While some commenters requested changes to the proposed delivery requirements, they nonetheless supported requiring delivery upon request.[763]

Finally, delivery of the relationship summary will not necessarily satisfy any other disclosure obligations the firm has under the federal securities laws or other laws or regulations, as proposed. The relationship summary requirement will be in addition to, and not in lieu of, other disclosure and reporting requirements or other obligations for broker-dealers and

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760 General Instruction 9.A. to Form CRS.

761 Recommendations of account types to existing customers and clients also are addressed in the Regulation Best Interest Release and Fiduciary Release, *supra footnote* 47.

762 General Instruction 9.B. to Form CRS.

763 *See* Fidelity Letter; SIFMA Letter.

investment advisers.[764] One commenter suggested that we require that the relationship summary include a prominent statement that it does not replace, but rather should be read in conjunction with, Form ADV or Form BD.[765] This commenter also suggested that the relationship summary should include a hyperlink to the appropriate Form ADV or Form BD, as applicable.[766] We believe that the required links in the Additional Information section, discussed in Section II.B.5. above, addresses these comments.

Some commenters argued that investment advisers should not be required to deliver a relationship summary to retail clients because they already deliver a Form ADV Part 2A brochure.[767] We disagree. By requiring both investment advisers and broker-dealers to deliver a relationship summary that discusses at a high level both types of services and their differences in a comparable format, the relationship summary would help all retail investors compare not only among investment advisory services, but also between investment advisory and brokerage services. We do not believe that existing disclosures provide this level of transparency and comparability across investment advisers, broker-dealers, and dual registrants. Form CRS is a summary disclosure designed to provide a high-level overview of services, fees, costs, conflicts

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764 For example, the relationship summary would not necessarily satisfy the disclosure requirements under Regulation Best Interest. *See* Regulation Best Interest Release, *supra* footnote 47.

765 *See* Financial Engines Letter.

766 *See* Financial Engines Letter.

767 Comment Letter of Registered Advisor Services (Apr. 20, 2018); Comment Letter of Franklin Templeton Investments (Aug. 6, 2018); IAA Letter I; Triad Letter; Pickard Djinis and Pisarri Letter; Prudential Letter; *see also* State Farm Letter (arguing that investment advisers should be required to include in their relationship summaries only those disclosures that are not otherwise available, provided that a representative heading or introductory statement and a hyperlink to such disclosures are provided in the Relationship Summary).

of interest, standard of conduct, and disciplinary history, to retail investors in order to help them decide whether to engage a particular firm or financial professional, including deciding whether to seek investment advisory or brokerage services. Form ADV Part 2A, in contrast, requires more detailed disclosures specific to advisory services. If a firm does not have retail investor clients or customers and is not required to deliver a relationship summary to any clients or customers, the firm will not be required to prepare or file a relationship summary, as proposed.[768]

4. Updating Requirements

We are adopting substantially as proposed a requirement for firms to update the relationship summary within 30 days whenever the relationship summary becomes materially inaccurate.[769] Firms also must post the latest version on their website (if they have one), and electronically file the relationship summary with the Commission.[770] Although some commenters expressed different views on the requirement to communicate updated information to retail investors, as discussed below, most commenters did not object to the proposed requirements to update the relationship summary within 30 days of a material change and the

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768 *See* amended Advisers Act rule 203-1, note to paragraph (a)(1); Exchange Act rule 17a-14(a), (b). *See* introduction of General Instructions to Form CRS.

769 Advisers Act rule 204-1(a)(2) and Exchange Act rule 17a-14(b)(3); General Instruction 8.A. to Form CRS. For investment advisers, we are also adopting amendments to the General Instructions to Form ADV to mirror this requirement and to clarify the filing type. *See* amended General Instruction 4 to Form ADV (revised to add the following language: "If you are registered with the SEC, you must amend Part 3 of your Form ADV within 30 days whenever any information in your *relationship summary* becomes materially inaccurate by filing with the SEC an additional other-than-annual amendment or by including the relationship summary as part of an *annual updating amendment*."); *see also supra* footnotes 673–677 and accompanying text.

770 Advisers Act rules 203-1(a)(1), 204-5(b)(3) and Exchange rules 17a-14(b)(2), 17a-14(c)(3); General Instructions 8.A., 8.C., and 10.A. to Form CRS.

associated posting and filing obligations.[771] On the other hand, one commenter advocated that firms be allowed 60 days to update the relationship summary to address operational issues, but did not describe the specific operational challenges.[772] Based on our experience with other similar filings, we believe the proposed approach is consistent with the current requirements for investment advisers to update the Form ADV Part 2A brochure,[773] and with broker-dealers' current obligations, including to update Form BD if its information is or becomes inaccurate for any reason.[774] We continue to believe that allowing 30 days for firms to make updates provides sufficient time for firms to make the necessary revisions. Therefore, we are adopting these requirements as proposed.

The proposed instructions also would have required firms, without charge to the retail investor, to communicate updated information by delivering the amended relationship summary or by communicating the information another way.[775] As noted above, commenters expressed different views regarding this approach. Some commenters advocated for posting the

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771 *See, e.g.*, Trailhead Consulting Letter ("If the form is kept to a more generalized and educational nature, material changes shouldn't occur too often."); NASAA Letter; LPL Financial Letter; Prudential Letter; Primerica Letter.

772 *See* Morgan Stanley Letter (30 days "may not be sufficient to address the related operational issues").

773 *See, e.g.*, Advisers Act rule 204-5(b)(4); General Instruction 8 to Form CRS. Generally, an investment adviser registered with the SEC is required to amend its Form ADV promptly if information provided in its brochure becomes materially inaccurate. *See* Advisers Act rule 204-1(a)(2); General Instruction 4 to Form ADV.

774 *See, e.g.*, Exchange Act rule 15b3-1.

775 *See* Proposed General Instruction 6.(b) to Form CRS.

relationship summary on a firm's website in order to meet the communication requirement.[776] On the other hand, one commenter advocated for requiring firms to deliver updated relationship summaries whenever a change is made, rather than permitting firms to communicate the information in another way.[777] We are adopting slightly revised final instructions to eliminate the proposed wording "another way" in order to clarify that a firm may communicate the information through another disclosure, and that disclosure must be delivered to the retail investor.[778] In other words, merely providing notice of or access to another disclosure or the relationship summary would not satisfy this final instruction. For example, if an investment adviser communicated a material change to information contained in its relationship summary to a retail investor by delivering an amended Form ADV brochure or Form ADV summary of material changes that also contained the updated information, this would support a reasonable belief that the information had been communicated to the retail investor, and the investment adviser will not be required to deliver an updated relationship summary to that retail investor. This requirement provides firms the flexibility to disclose changes to the relationship summary without requiring them to incur additional delivery costs.

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776 *See, e.g.*, Fidelity Letter ("We also support the SEC's position that with respect to material changes of information provided in a Form CRS, firms must either provide an updated Form CRS to retail investors or communicate the changes in another way such as posting on the firm's website."); Morgan Stanley Letter; Primerica Letter.

777 *See* NASAA Letter.

778 General Instruction 8.B. to Form CRS ("You can make the communication by delivering the amended *relationship summary* or by communicating the information through another disclosure that is delivered to the *retail investor*.").

In another modification from the proposal, the rules as adopted will allow firms to communicate the information in an amended relationship summary to retail investors who are existing clients or customers within 60 days after the updates are required to be made, instead of 30 days as proposed.[779] Two commenters advocated that allowing 60 days for the communication would increase the likelihood that firms could deliver an updated relationship summary along with other disclosures that firms commonly deliver on a quarterly basis, rather than in a separate delivery.[780] Delivery with other disclosures is consistent with the instructions regarding the way in which relationship summary updates may be communicated. We are clarifying this, as noted above, and adopting the requirement that firms must communicate updates to the relationship summary within 60 days after the updates are required to be made.

In a further change from the proposal, firms must highlight the changes in an amended relationship summary by, for example, marking the revised text or including a summary of material changes and attaching the changes as an exhibit to the unmarked amended relationship summary.[781] The unmarked amended relationship summary and exhibit must be filed with the

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779 Advisers Act rule 204-5(b)(4) and Exchange Act rule 17a-14(c)(4); Proposed General Instruction 6.(b) to Form CRS.

780 *See* LPL Financial Letter; Morgan Stanley Letter. For example, NASD Rule 2340 requires broker-dealers to deliver account statements generally on a quarterly basis.

781 General Instruction 8.C. to Form CRS ("Each amended *relationship summary* that is delivered to a *retail investor* who is an existing client or customer must highlight the most recent changes by, for example, marking the revised text or including a summary of material changes. The additional disclosure showing revised text or summarizing the material changes must be attached as an exhibit to the unmarked amended *relationship summary*."). As an addition to the proposal, we are also amending General Instruction 4 to Form ADV to mirror this requirement ("You must include an exhibit highlighting the most recent changes required by Form ADV, Part 3 (Form CRS), General Instruction 8.C."); *see also supra* footnotes 673–677 and accompanying text.

Commission.[782] We believe that including this exhibit is important in assisting retail investors to assess changes that may impact their accounts or their relationships with their firm or financial professional. A retail investor will be able to find the latest version of the relationship summary through Investor.gov and on the firm's website, if it has one, and firms will be required to deliver a relationship summary within 30 days upon the retail investor's request, as proposed.[783]

As discussed in the proposal, for purposes of the requirement to communicate updates to the relationship summary, it is important that broker-dealers identify their existing customers who are retail investors and recognize that a customer relationship may take many forms. For example, a broker-dealer will be required to provide the relationship summary to customers who have so-called "check and application" arrangements with the broker-dealer, under which a broker-dealer directs the customer to send the application and check directly to the issuer. We continue to believe this approach will facilitate broker-dealers building upon their current compliance infrastructure in identifying existing customers[784] and will enhance investor protections to retail investors engaging the financial services of broker-dealers.

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782 General Instruction 8.A. to Form CRS; *see also* General Instruction 4 to Form ADV.

783 Advisers Act rules 204-5(b)(3) and 204-5(b)(5) and Exchange Act rules 17a-14(c)(3) and 17a-14(c)(5); General Instruction 9.B. to Form CRS.

784 For example, broker-dealers may already have compliance infrastructure to identify customers pursuant to FINRA's suitability rule, which applies to dealings with a person (other than a broker or dealer) who opens a brokerage account at a broker-dealer or who purchases a security for which the broker-dealer receives or will receive, directly or indirectly, compensation even though the security is held at an issuer, the issuer's affiliate or custodial agent, or using another similar arrangement. *See* Guidance on FINRA's Suitability Rule, FINRA Regulatory Notice 12-55 (Dec. 2012), at Q6(a).

D. Transition Provisions

To provide adequate notice and opportunity to comply with the adopted relationship summary filing requirements, firms that are registered, or investment advisers who have an application for registration pending, with the Commission prior to June 30, 2020 will have a period of time beginning on May 1, 2020 until June 30, 2020 to file their initial relationship summaries with the Commission.[785] On and after June 30, 2020, newly registered broker-dealers will be required to file their relationship summary with the Commission by the date on which their registration with the Commission becomes effective, and the Commission will not accept any initial application for registration as an investment adviser that does not include a relationship summary that satisfies the requirements of Form ADV, Part 3: Form CRS.[786] The adopted transition period is longer than we proposed. The proposal would have required broker-dealers to comply with their relationship summary obligations beginning six months after the effective date of the new rules and rule amendments.[787] Similarly, in the proposal, investment advisers or dual registrants would have been required to comply with the new filing requirements as part of the firm's next annual updating amendment to Form ADV that would have been required after six months after the rule's effective date.[788] The extended time to comply with the

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785 *See* Exchange Act rule 17a-14(f), Advisers Act rules 203-1(a)(2) and 204-1(e)*;* Instruction 7.C. to Form CRS.

786 *See* Exchange Act rule 17a-14(f) and Advisers Act rule 203-1(a)(2); Instruction 7.C. to Form CRS.

787 *See* Proposed Instruction 5.c. to Form CRS. *See* Advisers Act proposed rule 203-1(a)(2) and Exchange Act proposed rule 17a-14 (f)(1).

788 *See id*.

relationship summary requirements reflects our consideration of comments we received from firms and the modifications to the proposed requirements of the relationship summary.

In the proposal, we asked for comment on the proposed implementation requirements and whether the six-month period was enough time for newly registered broker-dealers and investment advisers to prepare an initial relationship summary.[789] A number of commenters requested a longer implementation period, ranging from 12 to 24 months from the effective date.[790] One commenter suggested a phased-in approach, such that requirements may be effected at different points in time.[791] Commenters cited a number of reasons for a longer implementation period, including the time needed to hire additional staff and create and deploy new disclosures, procedures, training, and technology,[792] as well as to have the opportunity to apply innovative technology and designs.[793]

We are mindful of the time needed to create the relationship summary, as well as to update a firm's policies, procedures, and systems in order to provide these new disclosures. We are, however, lengthening the time that firms will have to comply relative to the proposal after considering commenters' suggestions for a longer implementation period. We expect that

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789 *See* Proposing Release.

790 *See, e.g.*, IAA Letter I (requesting a 12 month implementation period from the effective date); CCMC Letter (requesting 18 months); IRI Letter (requesting 18–24 months); Comment Letter of HD Vest Financial Services (Aug. 7, 2018) ("HDVest Letter") (requesting 18 months); Cetera Letter I; SIFMA Letter (requesting at least 24 months from the date the final rules are approved).

791 *See* SIFMA Letter.

792 *See* HDVest Letter.

793 *See* IAA Letter I.

approximately twelve months will be adequate for firms to conduct the requisite operational changes to their systems and to establish internal processes to satisfy their relationship summary obligations.

Some commenters expressed the view that the proposed one-time, initial delivery to existing clients and customers is not necessary.[794] One survey reported, on the other hand, that over 90% of survey respondents with an existing financial professional relationship stated that they knew more about their relationship with the adviser after reading the proposed relationship summary.[795] We believe the information contained in the relationship summary could improve existing investors' ability to monitor and make more informed decisions related to their existing relationships with firms during their duration, including whether to terminate a relationship. For example, as discussed above in Section II.A., retail investors that may learn of account types whose minimum requirements they did not meet when they first opened their existing account, through a one-time, initial delivery to existing clients and customers. Upon seeing this range of options, existing clients and customers could seek to take advantage of cost savings or additional

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794 *See, e.g.,* Fidelity Letter (existing customers are already familiar with the services offered to them by their broker-dealer or investment adviser. . . but can of course access a copy posted on the firm's website); AXA Letter (delivering the relationship summary to existing customers is likely to be confusing); Cetera Letter I (firms should not be required to deliver a new or amended Form CRS to [existing] clients except in limited circumstances, such as when the client establishes a different type of account than they already have).

795 *See* Cetera Letter II (Woelfel), *supra* footnote 17 (84% of respondents stated that they knew a lot or a little more about their financial adviser after reviewing the Form CRS than they did before; among respondents with current relationships with a broker or adviser, over 90% said they knew more); *see also* CCMC Letter (investor polling), *supra* footnote 21 (in a survey of investors with investments outside of a work sponsored 401(k), pension or personal real estate, 72% of participants responding to a question describing that new rules could require financial professionals to deliver " a standardized four page document that explains the relationship between the financial professional and clients" agreed that the new disclosure document "will boost transparency and help build stronger relationships between me and my financial professional" and 62% indicated that they were "very interested" in reading the document).

services offered through these other account types. We believe that existing clients and customers would benefit from this one-time delivery of the relationship summary and therefore are adopting the requirement as proposed. Firms will be required to deliver their relationship summary to new and prospective clients and customers who are retail investors as of the date by which they are first required to electronically file their relationship summary with the Commission.[796] In addition, as proposed, firms will be required, as part of the transition, to deliver their relationship summaries to all existing clients and customers who are retail investors on an initial one-time basis within 30 days after the date the firm is first required to file its relationship summary with the Commission.[797]

E. Recordkeeping Amendments

We are adopting amendments to the recordkeeping and record retention requirements under Advisers Act rule 204-2 and Exchange Act rules 17a-3 and 17a-4, as proposed. These rules set forth requirements for firms to make, maintain, and preserve specified books and records. Pursuant to paragraph (a)(14)(i) of Advisers Act Rule 204-2 as amended, investment advisers will be required to make and preserve a record of the dates that each relationship summary was given to any client or prospective client who subsequently becomes a client.[798] New paragraph (a)(24) of Exchange Act Rule 17a-3 as adopted will require broker-dealers to create a record of the date on which each relationship summary was provided to each retail

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796 *See* Advisers rule 204-5(e)(2) and Exchange Act rule 17a-14(f)(4); Instruction 7.C.iii. to Form CRS.

797 *See* Advisers rule 204-5(e)(1) and Exchange Act rule 17a-14(c) and (f)(3); adopted Instruction 7.C.iv. to Form CRS.

798 *See* amended Advisers Act rule 204-2(a)(14)(i).

investor, including any relationship summary provided before such retail investor opens an account.[799] In addition, paragraph (a)(14)(i) of Advisers Act rule 204-2, as amended, will require investment advisers to retain copies of each relationship summary and each amendment or revision thereto while paragraph (e)(10) of Exchange Act rule 17a-4, as amended, will require broker-dealers to maintain and preserve a copy of each version of the relationship summary as well as the records required to be made pursuant to new paragraph (a)(24) of Exchange Act rule 17a-3 as adopted by the Commission.[800] The amended rules set forth the manner in which and the period of time for which these record must be retained.[801] These records will facilitate the Commission's ability to inspect for and enforce compliance with the relationship summary requirements.

We received no comments on the proposed manner and time period for records preservation or the requirement to maintain a copy of each version of the relationship summary

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799 *See* Exchange Act rule 17a-3(a)(24).

800 The effect of the amended and adopted rules will require both investment advisers and broker-dealers to maintain copies of all versions of the relationship summary and the dates they are provided or given to existing or prospective retail customers; *see also* General Instruction 6.A. to Form CRS (requiring firms to maintain a copy of each version of the relationship summary and make it available to the SEC staff upon request). The Commission notes that pursuant to Exchange Act rule 17a-3(e), for purposes of transactions in municipal securities by municipal securities broker-dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board ("MSRB") will be deemed to be in compliance with the recordkeeping requirements for broker-dealers. Accordingly, for purposes of transactions in municipal securities, a broker-dealer may satisfy its recordkeeping obligations under Exchange Act rule 17a-3(a)(24), as adopted, by complying with Rule G-8 of the MSRB. *See* Exchange Act rule 17a-3(e).

801 Investment advisers will be required to maintain and preserve these records in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. *See* Advisers Act rule 204-2(e)(1). Broker-dealers will be required to maintain these records in an easily accessible place until six years after such record or relationship summary is created. *See* Exchange Act rules 17a-3(a)(24) and 17a-4(e)(10) as amended.

and each amendment or revision to the relationship summary.[802] We are adopting these requirements as proposed. Some commenters expressed concern with the potential costs and feasibility of complying with the proposed recordkeeping requirements for broker-dealers.[803] Several commenters argued that keeping records of when a relationship summary was given to a prospective retail investor would be unnecessarily burdensome for firms and would likely provide *de minimis* benefits.[804] Some investment adviser and broker-dealer commenters stated that most firms' recordkeeping systems and procedures are not designed to maintain records relating to prospective clients and that conforming such systems and procedures to the proposed rule requirements would be burdensome and costly and would not result in an offsetting benefit.[805] Others noted they may have to retain records for an indefinite length of time because their interactions with prospective clients about engaging services often span weeks, months or years and may include numerous phone calls, meetings or other forms of contact.[806]

As an alternative, commenters suggested that firms only be required to maintain a record of the most recent date they delivered the relationship summary to a prospective client that

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802 *See* Exchange Act rule 17a-4(e)(10) as proposed to be amended and Advisers Act rule 204-2(e)(1) (which would apply to amended rule 204-2(a)(14)(i) as proposed to be amended). The recordkeeping requirements for investment advisers will mirror the current recordkeeping requirements for Form ADV Part 2. *See* Advisers Act amended rule 204-2(a)(14)(i) as proposed to be amended and rule 204-2(e)(1).

803 *See, e.g.*, CCMC Letter; Committee of Annuity Insurers Letter; Edward Jones Letter; Morgan Stanley Letter; Primerica Letter; SIFMA Letter; IPA Letter.

804 *See id.*

805 *See, e.g.*, Committee of Annuity Insurers Letter; Edward Jones Letter; Morgan Stanley Letter; Primerica Letter; SIFMA Letter.

806 *See, e.g.*, Edward Jones Letter; Primerica Letter; SIFMA Letter.

becomes an actual client preceding the opening of an account.[807] Commenters suggested only requiring a record that the relationship summary was delivered at account opening or when a retail investor becomes an investment advisory client.[808]

Based on our experience with similar recordkeeping requirements for the Form ADV Part 2A brochure, requiring firms to create and maintain records of the dates they provide or give a relationship summary to an existing, new, or potential retail investor will facilitate examiners' ability to inspect and examine for compliance with the relationship summary delivery and content requirements. Specifically, the dates will help examiners to identify the relationship summary disclosures that retail investors may have relied on to decide whether to engage a firm's services. Absent having these dates to examine, we believe that it would be exceedingly difficult for examiners to evaluate firms' compliance with the relationship summary delivery and content requirement. These records also may assist firms in monitoring their compliance with the relationship summary delivery requirements.

Recordkeeping obligations for the relationship summary may be less burdensome if firms' recordkeeping and compliance systems are already capable of creating and maintaining records related to communications with prospective clients. For example, investment advisers are required to keep similar records for the delivery of the Form ADV Part 2A brochure[809] and broker-dealers, especially those registered with FINRA, are subject to comparable recordkeeping

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807 *See, e.g.*, CCMC Letter; SIFMA Letter.

808 *See, e.g.*, SIFMA Letter; Morgan Stanley; Edward Jones Letter.

809 *See, e.g.*, Advisers Act rule 204-2.

requirements with respect to communications and correspondence with prospective retail investors.[810]

Several firms also requested clarification and expressed concern regarding the potential recordkeeping implications related to the "Key Questions to Ask" provision of the proposal.[811] Some commenters stated that requiring firms to make and maintain records of their answers to the "Key Questions to Ask" and of supplemental information cross-referenced in or linked from the relationship summary would result in substantial and unnecessary burdens and/or might stifle potentially beneficial discussions between firms, clients and/or prospective clients.[812] Commenters requested clarification that "Key Questions to Ask" are intended to promote dialog between firms and clients rather than creating any sort of recordkeeping requirement, which commenters believed could lead to less robust discussions between firms and clients.[813]

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810 *See, e.g.*, Exchange Act rule 17a-4(b)(4) requiring broker-dealers to maintain a record of all communications sent relating to its business as such; *see also, e.g.*, FINRA Rule 2210(a)(5) (defining "retail communication" to mean "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period."); FINRA Rule 2210(b)(4) (requiring all FINRA members to "maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4...[and]…all correspondence in accordance with the record-keeping requirements of [FINRA] Rules 3110.09 [on supervision, requiring FINRA members to retain the internal communications and correspondence of associated persons relating to the member's investment banking or securities business for the period of time and accessibility specified in SEA Rule 17a-4(b)] and 4511 [establishing general requirements for members to "preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules"]).

811 *See, e.g.*, CCMC Letter; TIAA Letter; LPL Financial Letter; IPA Letter; NSCP Letter.

812 *See, e.g.*, Edward Jones Letter; CCMC Letter; NSCP Letter; SIFMA Letter; Morgan Stanley Letter; TIAA Letter; LPL Financial Letter.

813 *See, e.g.*, Edward Jones Letter; CCMC Letter; TIAA Letter; LPL Financial Letter.

As discussed above, the "Key Questions to Ask" section of the relationship summary has been eliminated, but firms will be required to include "conversation starters" in their relationship summary.[814] We are not establishing new or separate recordkeeping obligations related to the conversation starters or the answers provided by firms in response to the conversation starters. We are also not adding separate or new recordkeeping obligations related to the use of layered disclosure in the relationship summary. Current recordkeeping rules for investment advisers and broker-dealers already impose recordkeeping and retention requirements related to a firm's disclosures and other communications with retail investors, which will include responses to conversation starters or information cross-referenced in the relationships summary.[815] Responses to conversation starters or hyperlinked material may trigger recordkeeping requirements under other federal securities statutes and rules or the rules of self-regulatory organizations of which firms are members or registrants.[816] Further, firms may wish to develop scripts for their financial professionals in responding to conversation starters to ensure the quality and consistency of responses and then preserve the scripts for compliance purposes.

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814 *See supra* Section II.A.4.

815 For example, with respect to investment advisers, if a conversation starter prompts a written communication that includes a recommendation made or proposed to be made or any advice given or proposed to be given by the investment adviser, such a communication may be subject to the recordkeeping requirements of Advisers Act rule 204-(2)(a)(7). Also, for example, broker-dealers, under Exchange Act Rule 17a-4(b)(4), are required to maintain records of the "[o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such…"; *see also* the recordkeeping requirements of FINRA Rule 2210.

816 *See id*.

III. DISCLOSURES ABOUT A FIRM'S REGULATORY STATUS AND A FINANCIAL PROFESSIONAL'S ASSOCIATION

In connection with Form CRS, we recognized that the education and information that Form CRS provides to retail investors could potentially be overwhelmed by the way in which financial professionals present themselves to potential or current retail investors, including through advertising and other communications.[817] This concern was particularly acute where such communications could be misleading in nature, or where advertising and communications precede the delivery of Form CRS and may have a disproportionate impact on shaping or influencing retail investor perceptions.[818] To mitigate these concerns, we proposed additional rules as part of the Proposing Release. One of our proposed rules required disclosure of a firm's regulatory status and a financial professional's association with a firm. Specifically, we proposed rules under the Exchange Act and the Advisers Act that would have required a broker-dealer and an investment adviser to prominently disclose that it is registered as a broker-dealer or investment adviser, as applicable, with the Commission in print or electronic retail investor communications.[819] The proposed Exchange Act rule also would have required an associated natural person of a broker or dealer to prominently disclose that he or she is an associated person of a broker-dealer registered with the Commission in print or electronic retail investor communications.[820] Similarly, the proposed Advisers Act rule would have required a supervised person of an investment adviser registered under section 203 to prominently disclose that he or

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817 *See* Proposing Release, *supra* footnote 5, at footnotes 374–375 and accompanying text.

818 *See id.*

819 *See id.*, at footnotes 437–439 and accompanying text.

820 *See id.*

she is a supervised person of an investment adviser registered with the Commission in print or electronic retail investor communications.[821] As we discussed in the Proposing Release, we believed that requiring a firm to disclose whether it is a broker-dealer or an investment adviser in print or electronic retail investor communications would assist retail investors in determining which type of firm is more appropriate for their specific investment needs.[822] For similar reasons, we noted that because retail investors interact with a firm primarily through financial professionals, it is important that financial professionals disclose the firm type with which they are associated.[823]

Several commenters expressed general support for the proposed Affirmative Disclosures.[824] Some of these commenters believed that the rules could be beneficial in helping investors to understand the legal distinctions between broker-dealers and investment advisers.[825] Another commenter in support of the Affirmative Disclosures stated that investors would benefit more if they were also provided with readily accessible regulatory and disciplinary histories of

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821 *See id.*

822 *See* Proposing Release, *supra* footnote 5, at footnotes 440–441 and accompanying text.

823 *See id.* We also proposed rules that would have restricted broker-dealers and their associated persons from using the terms "adviser" or "advisor" as part of a name or title when communicating with retail investors in certain circumstances. We are not adopting those rules, as further discussed in the Regulation Best Interest Release. *See* Regulation Best Interest Release, *supra* footnote 47.

824 *See* CFA Letter I; CFA Institute Letter I (stating that "[r]equiring them to call themselves what they legally are will enable investors to better understand the distinction"); Better Markets Letter.

825 *See* CFA Institute Letter I; CFA Letter I; LPL Financial Letter.

the financial professional.[826] However, one commenter noted that while "the required disclosure could have some modest benefit, … it is important not to overstate [its] likely value."[827]

Several commenters also opposed the Affirmative Disclosures.[828] Some commenters believed that the proposed rules were duplicative, noting that Regulation Best Interest, Form CRS, and/or other required disclosure obligations (*e.g.*, Form ADV, FINRA Rule 2210) would inform retail investors of the capacity of a firm and its financial professionals, obviating the need for the additional rules.[829] Some of these commenters stated that Form CRS alone or in combination with FINRA Rule 2210(d)(3) (providing specific requirements for disclosure of the broker-dealer's name in retail communications and correspondence) would provide retail investors with a firm's capacity and its name, making the Affirmative Disclosures duplicative.[830]

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826 *See* Better Markets Letter.

827 *See* CFA Letter I.

828 Some commenters also opposed the proposed Affirmative Disclosures because investors do not understand what it means to be registered or what the legal terms mean. *See* Altruist Letter; IRI Letter. *See also* LPL Financial Letter (noting that regulatory status is not important to an investor when being casually introduced for the first time to a financial professional and receiving a business card); Bank of America Letter; SIFMA Letter.

829 *See*, *e.g.*, LPL Financial Letter (stating that Form ADV, Form CRS, and Regulation Best Interest already "communicate to investors the capacity in which they are acting on behalf of the investor and the material facts related to the investor's relationship with the firm and its financial professionals."); SIFMA Letter (stating that "information regarding regulatory status is contained in Proposed Form CRS, and Proposed Form CRS is available at all times on a firm's website, in addition to periodic distribution to clients."); IRI Letter; Committee of Annuity Insurers Letter; Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri LLP ("Pickard Letter") (stating "the Commission should determine whether the existing Form ADV brochure supplement adequately informs retail investors of the registration status of the advisory representatives they deal with….")

830 *See*, *e.g.*, IRI Letter; Bank of America Letter; Committee of Annuity Insurers Letter. *See also* SIFMA Letter (noting that Form CRS resolves any confusion that may exist regarding whether a financial professional or firm is a broker-dealer or an investment adviser and would be available on a firm website and given periodically to investors).

Several commenters also opposed the Affirmative Disclosures because they believed the costs to implement and comply with the proposed rules did not justify the benefits.[831] In particular, these commenters noted a range of cost-related impacts, such as replacing new and existing business cards[832] and amending numerous electronic and print marketing materials.[833] Several commenters also noted the difficultly in implementing and supervising specific types of communication including business cards, oral communications, and voice overlay and on-screen text in televised or video presentations.[834]

After considering the comments received and the obligations we are adopting under Regulation Best Interest and Form CRS, we have concluded that the capacity disclosure requirement in Regulation Best Interest and Form CRS are sufficient to achieve the objectives of the proposed Affirmative Disclosures. These rules enhance retail investor awareness of the firm and professional type that they are engaging or seeking to engage and would therefore assist a retail investor in choosing the type that best suits his or her financial goals.

As discussed in the Regulation Best Interest Release, as part of its disclosure obligations, a broker-dealer and its associated natural persons must disclose when they are acting as a broker-dealer when making a recommendation. This type of disclosure is designed to improve awareness among retail customers such that a retail customer can more readily identify and

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831 *See*, *e.g.*, LPL Financial Letter; Bank of America Letter; IRI Letter; SIFMA Letter.

832 *See* IRI Letter. *See also* SIFMA Letter (noting also that firms would need to reprint all business cards and modify "firm technologies and electronic communications").

833 *See* LPL Financial Letter (noting "significant financial costs").

834 *See* Bank of America Letter; IRI Letter; SIFMA Letter; Altruist Letter. *See also* Committee of Annuity Insurers Letter (noting also that there are operational challenges in situations where marketing materials or account statements are used or distributed by a product sponsor rather than the firm itself).

understand their relationship.[835] This capacity disclosure requires a broker-dealer and its financial professionals to disclose that the firm or the financial professional is acting as a broker-dealer, as a material fact relating to the scope and terms of the relationship subject to its disclosure obligation.[836] As noted in the Regulation Best Interest Release, a broker-dealer and its financial professionals must disclose the required information prior to or at the time of a recommendation but Regulation Best Interest does not mandate the form, specific time, or method of delivering disclosures pursuant to its disclosure obligation.[837] In fulfilling this obligation, a broker-dealer that is not a dual registrant generally will be able to satisfy the requirement to disclose the broker-dealer's capacity by delivering the Relationship Summary to the retail customer. For broker-dealers who are dually registered, and for associated persons who are either dually licensed or are not dually licensed and only offer broker-dealer services through a firm that is dually registered, the information contained in the Relationship Summary will not be sufficient to disclose their capacity in making a recommendation.[838] As discussed in the Regulation Best Interest Release, although some commenters expressed concerns about potential investor confusion caused by "additional" disclosure regarding a dual registrant's capacity, the disclosure obligations of Regulation Best Interest will not duplicate or confuse, but instead will

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835 *See* Regulation Best Interest Release, *supra* footnote 47, at Section II.C.1.a.

836 *See id.*

837 *See id*.

838 *See id.*

provide clarifying detail on capacity to supplement the information contained in the Relationship Summary.[839]

Additionally, as discussed above, Form CRS includes a requirement for firms to state their name and whether they are "registered with the Securities and Exchange Commission as a broker-dealer, investment adviser, or both."[840] Form CRS is required to be delivered before or at the time the financial professional enters into an investment advisory relationship or, for a broker-dealer, before or at the earliest of a certain recommendation, the execution of a securities transaction, or the opening of a brokerage account.[841] Additionally, Form CRS will need to be prominently posted on the firm's public website, if it maintains one, in a location and format that is easily accessible to retail investors[842] and must be provided to retail investors 60 days after a material change is made.[843] These requirements highlight for an investor's attention, and promote access to, the capacity information at times that we believe are crucial to a retail investor when seeking to make a choice of financial firms.

We recognize that the proposed Affirmative Disclosures would have included capacity requirements on more communications than what is required by Form CRS and capacity disclosure requirement in Regulation Best Interest. Specifically, under the Affirmative Disclosures, all forms of communications used by broker-dealers, investment advisers and their

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839 *See id.*

840 *See* Item 1.A. of Form CRS. *See also supra* Section II.B.1.

841 *See* General Instruction 7.B to Form CRS. *See also supra* Section II.C.

842 *See* General Instruction 10.A. to Form CRS. *See also supra* Section II.C.3.a.

843 *See* General Instruction 8.B. to Form CRS. *See also supra* Section II.C.4. In addition, the most recent versions of firms' relationship summaries will be accessible through Investor.gov. *See supra* footnote 698 and accompanying text.

financial professionals, such as business cards, letterheads, social media profiles, and signature blocks would have included these required capacity disclosures. However, several commenters questioned whether the benefit provided by covering more communications justified the costs of implementing the requirements.[844] While commenters did not provide quantitative data that would demonstrate the cost impact on firms, certain commenters did describe the scope of the impact along with the operational challenges in implementing the rule.[845] One commenter stated that "the costs of such requirement would be significant" as firms would need to reprint all business cards to include this disclosure and make changes to firm technology and electronic communications to make the disclosure.[846] Additionally, another commenter stated that adding a voice overlay and on-screen text for video presentations would be difficult to implement, costly, and challenging to supervise.[847]

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844 *See*, *e.g.,* IRI Letter (stating that the costs to amend "tens of thousands of business cards to add the new required disclosure outweighs any intended benefit, particularly since the Form CRS already accomplishes the same objective…"); Committee of Annuity Insurers Letter (stating that the Affirmative Disclosure rules provide little benefit to investors and present operational challenges with respect to marketing materials created by product sponsors or issuers); LPL Financial Letter (noting that the benefits of these rules are outweighed by the "significant financial cost" to amend "numerous electronic and print marketing materials, business cards, and other retail customer communications.")

845 *See* IRI Letter (noting that a voice overlay and on-screen text may be difficult to implement and to effectively supervise. Additionally, firms will incur "significant costs and resources to monitor such presentations" for the required disclosures "even though that same client already received the Form CRS disclosure."); LPL Financial Letter. *See also* Bank of America Letter ("the [Affirmative Disclosure rules] will impose significant costs to implement since tens of thousands of business cards will need to be amended in order to add the new required disclosures.")

846 *See* SIFMA Letter (noting that "we do not believe the regulatory status disclosure would have an obvious benefit to investors. At the same time, the costs of such a requirement would be significant.")

847 *See* Bank of America Letter (stating further that "it would be virtually impossible to supervise whether [the required] disclosure was made in oral communications."); *see also* Altruist Letter (stating that including the disclosure in oral communications would be "awkward for a practitioner to implement."); Committee of Annuity Insurers Letter (stating that "it may not be feasible for a broker-dealer to include this information on marketing materials for investment products created and provided by a product sponsor.")

After considering the comments received and the obligations we are adopting under Regulation Best Interest and Form CRS, we have concluded that the policy concerns underlying the Affirmative Disclosures are addressed by the rulemaking package we are adopting, particularly the disclosure obligations in Regulation Best Interest and Form CRS, as discussed above.[848] We therefore believe that the costs of the Affirmative Disclosures do not justify any incremental benefit of requiring registration status on all communications and as a result, we are not adopting the Affirmative Disclosures.

IV. ECONOMIC ANALYSIS

A. Introduction

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation that will result from the new rules and amendments to existing rules. Whenever the Commission engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, section 3(f) of the Exchange Act requires the Commission to consider whether the action would promote efficiency, competition, and capital formation, in addition to the protection of investors.[849] Further, when making rules under the Exchange Act, section 23(a)(2) of the Exchange Act requires the Commission to consider the impact such rules would have on competition.[850] Section 23(a)(2) of the Exchange Act also prohibits the Commission from

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848 *See* Regulation Best Interest Release, *supra* footnote 47.

849 *See* 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

850 *See* 15 U.S.C. 78w(a)(2).

adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[851]

Section 202(c) of the Advisers Act requires the Commission, when engaging in rulemaking and required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors.[852] The Commission provides both a qualitative assessment of the potential effects and where feasible, quantitative estimates of the potential aggregate initial and aggregate ongoing costs. In some cases, however, quantification is not feasible due to lack of relevant data, or the difficulty of predicting how market participants would act under the conditions of the proposed rules. For example, to the extent that the relationship summary will increase retail investors' understanding of the services provided to them, investors are likely to respond differently to the increased understanding. Such responses could be transferring to a different financial firm or professional, hiring a financial professional for the first time, not taking any action, deciding to invest on their own without advice, or entirely abandoning the brokerage or investment advisory market while moving their assets to other products or markets (*e.g.*, bank deposits or insurance products). Given the number and complexity of assumptions that would be required to be able to estimate how the relationship summary will affect investors' understanding and their decision-making, the Commission is not able to estimate the propensity of investors to respond in one way or another.

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851 *Id.*

852 15 U.S.C. 80b-2(c).

In the economic analysis that follows, we first examine the current regulatory and economic landscape to form a baseline for our analysis. The economic effects of the adopted changes are discussed below.

B. Baseline

This section discusses, as it relates to this rulemaking, the current state of the broker-dealer and investment adviser markets, the current regulatory environment, and the current state of retail investor perceptions in the market.

1. Providers of Financial Services[853]

a. Broker-Dealers

This rule will affect registrants in the market for broker-dealer services, including dual registrants[854] and broker-dealers offering services to retail investors that are affiliated with an

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853 In addition to broker-dealers and Commission-registered investment advisers discussed below in the baseline, there are a number of other entities, such as state registered investment advisers, commercial banks and bank holding companies, and insurance companies, which also provide financial advice services to retail customers; however, because of unavailability of data, the Commission is unable to estimate the number of some of those other entities that are likely to provide financial advice to retail customers. A number of broker-dealers (*see infra* footnote 862) have non-securities businesses, such as insurance or tax services. As of December 2018, there are approximately 17,300 state-registered investment advisers. The Department of Labor in its Regulatory Impact Analysis identifies approximately 398 life insurance companies that could provide advice to retirement investors. *See* U.S. Department of Labor, *Regulating Advice Markets: Definition of the Term 'Fiduciary,' Conflicts of Interest, Retirement Investment Advice: Regulatory Impact Analysis for Final Rule and Exemptions* (Apr. 2016), *available at* https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB32-2/ria.pdf ("Regulatory Impact Analysis")

854 Not all firms that are dually registered as an investment adviser and a broker-dealer offer both brokerage and advisory accounts to retail investors. For example, some dually registered firms offer advisory accounts to retail investors but offer only brokerage services, such as underwriting services, to institutional clients. For the purposes of the relationship summary, we define a dual registrant as a firm that is dually registered as a broker-dealer and an investment adviser and offers services to retail investors as both a broker-dealer and investment adviser. General Instruction 11.C to Form CRS.

investment adviser.[855] The market for broker-dealer services encompasses a small set of large and medium sized broker-dealers and thousands of smaller broker-dealers competing for niche or regional segments of the market.[856] The market for broker-dealer services includes many different markets for a variety of services, including, but not limited to, managing orders for customers and routing them to various trading venues; providing advice to customers that is in connection with and reasonably related to their primary business of effecting securities transactions; holding retail customers' funds and securities; handling clearance and settlement of trades; intermediating between retail customers and carrying/clearing brokers; dealing in corporate debt and equities, government bonds, and municipal bonds, among others; privately placing securities; and effecting transactions in mutual funds that involve transferring funds directly to the issuer. Some broker-dealers may specialize in just one narrowly defined service, while others may provide a wide variety of services.

As of December 2018, there were approximately 3,764 registered broker-dealers with over 140 million customer accounts. In total, these broker-dealers have over $4.3 trillion in total

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855 Some broker-dealers may be affiliated with investment advisers but are not dually registered. From Question 10 on Form BD, 2,098 (55.7%) broker-dealers report that directly or indirectly, they control, are controlled by, or are under common control with an entity that is engaged in the securities or investment advisory business. Comparatively, 2,421 (18.2%) SEC-registered investment advisers report an affiliate that is a broker-dealer in Section 7A of Schedule D of Form ADV, including 1,878 SEC-registered investment advisers that report an affiliate that is a registered broker-dealer. Approximately 77% of total regulatory assets under management of investment advisers are managed by these 2,421 SEC-registered investment advisers.

856 *See* Risk Management Controls for Brokers or Dealers with Market Access, Securities Exchange Act Release No. 63241 (Nov. 3, 2010) [75 FR 69791 (Nov. 15, 2010)]. For simplification, we present our analysis as if the market for broker-dealer services encompasses one broad market with multiple segments, even though, in terms of competition, it could also be discussed in terms of numerous interrelated markets.

assets, which are total broker-dealer assets as reported on Form X-17a-5.[857] More than two-thirds of all brokerage assets and close to one-third of all customer accounts are held by the 17 largest broker-dealers, as shown in Table 1, Panel A.[858] Of the broker-dealers registered with the Commission as of December 2018, 359 broker-dealers are dually registered as investment advisers.[859] These firms hold over 90 million (63%) customer accounts. Approximately 539 broker-dealers (14%) report at least one type of non-securities business, including insurance, retirement planning, mergers and acquisitions, and real estate, among others.[860] Approximately 73.5% of registered broker-dealers report retail customer activity.[861]

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857 Assets are estimated by Total Assets (allowable and non-allowable) from Part II of the FOCUS filings (Form X-17A-5 Part II, *available at* https://www.sec.gov/files/formx-17a-5_2.pdf) and correspond to balance sheet total assets for the broker-dealer. The Commission does not have an estimate of the total amount of customer assets for broker-dealers. We estimate broker-dealer size from the total balance sheet assets as described above.

858 Approximately $4.27 trillion of total assets of broker-dealers (99%) are at firms with total assets in excess of $1 billion. Of the 39 dually registered broker-dealers with total assets in excess of $1 billion, total assets for these dually registered broker-dealers are $2.32 trillion (54%) of aggregate broker-dealer assets. Of the remaining 99 broker-dealers with total assets in excess of $1 billion that are not dually registered, 91 have affiliated investment advisers.

859 Because this number does not include the number of broker-dealers who are also registered as state investment advisers, the number undercounts the full number of broker-dealers that operate in both capacities.

860 We examined Form BD filings to identify broker-dealers reporting non-securities business. For the 539 broker-dealers reporting such business, staff analyzed the narrative descriptions of these businesses on Form BD, and identified the most common types of businesses: insurance (202), management/financial/other consulting (99), advisory/retirement planning (71), mergers and acquisitions (70), foreign exchange/swaps/other derivatives (28), real estate/property management (30), tax services (15), and other (146). Note that a broker-dealer may have more than one line of non-securities business.

861 The value of customer accounts is not available from FOCUS data for broker-dealers. Therefore, to obtain estimates of firm size for broker-dealers, we rely on the value of broker-dealers' total assets as obtained from FOCUS reports. Retail sales activity is identified from Form BR, which categorizes retail activity broadly (by marking the "sales" box) or narrowly (by marking the "retail" or "institutional" boxes as types of sales activity). We use the broad definition of sales as we preliminarily believe that many firms will just mark "sales" if they have both retail and institutional activity. However, this may capture some broker-dealers that do not have retail activity, although we are unable to estimate that frequency.

Panel B of Table 1 is limited to the broker-dealers that report some retail investor activity. As of December 2018, there are approximately 2,766 broker-dealers that served retail investors, with over $3.8 trillion in total assets (89% of total broker-dealer assets) and almost 139 million (97%) customer accounts.[862] Of those broker-dealers serving retail investors, 318 are dually registered as investment advisers.[863]

Table 1, Panel A: Registered Broker-Dealers as of December 2018

Cumulative Broker-Dealer Total Assets and Customer Accounts

Size of Broker-Dealer (Total Assets)	Total Num. of Broker-Dealers	Num. of Dually Registered Broker-Dealers	Cumulative Total Assets	Cumulative Number of Customer Accounts[864]
> $50 billion	17	10	$2,879 bil.	40,550,200
$1 billion to $50 billion	114	22	$1,363 bil.	96,037,591
$500 million to $1 billion	35	7	$23 bil.	397,814
$100 million to $500 million	105	19	$23 bil.	1,603,818

862 Total assets and customer accounts for broker-dealers that serve retail customers also include institutional accounts. Data available from Form BD and FOCUS data is not sufficiently granular to identify the percentage of retail and institutional accounts at firms.

863 Of the 31 dually registered firms in the group of retail broker-dealers with total assets in excess of $500 million, total assets for these dually registered firms are nearly $2.32 trillion (60%) of aggregate retail broker-dealer assets (Table 1, Panel B). Of the remaining 81 retail broker-dealers with total assets in excess of $500 million that are not dually registered, 69 have affiliated investment advisers.

864 Customer Accounts includes both broker-dealer and investment adviser accounts for dually-registered firms.

Size of Broker-Dealer (Total Assets)	Total Num. of Broker-Dealers	Num. of Dually Registered Broker-Dealers	Cumulative Total Assets	Cumulative Number of Customer Accounts[864]
$10 million to $100 million	490	101	$17 bil.	4,277,432
$1 million to $10 million	1021	130	$3.6 bil.	460,748
< $1 million	1982	70	$0.5 bil.	5,675
Total	3,764	359	$4,309 bil.	143,333,278

[865]

[866]

Table 1, Panel B: Registered Retail Broker-Dealers as of December 2018

Cumulative Broker-Dealer Total Assets and Customer Accounts

Size of Broker-Dealer (Total Assets)	Total Num. of Retail-Facing Broker-	Num. of Dually Registered Retail-Facing Broker-	Cumulative Total Assets	Cumulative Number of Customer

[865] The data is obtained from FOCUS filings as of December 2018. Note that there may be a double-counting of customer accounts among, in particular, the larger broker-dealers, as they may report introducing broker-dealer accounts as well accounts in their role as clearing broker-dealers.

[866] In addition to the approximately 143 million individual accounts at broker-dealers, there are approximately 302,000 omnibus accounts (0.2% of total accounts at broker-dealers), with total assets of $32.1 billion, across all 3,764 broker-dealers, of which approximately 99% are held at broker-dealers with greater than $1 billion in total assets. *See also infra* footnote 872. Omnibus accounts reported in FOCUS data are the accounts of non-carrying broker-dealers with carrying broker-dealers. These accounts may have securities of multiple customers (of the non-carrying firm), or securities that are proprietary assets of the non-carrying broker-dealer. We are unable to determine from the data available how many customer accounts non-carrying broker-dealers may have. The data does not allow the Commission to parse the total assets in those accounts to determine to whom such assets belong. Therefore, our estimate may be under inclusive of all customer accounts held at broker-dealers.

	Dealers	Dealers		Accounts
> $50 billion	16	8	$2,806 bil.	40,545,792
$1 billion to $50 billion	75	18	$990 bil.	91,991,118
$500 million to $1 billion	21	5	$13 bil.	365,632
$100 million to $500 million	84	16	$18 bil.	1,603,818
$10 million to $100 million	378	91	$14 bil.	3,762,620
$1 million to $10 million	783	120	$2.8 bil.	450,132
< $1 million	1409	60	$0.4 bil.	5,672
Total BDs[867]	2,766	318	$3,844 bil.	138,724,784

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Table 2 reports information on brokerage commissions,[869] fees, and selling concessions from the fourth quarter of 2018 for all broker-dealers, including dually-registered firms.[870] We observe significant variation in sources of revenues for broker-dealers, with large broker-dealers, on average, generating substantially higher levels of commission and fee revenues than smaller broker-dealers. On average, broker-dealers, including those that are dually registered as investment advisers, earn about $5.1 million per quarter in revenue from commissions and nearly

867 Total Broker-dealers includes all retail-facing broker-dealers, including those dual registrants that have both retail-facing broker-dealers and retail-facing investment advisers.

868 *See infra* footnote 1397 for how broker-dealers who engage in retail sales activity are identified. In addition to the 318 retail-facing dually registered broker-dealers, we estimate 30 broker-dealers that are registered as investment advisers but do not have a retail-facing investment advisory business.

869 Mark-ups or mark-downs are not included as part of the brokerage commission revenue in FOCUS data; instead, they are included in Net Gains or Losses on Principal Trades, but are not uniquely identified as a separate revenue category.

870 Source: FOCUS data.

four times that amount in fees, although the Commission notes that fees encompass a variety of fees.[871] The level of revenues earned from broker-dealers for commissions and fees increases with broker-dealer size, but also tends to be more heavily weighted toward commissions for broker-dealers with less than $10 million in assets and is weighted more heavily toward fees for broker-dealers with assets in excess of $10 million. For example, for the 114 broker-dealers with assets between $1 billion and $50 billion, average revenues from commissions are approximately $45 million, while average revenues from fees are approximately $225 million.[872]

In addition to revenue generated from commissions and fees, broker-dealers may also receive revenues from other sources, including margin interest, underwriting, research services, and third-party selling concessions, such as from sales of investment company ("IC") shares. As shown in Table 2, Panel A, these selling concessions are generally a smaller fraction of broker-dealer revenues than either commissions or fees, except for broker-dealers with total assets between $10 million and $100 million. For these broker-dealers, revenue from third-party selling

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871 Fees, as detailed in the FOCUS data, include fees for account supervision, investment advisory services, and administrative services. Beyond the broad classifications of fee types included in fee revenue, we are unable to determine whether fees such as 12b-1 fees, sub-accounting, or other such service fees (*e.g.*, payments by an investment company for personal services and/or maintenance of shareholder accounts) are included. The data covers both broker-dealers and dually registered firms. FINRA's Supplemental Statement of Income, Line 13975 (Account Supervision and Investment Advisory Services) denotes that fees earned for account supervision are those fees charged by the firm for providing investment advisory services where there is no fee charged for trade execution. Investment Advisory Services generally encompass investment advisory work and execution of client transactions, such as wrap arrangements. These fees also include fees charged by broker-dealers that are also registered with the Commodity Futures Trading Commission ("CFTC"), but do not include fees earned from affiliated entities (Item A of question 9 under Revenue in the Supplemental Statement of Income).

872 A rough estimate of total fees in this size category would be 114 broker-dealers with assets between $1 billion and $50 billion multiplied by the average fee revenue of $225 million, or $25.65 billion in total fees. Divided by the number of customer accounts, not all of which may pay fees, in this size category (96,037,591), each account would be charged on average approximately $267 in fees per quarter, or $1,068 per year.

concessions is the largest category of revenues and constitutes approximately 42% of total revenues earned by these firms.

Table 2, Panel B below provides aggregate revenues by revenue type (commissions, fees, or selling concessions from sales of IC shares) for broker-dealers delineated by whether the broker-dealer is also a dually-registered firm. Broker-dealers dually registered as investment advisers have a significantly larger fraction of their revenues from fees other than commissions or selling concessions, whereas commissions are approximately 42% of the revenues of broker-dealers that are not dually registered.

Table 2, Panel A: Average Broker-Dealer Revenues from Revenue Generating Activities

Size of Broker-Dealer in Total Assets	Number of Broker-Dealers	Commissions	Fees[873]	Sales of IC Shares
> $50 billion	17	$170,336,258	$414,300,268	$23,386,192
$1 billion - $50 billion	114	$45,203,225	$225,063,257	$53,671,602
$500 million - $1 billion	35	$8,768,547	$30,141,270	$5,481,248
$100 million - $500 million	105	$12,801,889	$33,726,336	$16,610,013
$10 million - $100 million	490	$3,428,843	$8,950,892	$9,092,971

873 Fees, as detailed in the FOCUS data, include fees for account supervision, investment advisory services, and administrative services. The data covers both broker-dealers and dually registered firms.

$1 million - $10 million	1,021	$996,130	$1,037,825	$652,905
< $1 million	1,982	$197,907	$269,459	$85,219
Average of All Broker-Dealers	3,764	$5,092,808	$21,948,551	$4,368,823

[874]

Table 2, Panel B: Aggregate Total Revenues from Revenue Generating Activities for Broker-Dealers based on Dually-Registered Status

Broker-Dealer Type	Number of Broker-Dealers	Commissions	Fees[875]	Sales of IC Shares
Dually Registered as IAs	359	$4.52 bil.	$17.54 bil.	$2.63 bil.
Broker-Dealers	3,405	$4.16 bil.	$3.25 bil.	$2.57 bil.
All	3,764	$8.68 bil.	$20.79 bil.	$5.20 bil.

As shown in Table 3, based on responses to Form BD, broker-dealers most commonly provided business lines include private placements of securities (62.7% of broker-dealers); retail sales of mutual funds (55.4%); acting as a broker or dealer retailing corporate equity securities over the counter (52.0%); acting as a broker or dealer retailing corporate debt securities (47.2%); acting as a broker or dealer selling variable contracts, such as life insurance or annuities (41.0%); acting as a broker of municipal debt/bonds or U.S. government securities (39.8% and 37.4%,

874 The data is obtained from December 2018 FOCUS reports and averaged across size groups.

875 *See id*.

respectively); acting as an underwriter or selling group participant of corporate securities (31.2%); and investment advisory services (26.4%); among others.[876]

Table 3: Lines of Business at Retail Broker-Dealers as of December 2018

	Total	
Line of Business	**Number of Broker-Dealers**	**Percent of Broker-Dealers**
Private Placements of Securities	1,735	62.7%
Mutual Fund Retailer	1,533	55.4%
Broker or Dealer Retailing:		
Corporate Equity Securities OTC	1,438	52.0%
Corporate Debt Securities	1,306	47.2%
Variable Contracts	1,132	40.9%
Municipal Debt/Bonds – Broker	1,101	39.8%
U.S. Government Securities Broker	1,035	37.4%
Put and Call Broker or Dealer or Options Writer	993	35.9%
Underwriter or Selling Group Participant - Corporate Securities	862	31.2%
Non-Exchange Member Arranging for Transactions in Listed Securities by Exchange Member	785	28.4%
Investment Advisory Services	730	26.4%

[876] Form BD requires applicants to identify the types of business engaged in (or to be engaged in) that accounts for 1% or more of the applicant's annual revenue from the securities or investment advisory business. Table 3 provides an overview of the types of businesses listed on Form BD, as well as the frequency of participation in those businesses by registered broker-dealers as of December 2018.

Broker or Dealer Selling Tax Shelters or Limited Partnerships – Primary Market	619	22.4%
Trading Securities for Own Account	614	22.2%
Municipal Debt/Bonds – Dealer	475	17.2%
U.S. Government Securities – Dealer	339	12.3%
Solicitor of Time Deposits in a Financial Institution	308	11.1%
Underwriter - Mutual Funds	237	8.6%
Broker or Dealer Selling Interests in Mortgages or Other Receivables	216	7.8%
Broker or Dealer Selling Oil and Gas Interests	207	7.5%
Broker or Dealer Making Inter-Dealer Markets in Corporate Securities OTC	207	7.5%
Broker or Dealer Involved in Networking, Kiosk, or Similar Arrangements (Banks, Savings Banks, Credit Unions)	197	7.1%
Internet and Online Trading Accounts	192	6.9%
Exchange Member Engaged in Exchange Commission Business Other than Floor Activities	171	6.2%
Broker or Dealer Selling Tax Shelters or Limited Partnerships – Secondary Market	164	5.9%
Commodities	162	5.9%
Executing Broker	107	3.9%
Day Trading Accounts	89	3.2%
Broker or Dealer Involved in Networking, Kiosk, or Similar Arrangements (Insurance Company or Agency)	88	3.2%
Real Estate Syndicator	94	3.4%
Broker or Dealer Selling Securities of Non-Profit Organizations	71	26%
Exchange Member Engaged in Floor Activities	61	2.2%
Broker or Dealer Selling Securities of Only One Issuer or Associate Issuers	43	1.6%
Prime Broker	21	0.8%

Crowdfunding FINRA Rule 4518(a)	21	0.8%
Clearing Broker in a Prime Broker	14	0.5%
Funding Portal	8	0.3%
Crowdfunding FINRA Rule 4518(b)	5	0.2%
Number of Retail-Facing Broker-Dealers	2,766	

(1) Disclosures for Broker-Dealers

As discussed above, broker-dealers register with and report information, including about their business, affiliates, and disciplinary history, to the Commission, Self-Regulatory Organizations ("SROs"), and other jurisdictions through Form BD.[877] Form BD requires information about the background of the applicant, its principals, controlling persons, and employees, as well as information about the type of business the broker-dealer proposes to engage in and all control affiliates engaged in the securities or investment advisory business.[878] Broker-dealers report whether a broker-dealer or any of its control affiliates have been subject to criminal prosecutions, regulatory actions, or civil actions in connection with any investment-related activity, as well as certain financial matters.[879] Once a broker-dealer is registered, it must keep its Form BD current by amending it promptly when the information is or becomes

877 *See* Proposing Release, *supra* footnote 5, at Section IV.A.1.i.; *see also generally* Form BD.

878 *See generally* Form BD.

879 *See* Item 11 and Disclosure Reporting Pages of Form BD.

inaccurate for any reason.[880] In addition, firms report similar information and additional information to FINRA pursuant to FINRA Rule 4530.[881]

A significant amount of information concerning broker-dealers and their associated natural persons, including information from Form BD, Form BDW, and Forms U4, U5, and U6, is publicly available through FINRA's BrokerCheck system.[882] This information includes violations of and claims of violations of the securities and other financial laws by broker-dealers and their financial professionals; criminal or civil litigation, regulatory actions, arbitration, or customer complaints against broker-dealers and their financial professionals; and the employment history and licensing information of financial professionals associated with broker-dealers, among other things.[883]

Broker-dealers are subject to other disclosure obligations under the federal securities laws and SRO rules. For instance, under existing antifraud provisions of the Exchange Act, a broker-dealer has a duty to disclose material information to its customers conditional on the scope of the relationship with the customer.[884] Disclosure has also been a feature of other regulatory efforts related to financial services, including certain FINRA rules.[885]

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880 *See* Exchange Act rule 15b3-1(a).

881 *See* Proposing Release, *supra* footnote 5, at Section II.B.7. Pursuant to FINRA Rule 4530, broker-dealers are required to disclose certain information to FINRA that is not reported on Form BD (*e.g.*, customer complaints and arbitrations).

882 FINRA Rule 8312 governs the information FINRA releases to the public via BrokerCheck. *See* Proposing Release, *supra* footnote 5, at n.280.

883 *See* Proposing Release, *supra* footnote 5, at Section II.B.7.

884 A broker-dealer also may be liable if it does not disclose "material adverse facts of which it is aware." *See, e.g.*, *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167, 1172 (1970); *SEC v. Hasho*, 784 F. Supp. 1059, 1110

b. Investment Advisers

As discussed above, SEC-registered investment advisers that offer services to retail investors will be subject to the final rule. In addition, although not required to comply with the final rule, state-registered investment advisers will also be affected, because the final rule will impact the competitive landscape in the market for the provision of financial advice.[886] This section first discusses SEC-registered investment advisers, followed by a discussion of state-registered investment advisers.

As of December 2018, there are approximately 13,300 investment advisers registered with the Commission. The majority of SEC-registered investment advisers report that they provide portfolio management services for individuals and small businesses.[887]

(S.D.N.Y. 1992); In the Matter of RichMark Capital Corp., Exchange Act Release No. 48758 (Nov. 7, 2003) ("When a securities dealer recommends stock to a customer, it is not only obligated to avoid affirmative misstatements, but also must disclose material adverse facts of which it is aware. That includes disclosure of "adverse interests" such as "economic self-interest" that could have influenced its recommendation.") (citations omitted).

885 *See* FINRA Requests Comment on Concept Proposal to Require a Disclosure Statement for Retail Investors at or Before Commencing a Business Relationship, FINRA Regulatory Notice 10-54 (Oct. 2010). Generally, all registered broker-dealers that deal with the public must become members of FINRA, a registered national securities association, and may choose to become exchange members. *See* section 15(b)(8) of the Exchange Act and Exchange Act rule 15b9-1. FINRA is the sole national securities association registered with the SEC under section 15A of the Exchange Act. Accordingly, for purposes of discussing a broker-dealer's regulatory requirements when providing advice, we focus on FINRA's regulation, examination, and enforcement with respect to member broker-dealers. FINRA disclosure rules include, but are not limited to, FINRA Rules 2210(d)(2) (communications with the public), 2260 (disclosures), 2230 (customer account statements and confirmations), and 2270 (day-trading risk disclosure statement).

886 In addition to SEC-registered investment advisers, which are the focus of this section, this rule could also affect banks, trust companies, insurance companies, and other providers of financial advice.

887 Of the approximately 13,300 SEC-registered investment advisers, 8,410 (63.24%) report in Item 5.G.(2) of Form ADV that they provide portfolio management services for individuals and/or small businesses. In addition, there are approximately 17,300 state-registered investment advisers, of which 125 are also

Of all SEC-registered investment advisers, 359 identify themselves as dually registered broker-dealers.[888] Further, 2,421 investment advisers (18%) report an affiliate that is a broker-dealer, including 1,878 investment advisers (14%) that report an SEC-registered broker-dealer affiliate.[889] As shown in Panel A of Table 4 below, in aggregate, investment advisers have over $84 trillion in assets under management ("AUM"). A substantial percentage of AUM at investment advisers is held by institutional clients, such as investment companies, pooled investment vehicles, and pension or profit sharing plans; therefore, the total number of accounts for investment advisers is only 29% of the number of customer accounts for broker-dealers.

Based on staff analysis of Form ADV data as of December 2018, approximately 62% of registered investment advisers (8,235) have some portion of their business dedicated to retail investors, including both high net worth and non-high net worth individual clients,[890] as shown in Panel B of Table 4.[891] In total, these firms have approximately $41.4 trillion of assets under management.[892] Approximately 8,200 registered investment advisers (61%) serve over 32

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registered with the Commission. Approximately 13,900 state-registered investment advisers are retail facing (*see* Item 5.D. of Form ADV).

888 *See supra* footnote 861 and accompanying text.

889 Item 7.A.1. of Form ADV.

890 Data on individual clients obtained from Form ADV may not necessarily correspond to data on "retail customers" as defined in this rule because the data in Form ADV regarding individual clients does not involve any test of use for personal, family, or household purposes.

891 We use the responses to Items 5.D.(a)(1), 5.D.(a)(3), 5.D.(b)(1), and 5.D.(b)(3) of Part 1A of Form ADV. If at least one of these responses was filled out as greater than 0, the firm is considered as providing business to retail investors. Part 1A of Form ADV.

892 The aggregate AUM reported for these investment advisers that have retail investors includes both retail AUM as well as any institutional AUM also held at these advisers.

million non-high net worth individual clients and have approximately $4.8 trillion in assets under management, while approximately 8,000 registered investment advisers (60%) serve approximately 4.8 million high net worth individual clients with $6.15 trillion in assets under management.[893]

Table 4, Panel A: Registered Investment Advisers (RIAs) as of December 2018

Cumulative RIA Assets under Management (AUM) and Accounts

Size of Investment Adviser (AUM)	Number of RIAs	Number of Dually Registered RIAs	Cumulative AUM	Cumulative Number of Accounts
> $50 billion	270	15	$59,264 bil.	20,655,756
$1 billion to $50 billion	3,453	121	$22,749 bil.	13,304,154
$500 million to $1 billion	1,635	47	$1,151 bil.	1,413,099
$100 million to $500 million	5,927	119	$1,397 bil.	5,135,070
$10 million to $100 million	1,070	24	$59 bil.	310,031
$1 million to $10 million	162	3	$0.8 bil.	69,664
< $1 million	782	30	$0.02 bil.	13,976
Total	13,299	359	$84,621 bil.	41,081,750

[893] Estimates are based on IARD system data as of December 31, 2018. The AUM reported here is specifically that of those non-high net worth clients. Of the 8,235 investment advisers serving retail investors, 318 are also dually registered as broker-dealers.

Table 4, Panel B: Retail Registered Investment Advisers (RIAs) as of December 2018

Cumulative RIA Assets under Management (AUM) and Accounts

Size of Investment Adviser (AUM)	Num. of RIAs	Num. of Dually registered RIAs	Cumulative AUM	Cumulative Number of Accounts
> $50 billion	119	14	$30,291 bil.	20,592,326
$1 billion to $50 billion	1,614	111	$9,570 bil.	13,224,188
$500 million to $1 billion	1,007	44	$700 bil.	1,392,842
$100 million to $500 million	4,548	113	$1,026 bil.	5,287,584
$10 million to $100 million	706	23	$40 bil.	308,285
$1 million to $10 million	102	3	$0.5 bil.	69,534
< $1 million	169	10	$0.02 bil.	13,946
Total RIAs[894]	8,235	318	$41,434 bil.	40,887,325

In addition to SEC-registered investment advisers, other investment advisers are registered with state regulators.[895] As of December 2018, there are 17,268 state-registered

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894 Total RIAs (1) includes all retail-facing investment advisers, including those dual registrants that have retail-facing investment advisers and retail-facing broker-dealers.

895 Item 2.A. of Part 1A of Form ADV and the Advisers Act rules 203A-1 and 203A-2 require an investment adviser to register with the SEC if it: (i) is a large adviser that has $100 million or more of regulatory assets under management (or $90 million or more if an adviser is filing its most recent annual updating amendment and is already registered with the SEC); (ii) is a mid-sized adviser that does not meet the criteria for state registration or is not subject to examination; (iii) meets the requirements for one or more of the revised exemptive rules under section 203A; (iv) is an adviser (or subadviser) to a registered investment company; (v) is an adviser to a business development company and has at least $25 million of regulatory assets under management; or (vi) receives an order permitting the adviser to register with the

investment advisers,[896] of which 125 are also registered with the Commission. Of the state-registered investment advisers, 204 are dually registered as broker-dealers, while approximately 4.6% (786) report a broker-dealer affiliate. In aggregate, state-registered investment advisers have approximately $334 billion in AUM. Eighty-two percent of state-registered investment advisers report that they provide portfolio management services for individuals and small businesses, compared to just 63% for Commission-registered investment advisers.

Approximately 81% of state-registered investment advisers (13,927) have some portion of their business dedicated to retail investors,[897] and in aggregate, these firms have approximately $324 billion in AUM.[898] Approximately 13,910 (81%) state-registered advisers serve 14 million non-high net worth retail clients and have approximately $137 billion in AUM, while 11,497 (67%) state-registered advisers serve approximately 170,000 high net worth retail clients with approximately $169 billion in AUM.[899]

Commission. Although the statutory threshold is $100 million, the SEC raised the threshold to $110 million to provide a buffer for mid-sized advisers with assets under management close to $100 million to determine whether and when to switch between state and Commission registration. Advisers Act rule 203A-1(a).

[896] There are 70 investment advisers with latest reported regulatory assets under management in excess of $110 million but that are not listed as registered with the SEC. None of these 70 investment advisers has exempted status with the Commission. For the purposes of this rulemaking, these are considered potentially erroneous submissions

[897] We use the responses to Items 5.D.(a)(1), 5.D.(a)(3), 5.D.(b)(1), and 5.D.(b)(3) of Part 1A. If at least one of these responses was filled out as greater than 0, the firm is considered as providing business to retail investors. Part 1A of Form ADV.

[898] The aggregate AUM reported for these investment advisers that have retail investors includes both retail AUM as well as any institutional AUM also held at these advisers.

[899] Estimates are based on IARD system data as of February 10, 2018. The AUM reported here is specifically that of those non-high net worth investors. Of the 13,927 state-registered investment advisers serving retail investors, 134 may also be dually registered as broker-dealers.

Table 5 details the compensation structures employed by approximately 13,000 SEC-registered investment advisers. Approximately 96% are compensated through a fee-based arrangement, where a percentage of assets under management are remitted to the investment adviser from the investor for advisory services. As shown in the table below, most investment advisers rely on a combination of different compensation types, in addition to fee-based compensation, including fixed fees, hourly charges, and performance based fees. Less than 4% of investment advisers charge commissions[900] to their investors.

Table 5: Registered Investment Advisers Compensation by Type

Compensation Type	Yes	No
A Percentage of Assets Under Management	12,678	614
Hourly Charges	3,914	9,378
Subscription Fees (For a Newsletter or Periodical)	122	13,170
Fixed Fees (Other Than Subscription Fees)	5,800	7,492
Commissions	454	12,838
Performance-Based Fees	4,938	8,354
Other	1,899	11,393

[900] Some investment advisers report on Item 5.E. of Form ADV that they receive "commissions." As a form of deferred sales load, all payments of ongoing sales charges to intermediaries would constitute transaction-related compensation. Intermediaries receiving those payments should consider whether they need to register as broker-dealers under section 15 of the Exchange Act.

As discussed above, many investment advisers participate in wrap fee programs. As of December 31, 2018, more than 8.5% of the SEC-registered investment advisers sponsor a wrap fee program and more than 13.1% act as a portfolio manager for one or more wrap fee programs.[901] From the data available, we are unable to determine how many advisers provide advice about investing in wrap fee programs, because advisers providing such advice may be neither sponsors nor portfolio managers.

(1) Disclosures for Investment Advisers

As discussed more fully in the Fiduciary Release, investment advisers have a duty to provide full and fair disclosure of all material facts about the advisory relationship to their clients as well as to obtain informed consent from their clients. [902] SEC- and state-registered investment advisers are also subject to express disclosure requirements in Form ADV. Consistent with this duty and those requirements, investment advisers file Form ADV to register with the Commission or state securities authorities, as applicable, and provide an annual update to the form.[903] Part 1 of Form ADV provides information to regulators about the registrants' ownership, investors, and business, and it is made available to clients, prospective clients, and the public. Advisers also prepare a Form ADV Part 2A narrative brochure that contains information about

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901 A wrap fee program sponsor is as a firm that sponsors, organizes, or administers the program or selects, or provides advice to clients regarding the selection of, other investment advisers in the program. *See* General Instructions to Form ADV.

902 *See* Fiduciary Release *supra* footnote 47.

903 *See* Advisers Act rules 203-1 and 204-1. Part 1 of Form ADV is the registration application for the Commission (and state securities authorities). Part 2 of Form ADV consists of a narrative "brochure" about the adviser and "brochure supplements" about certain advisory personnel on whom clients may rely for investment advice. *See* Brochure Adopting Release, *supra* footnote 576.

the investment adviser's business practices, fees, conflicts of interest, and disciplinary information,[904] in addition to a Part 2B brochure supplement that includes information about the specific individuals, acting on behalf of the investment adviser, who actually provide investment advice and interact with the client.[905] The Part 2A brochure is the primary client-facing disclosure document,[906] however, Parts 1 and 2A are both made publicly available by the Commission through IAPD,[907] and advisers are generally required to deliver Part 2A and Part 2B to their clients.

c. Trends in the Relative Numbers of Providers of Financial Services

Over time, the relative number of broker-dealers and investment advisers has changed. Figure 1 presented below shows the time series trend of growth in broker-dealers and SEC-registered investment advisers between 2005 and 2018. Over the last 14 years, the number of broker-dealers has declined from over 6,000 in 2005 to less than 4,000 in 2018, while the

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904 Part 2A of Form ADV contains 18 mandatory disclosure items about the advisory firm, including information about an adviser's: (i) range of fees; (ii) methods of analysis; (iii) investment strategies and risk of loss; (iv) brokerage, including trade aggregation polices and directed brokerage practices, as well as the use of soft dollars; (v) review of accounts; (vi) client referrals and other compensation; (vii) disciplinary history; and (viii) financial information, among other things. Much of the disclosure in Part 2A addresses an investment adviser's conflicts of interest with its investors, and is disclosure that the adviser, as a fiduciary, must make to investors in some manner regardless of the form requirements. *See* Brochure Adopting Release, *supra* footnote 576.

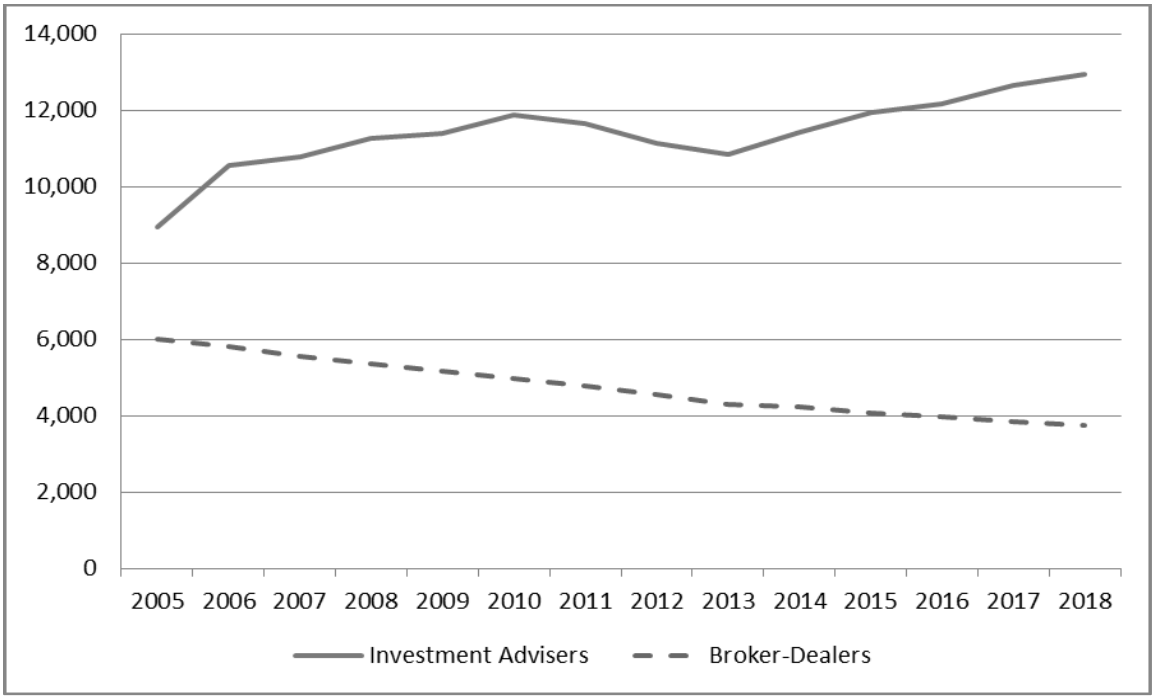
905 Part 2B, or the "brochure supplement," includes information about certain advisory personnel that provide retail client investment advice, and contains educational background, disciplinary history, and the adviser's supervision of the advisory activities of its personnel. *See* General Instruction 5 to Form ADV. Registrants are not required to file Part 2B (brochure supplement) electronically, but must preserve a copy of the supplement(s) and make the copy available upon request.

906 *See* Brochure Adopting Release, *supra* footnote 576.

907 *See* Investment Adviser Public Disclosure, *available at* https://adviserinfo.sec.gov/.

number of investment advisers has increased from approximately 9,000 in 2005 to over 13,000 in 2018. This change in the relative numbers of broker-dealers and investment advisers over time likely affects the competition for advice, and potentially alters the choices available to retail investors regarding how to receive or pay for such advice, the nature of the advice, and the attendant conflicts of interest.

Figure 1: Time Series of the Number of SEC-Registered Investment Advisers and Broker-Dealers (2005–2018)



An increase in the number of investment advisers and a decrease in the number of broker-dealers could have occurred for a number of reasons, including anticipation of possible regulatory changes to the industry, other regulatory restrictions,[908] technological innovation (*i.e.*,

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908 *See* Hester Peirce, *Dwindling Numbers in the Financial Industry*, Brookings Center on Markets and Regulation Report (May 15, 2017), at 5, *available at* https://www.brookings.edu/research/dwindling-

robo-advisers and online trading platforms), product proliferation (*e.g.*, index mutual funds and exchange-traded products), and industry consolidation driven by economic and market conditions, particularly among broker-dealers. Commission staff has observed the transition by broker-dealers from traditional brokerage services to also providing investment advisory services (often under an investment adviser registration, whether federal or state), and many firms have been more focused on offering fee-based accounts that provide a steady source of revenue rather than accounts that charge commissions and are dependent on transactions.[909] Broker-dealers have indicated that the following factors have contributed to this migration: provision of revenue stability or increase in profitability,[910] perceived lower regulatory burden, and provisions of more services to retail customers.[911]

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numbers-in-the-financial-industry ("Brookings Report") which notes that "SEC restrictions have increased by almost thirty percent [since 2000]," and that regulations post-2010 were driven in large part by the Dodd-Frank Act. Further, the Brookings Report observation of increased regulatory restrictions on broker-dealers only reflects CFTC or SEC regulatory actions, but does not include regulation by FINRA, SROs, National Futures Association, or the MSRB.

[909] *See id.* at 7. Beyond Commission observations, the Brookings Report also discusses the shift from broker-dealer to investment advisory business models for retail investors. Declining transaction-based revenue due to declining commission rates and competition from discount brokerage firms has made fee-based products and services more attractive to providers of such products and services. Although discount brokerage firms generally provide execution-only services and do not compete directly in the advice market with full service broker-dealers and investment advisers, entry by discount brokers has contributed to lower commission rates throughout the broker-dealer industry. Further, fee-based activity generates a steady stream of revenue regardless of the customer trading activity, unlike commission-based accounts; *see also* Angela A. Hung, *et al.*, *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers,* RAND Institute for Civil Justice Technical Report (2008), *available at* https://www.rand.org/content/dam/rand/pubs/technical_reports/2008/RAND_TR556.pdf ("RAND 2008"), which discusses a shift from transaction-based to fee-based brokerage accounts prior to recent regulatory changes.

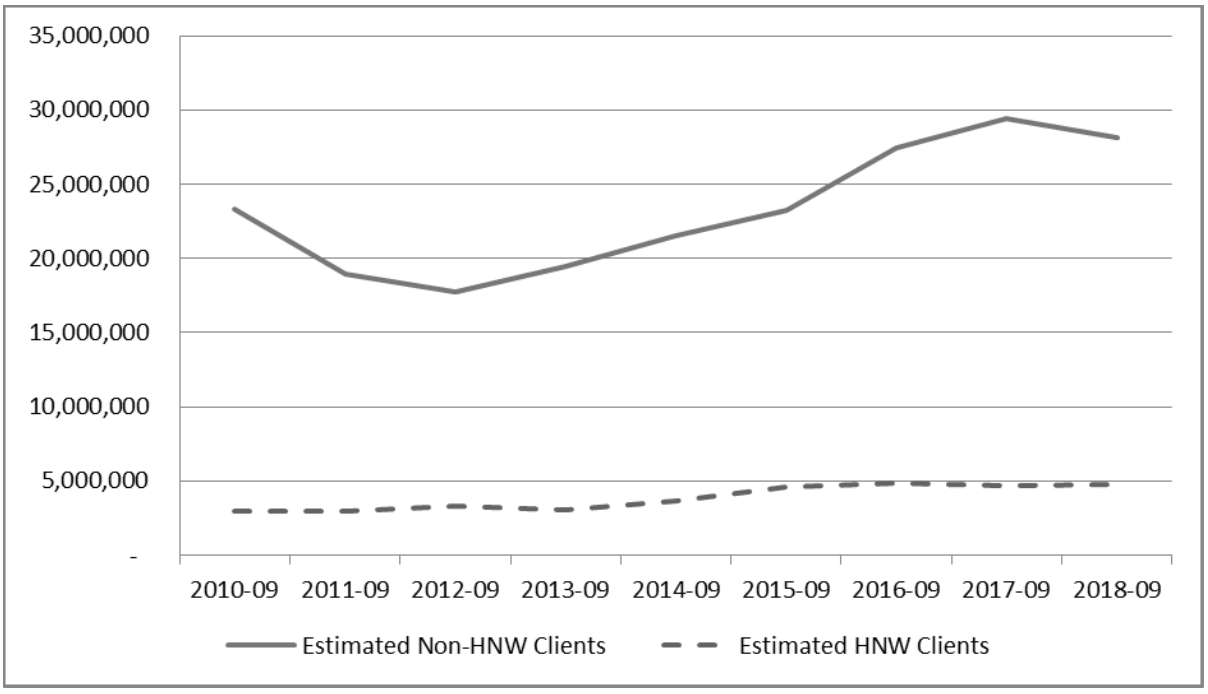
[910] Commission staff examined a sample of recent Form 10-K or Form 10-Q filings of large broker-dealers, many of which are dually registered as investment advisers, that have a large fraction of retail customer accounts to identify relevant broker-dealers. *See, e.g.*, The Jones Financial Companies, L.L.L.P., Form 10-K (Mar. 14, 2019), *available at* https://www.sec.gov/Archives/edgar/data/815917/000156459019007788/ck0000815917-

Further, there has been a substantial increase in the number of retail clients of investment advisers, both high net worth clients and non-high net worth clients as shown in Figure 2. Although the number of non-high net worth retail customers of investment advisers dipped between 2010 and 2012, since 2012, more than 12 million new non-high net worth retail clients have been added. With respect to assets under management, we observe a similar, albeit more pronounced pattern for non-high net worth retail clients as shown in Figure 3. For high net worth retail clients, there has been a pronounced increase in AUM since 2012, although AUM has leveled off since 2015.

Figure 2: Time Series of the Number of Retail Clients of Investment Advisers (2010 – 2018)

10k_20181231.htm; Raymond James Financial, Inc., Form 10-K (Nov. 21, 2018), *available at* https://www.sec.gov/Archives/edgar/data/720005/000072000518000083/rjf-20180930x10k.htm; Stifle Financial Corp., Form 10-K (Feb. 20, 2019), *available at* https://www.sec.gov/Archives/edgar/data/720672/000156459019003474/sf-10k_20181231.htm; Wells Fargo & Co., 10-K (Feb. 27, 2019) *available at* https://www.sec.gov/Archives/edgar/data/72971/000007297119000227/wfc-12312018x10k.htm; and Ameriprise Financial Inc., Form 10-K (Feb. 23, 2018), *available at* https://www.sec.gov/Archives/edgar/data/820027/000082002718000008/amp12312017.htm. Discussions in Form 10-K and 10-Q filings of this sample of broker-dealers here may not be representative of other large broker-dealers or of small to mid-size broker-dealers. Some firms have reported record profits as a result of moving clients into fee-based accounts, and cite that it provides "stability and high returns." *See* Hugh Son*, Morgan Stanley Wealth Management fees climb to all-time high*, Bloomberg (Jan. 18, 2018), *available at* https://www.bloomberg.com/news/articles/2018-01-18/morgan-stanley-wealth-management-fees-hit-record-on-stock-rally. Morgan Stanley increased the percentage of client assets in fee-based accounts from 37% in 2013 to 44% in 2017, while decreasing the dependence on transaction-based revenues from 30% to 19% over the same time period (Morgan Stanley, *Strategic Update* (Jan. 18, 2018), *available at* https://www.morganstanley.com/about-us-ir/shareholder/4q2017-strategic-update.pdf); *see also* Lisa Beilfuss & Brian Hershberg, *WSJ Wealth Adviser Briefing: The Reinvention of Morgan and Merrill, Adviser Profile*, The Wall Street Journal (Jan. 25, 2018), *available at* https://blogs.wsj.com/moneybeat/2018/01/25/wsj-wealth-adviser-briefing-the-reinvention-of-morgan-and-merrill-adviser-profile/.

911 *See* Regulation Best Interest Release, *supra* footnote 47, at Section III.B.2.e.ii, which discusses industry trends.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2012-09
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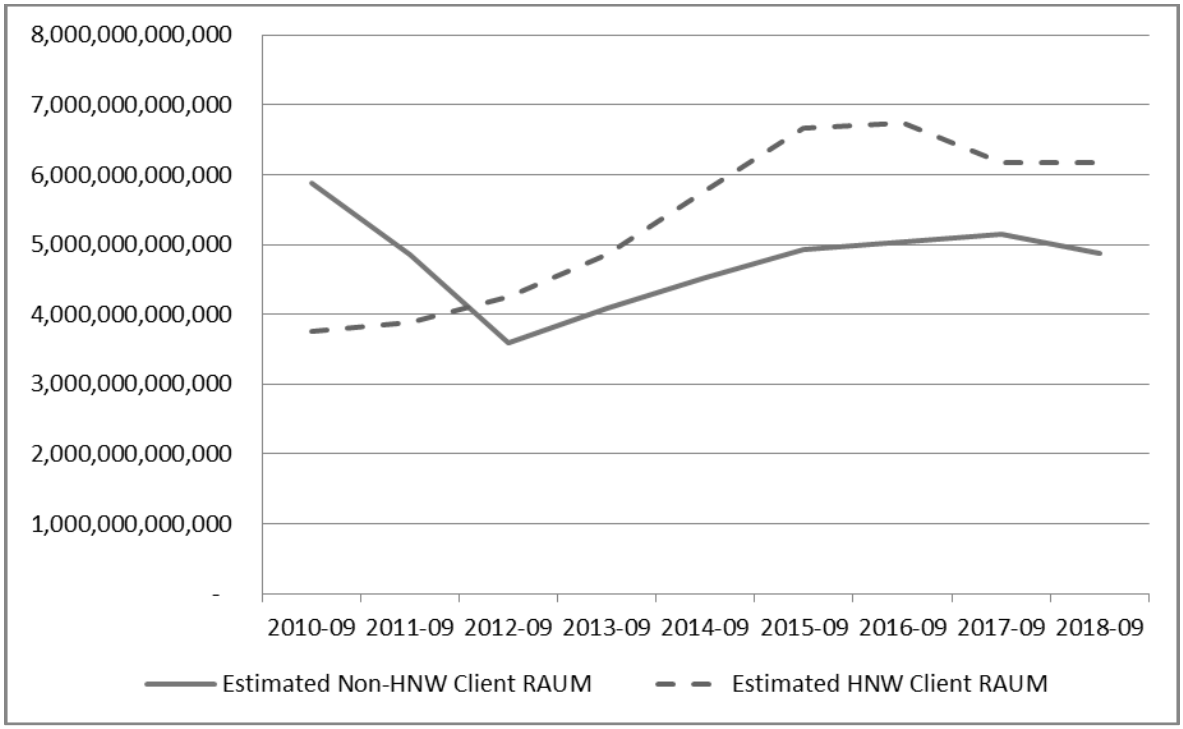
2014-09
2015-09
2016-09
2017-09
2018-09
Estimated Non-HNW Clients
Estimated HNW Clients

Figure 3: Time Series of the Retail Clients of

Investment Advisers Assets under Management (2010 – 2018)



d. Registered Representatives of Broker-Dealers, Investment Advisers and Dually Registered Firms

We estimate the number of associated natural persons of broker-dealers through data obtained from Form U4, which generally is filed for individuals who are engaged in the securities or investment banking business of a broker-dealer that is a member of a SRO ("registered representatives").[912] Similarly, we approximate the number of supervised persons of

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912 The number of associated natural persons of broker-dealers may be different from the number of registered representatives of broker-dealers because clerical/ministerial employees of broker-dealers are associated persons but are not required to register with the firm. Therefore, the registered representative number does not include such persons. However, we do not have data on the number of associated natural persons and

registered investment advisers through the number of registered investment adviser representatives (or "registered IAR"s), who are supervised persons of investment advisers who meet the definition of investment adviser representatives in Advisers Act rule 203A-3 and are registered with one or more state securities authorities to solicit or communicate with clients.[913]

We estimate the number of registered representatives and registered IARs, including dually registered financial professionals, (together "registered financial professionals") at broker-dealers, investment advisers, and dual registrants by considering only the employees of those firms that have Series 6 or Series 7 licenses or are registered with a state as a broker-dealer agent or investment adviser representative.[914] We only consider employees at firms who have retail-facing business, as defined previously.[915] We observe in Table 6 that approximately 60% of registered financial professionals are employed by dually registered entities. The percentage

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therefore are not able to provide an estimate of the number of associated natural persons. We believe that the number of registered representatives is an appropriate approximation because they are the individuals at broker-dealers that provide advice and services to customers.

913 *See* 17 CFR §275.203A-3. However, the data on numbers of registered IARs may undercount the number of supervised persons of investment advisers who provide investment advice to retail investors because not all supervised persons who provide investment advice to retail investors are required to register as IARs. For example, Commission rules exempt from IAR registration supervised persons who provide advice only to non-individual clients or to individuals that meet the definition of "qualified client." In addition, state securities authorities may impose different criteria for requiring registration as an investment adviser representative.

914 We calculate these numbers based on Form U4 filings. Representatives of broker-dealers, investment advisers, and issuers of securities must file this form when applying to become registered in appropriate jurisdictions and with SROs. Firms and representatives have an obligation to amend and update information as changes occur. Using the examination information contained in the form, we consider an employee a financial professional if he has an approved, pending, or temporary registration status for either Series 6 or 7 (RR) or is registered as an investment adviser representative in any state or U.S. territory (IAR). We limit the firms to only those that do business with retail investors, and only to licenses specifically required for an RR or IAR.

915 *See supra* footnotes 864 and 893.

varies by the size of the firm. For example, in firms with total assets between $1 billion and $50 billion, 67% of all registered financial professionals are employed by dually registered firms. Focusing on dually registered firms only, approximately 62.7% of total licensed representatives at these firms are dually registered financial professionals, approximately 36.9% are only registered representatives; and less than one percent are only registered investment adviser representatives.

Table 6: Total Registered Representatives at Broker-Dealers, Investment Advisers, and Dually Registered Firms with Retail Investors

Size of Firm (Total Assets for Standalone BDs and Dually Registered Firms; AUM for Standalone IAs)	Total Number of Reps	% of Reps in Dually Registered Firms	% of Reps in Standalone BD w/ an IA Affiliate	% of Reps in Standalone BD w/o an IA Affiliate	% of Reps in Standalone IA w/ a BD Affiliate	% Reps in Standalone IA w/o a BD Affiliate
>$50 billion	84,461	73%	7%	0%	19%	1%
$1 billion to $50 billion	170,256	67%	11%	0%	15%	7%
$500 million to $1 billion	29,874	71%	5%	1%	7%	16%
$100 million to $500 million	66,924	51%	27%	0%	4%	18%
$10 million to $100 million	106,178	55%	42%	1%	1%	1%
$1 million to $10 million	33,790	35%	54%	11%	0%	0%
< $1 million	12,522	8%	52%	36%	3%	1%

Total Licensed Representatives	504,005	60%	23%	2%	9%	6%

[916]

In Table 7 below, we estimate the number of employees who are registered representatives, registered investment adviser representatives, or both ("dually registered representatives").[917] Similar to Table 6, we calculate these numbers using Form U4 filings. Here, we also limit the sample to employees at firms that have retail-facing businesses as discussed previously.[918]

In Table 7, approximately 25% of registered employees at registered broker-dealers or investment advisers are dually registered representatives. However, this proportion varies significantly across size categories. For example, for firms with total assets between $1 billion and $50 billion,[919] approximately 35% of all registered employees are both registered

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916 The classification of firms as dually registered, standalone broker-dealers, and standalone investment advisers comes from Forms BD, FOCUS, and ADV as described earlier. The number of representatives at each firm is obtained from Form U4 filings. Note that all percentages in the table have been rounded to the nearest whole percentage point.

917 We calculate these numbers based on Form U4 filings.

918 *See supra* footnotes 864 and 893.

919 Firm size is defined as total assets from the balance sheet for broker-dealers and dually registered firms (source: FOCUS reports) and as assets under management for investment advisers (source: Form ADV). We are unable to obtain customer assets for broker-dealers, and for investment advisers. We can only obtain information from Form ADV as to whether the firm assets exceed $1 billion. We recognize that our approach of using firm assets for broker-dealers and customer assets for investment advisers does not allow for direct comparison; however, our objective is to provide measures of firm size and not to make comparisons between broker-dealers and investment advisers based on firm size. Across both broker-dealers and investment advisers, larger firms, regardless of whether we stratify on firm total assets or assets under management, have more customer accounts, are more likely to be dually registered, and have more representatives or employees per firm, than smaller broker-dealers or investment advisers.

representatives and investment adviser representatives. In contrast, for firms with total assets below $1 million, 13% of all employees are dually registered representatives.

Table 7: Number of Employees at Retail Facing Firms who are Registered Representatives, Investment Adviser Representatives, or Both

Size of Firm (Total Assets for Standalone BDs and Dually Registered Firms; AUM for Standalone IAs)	Total Number of Employees	Percentage of DuallyRegistered representatives	Percentage of Registered Representatives Only	Percentages of IARs Only
>$50 billion	218,539	19%	16%	1%
$1 billion to $50 billion	328,842	35%	12%	4%
$500 million to $1 billion	43,211	18%	40%	10%
$100 million to $500 million	119,214	23%	24%	9%
$10 million to $100 million	176,559	20%	39%	1%
$1 million to $10 million	56,230	17%	39%	1%
< $1 million	18,334	13%	46%	3%
Total Employees at Retail Facing Firms	960,929	25%	23%	4%

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920 *See supra* footnotes 918 and 919. Note that all percentages in the table have been rounded to the nearest whole percentage point.

Approximately 87% of investment adviser representatives are dual-hatted as registered representatives. This percentage is relatively unchanged from 2010. According to information provided in a FINRA comment letter in connection with the 913 Study,[921] 87.6% of registered investment adviser representatives were dually registered as registered representatives as of mid-October 2010.[922] In contrast, approximately 52% of registered representatives were dually registered as investment adviser representatives at the end of 2018.[923]

Broker-dealers and investment advisers must report certain criminal, regulatory, and civil actions and complaint information and information about certain financial matters in Forms U4[924] and U5[925] for their representatives. SROs, regulators and jurisdictions report disclosure events on Form U6.[926] FINRA's BrokerCheck system and IAPD discloses to the public certain information on registered representatives and investment adviser representatives, respectively,

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921 *See* Staff of the Securities and Exchange Commission, *Study on Investment Advisers and Broker-Dealers as Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 2011), *available at* www.sec.gov/news/studies/2011/913studyfinal.pdf ("913 Study").

922 Comment Letter of FINRA to File Number 4-606; Obligations of Brokers, Dealers and Investment Advisers (Nov. 3, 2010), at 1, *available at* https://www.sec.gov/comments/4-606/4606-2836.pdf.

923 In order to obtain the percentage of IARs that are dually registered as registered representatives of broker-dealers, we sum the representatives at dually registered firms and those at investment advisers across size categories to obtain the aggregate number of representatives in each of the two categories. We then divide the aggregate dually registered representatives by the sum of the dually registered representatives and the IARs at investment adviser-only firms. We perform a similar calculation to obtain the percentage of registered representatives of broker-dealers that are dually registered as IARs.

924 Form U4 requires disclosure of registered representatives' and investment adviser representatives' criminal, regulatory, and civil actions similar to those reported on Form BD or Form ADV as well as certain customer-initiated complaints, arbitration, and civil litigation cases. *See generally* Form U4.

925 Form U5 requires information about representatives' termination from their employers.

926 *See* FINRA, Current Uniform Registration Forms for Electronic Filing in Web CRD®, *available at* http://www.finra.org/industry/web-crd/current-uniform-registration-forms-electronic-filing-web-crd.

such as principal place of business, business activities, owners, and criminal prosecutions, regulatory actions, and civil actions in connection with any investment-related activity.

e. Investor Account Statistics

Investors seek financial advice and services to achieve a number of different goals, such as saving for retirement or children's college education. The OIAD/RAND survey estimates that approximately 73% of adults live in a household that invests.[927] The survey indicates that non-investors are more likely to be female, to have lower family income and educational attainment, and to be younger than investors.[928] Approximately 35% of households that do invest do so through accounts such as broker-dealer or advisory accounts.[929]

As shown above in Figures 2 and 3, the number of retail investors and their assets under management associated with investment advisers has increased significantly, particularly since 2012. According to the Investment Company Institute ("ICI"), as of December 2016, nearly $24.2 trillion is invested in retirement accounts, of which $7.5 trillion is in IRAs.[930] A total of 43.3 million U.S. households have either an IRA or a brokerage account, of which an estimated 20.2 million U.S. households have a brokerage account and 37.7 million households have an IRA

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927 *See* OIAD/RAND, *supra* footnote 3 (defining "investors" as persons "owning at least one type of investment account, (e.g., an employer-sponsored retirement account, a non-employer sponsored retirement account such as an IRA, a college savings investment account, or some other type of investment account such as a brokerage or advisory account), or owning at least one type of investment asset (*e.g.*, mutual funds, exchange-traded funds or other funds, individual stocks, individual bonds, derivatives, and annuities)").

928 OIAD/RAND, *supra* footnote 3.

929 *Id.*.

930 *See* Sarah Holden & Daniel Schrass, *The Role of IRAs in US Households' Saving for Retirement, 2016*, 23 ICI RES. PERSP. 23-1 (Jan. 2017), *available at* https://www.ici.org/pdf/per23-01.pdf.

(including 72% of households that also hold a brokerage account).[931] With respect to IRA accounts, one commenter, the ICI, documents that 43 million U.S. households own either traditional or Roth IRAs and that approximately 70% are held with financial professionals, with the remainder being direct market.[932] Further, ICI finds that approximately 64% of households have aggregate IRA (traditional and Roth) balances of less than $100,000, and approximately 36% of investors have balances below $25,000. As noted in one study, the growth of assets in traditional IRAs comes from rollovers from workplace retirement plans; for example, 58% of traditional IRAs consist of rollover assets, and contributions due to rollovers exceeded $460 billion in 2015 (the most recently available data).[933]

While the number of retail investors obtaining services from investment advisers and the aggregate value of associated assets under management has increased, the OIAD/RAND study also suggests that the general willingness of investors to use planning or to take financial advice regarding strategies, products, or accounts is relatively fixed over time.[934] With respect to the account assets associated with retail investors, the OIAD/RAND survey also estimates that

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931 The data is obtained from the Federal Reserve System's 2016 Survey of Consumer Finances ("SCF"), a triennial survey of approximately 6,200 U.S. households and imputes weights to extrapolate the results to the entire U.S. population. As noted, some survey respondent households have both a brokerage and an IRA account. *See* Board of Governors of the Federal Reserve System, *Survey of Consumer Finances* (2016), *available at* https://www.federalreserve.gov/econres/scfindex.htm. The SCF data does not directly examine the incidence of households that could use advisory accounts instead of brokerage accounts; however, some fraction of IRA accounts reported in the survey could be those held at investment advisers.

932 *See* Sarah Holden & Daniel Schrass, *The Role of IRAs in US Households' Saving for Retirement, 2018*, ICI RES. PERSP. 24-10 (Dec. 2018), *available at* https://www.ici.org/pdf/per24-10.pdf.

933 *See id.*

934 OIAD/RAND, *supra* footnote 3 (noting that this conclusion was limited by the methodology of comparing participants in a 2007 survey with those surveyed in 2018).

approximately 10% of investors who have broker-dealer or advisory accounts hold more than $500,000 in assets, while approximately 47% hold $50,000 in assets or less. Altogether, many investors who have brokerage or advisory accounts trade infrequently, with approximately 31% reporting no annual transactions and an additional approximately 30% reporting three or fewer transactions per year.[935]

With respect to particular products, commenters have provided us with additional information about ownership of mutual funds and IRA account statistics. For example, ICI stated that 56 million U.S. households and nearly 100 million individual investors own mutual funds, of which 80% are held through 401(k) and other workplace retirement plans, while 63% of investors hold mutual funds outside of those plans.[936] Of those investors that own mutual funds outside of workplace retirement plans, approximately 50% rely on financial professionals, while nearly one-third purchase direct-sold funds either directly from the fund company or through a discount broker.[937]

Table 8 below provides an overview of account ownership segmented by account type (*e.g.*, IRA, brokerage, or both) and investor income category based on the SCF.[938]

Table 8: Ownership by Account Type in the U.S. by Income Group

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935 OIAD/RAND, *supra* footnote 3.

936 *See* ICI Letter; *see also* Sarah Holden, Daniel Schrass & Michael Bogdan, *Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2018*, ICI RES. PERSP. 24-8 (Nov. 2018), *available at* https://www.ici.org/pdf/per24-08.pdf.

937 *See id.*

938 *Id.* To the extent that investors have IRA accounts at banks that are not also registered as broker-dealers, our data may overestimate the numbers of IRA accounts held by retail investors that could be subject to this rulemaking.

(as reported by the 2016 SCF)

Income Category	% Brokerage Only	% IRA Only	% Both Brokerage and IRA
Bottom 25%	1.2%	7.6%	2.4%
25% - 50%	3.2%	14.5%	5.4%
50% - 75%	4.1%	21.4%	11.4%
75% - 90%	7.5%	33.4%	16.5%
Top 10%	12.0%	24.7%	43.9%
Average	4.4%	18.3%	11.6%

With respect to the nature of the accounts held by investors and whether they are managed by financial professionals, the OIAD/RAND survey finds that 36% of its sample of participants report that they currently use a financial professional and approximately 33% receive some kind of recommendation service.[939] Of the subset of those investors who report holding a brokerage, advisory, or similar account, approximately 33% self-direct their own account, 25% have their account managed by a financial professional, and 10% have their account advised by a professional.[940] For those investors who take financial advice, the OIAD/RAND study suggests

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939 OIAD/RAND, *supra* footnote 3. In a focus group preceding the survey, focus group participants provided a number of reasons for not using a financial professional in making investments, including being unable or unwilling to pay the fees, doing their own financial research, being unsure of how to work with a professional, and being concerned about professionals selling products without attending to investors' plans and goals.

940 *Id*.

that they may differ in characteristics from other investors. Investors who take financial advice are generally older, retired, and have a higher income than other investors, but also may have lower educational attainment (*e.g.*, high school or less) than other investors.[941]

Similarly, one question in the SCF asks what sources of information households' financial decision-makers use when making decisions about savings and investments. Respondents can list up to fifteen possible sources from a preset list that includes "Broker" or "Financial Planner" as well as "Banker," "Lawyer," "Accountant," and a list of non-professional sources.[942] Panel A of Table 8 below presents the breakdown of where households who have brokerage accounts seek advice about savings and investments. The table shows that of those respondents with brokerage accounts, 23% (4.7 million households) use advice services of broker-dealers for savings and investment decisions, while 49% (7.8 million households) take advice from a "financial planner." Approximately 36% (7.2 million households) seek advice from other sources such as bankers, accountants, and lawyers. Almost 25% (5.0 million households) do not use advice from the above sources.

Panel B of Table 9 below presents the breakdown of advice received for households who have an IRA. 15% (5.7 million households) rely on advice services of their broker-dealers and

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941 *Id.*

942 The SCF, *supra* footnote 931, specifically asks participants "Do you get advice from a friend, relative, lawyer, accountant, banker, broker, or financial planner? Or do you do something else?" (*see* Federal Reserve, *Codebook for 2016 Survey of Consumer Finances* (2016), *available at* https://www.federalreserve.gov/econres/files/codebk2016.txt). Other response choices presented by the survey include "Calling Around," "Magazines," "Self," "Past Experience," "Telemarketer," and "Insurance Agent," as well as other choices. Respondents could also choose "Do Not Save/Invest." The SCF allows for multiple responses, so these categories are not mutually exclusive. However, we would note that the list of terms in the question does not specifically include "investment adviser."

48% (18.3 million households) obtain advice from financial planners. Approximately 41% (15.5 million households) seek advice from bankers, accountants, or lawyers, while the 25% (9.5 million households) use no advice or seek advice from other sources.

Table 9, Panel A: Sources of Advice for Households who have a Brokerage Account in the U.S. by Income Group

Income Category	% Taking Advice from Brokers	% Taking Advice from Financial Planners	% Taking Advice from Lawyers, Bankers, or Accountants	% Taking no Advice or from Other Sources
Bottom 25%	20.55%	53.89%	35.64%	24.30%
25% - 50%	22.98%	38.03%	43.92%	32.36%
50% - 75%	20.75%	52.00%	31.42%	23.61%
75% - 90%	22.56%	48.94%	32.25%	28.10%
Top 10%	25.29%	50.53%	38.47%	21.06%
Average	23.02%	49.02%	35.99%	24.94%

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Table 9, Panel B: Sources of Advice for Households who have an IRA in the U.S. by Income Group

943 *Id.*

Income Category	% Taking Advice from Brokers	% Taking Advice from Financial Planners	% Taking Advice from Bankers, Accountants, or Lawyers	% Taking no Advice or from Other Sources
Bottom 25%	12.14%	38.30%	43.69%	31.85%
25% - 50%	9.79%	43.82%	40.67%	32.74%
50% - 75%	14.93%	45.20%	41.23%	25.23%
75% - 90%	14.68%	52.14%	41.65%	24.26%
Top 10%	21.40%	55.40%	40.03%	18.56%
Average	15.25%	48.45%	41.17%	25.28%

[944]

The OIAD/RAND survey notes that for survey participants who reported working with a specific individual for investment advice, 70% work with a dually registered firm, 5.4% with a broker-dealer, and 5.1% with an investment adviser.[945]

2. Investor Perceptions about the Marketplace for Financial Services and Disclosures

Our proposal discussed a number of studies providing information on investors' perceptions of the market for financial services and advice, including those conducted by Siegel & Gale[946] in 2005, RAND[947] in 2008 and CFA in 2010.[948] Commenters to the proposal provided

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944 *Id.*

945 OIAD/RAND, *supra* footnote 3. As documented by OIAD/RAND, retail investors surveyed had difficulty in accurately identifying the type of relationship that they have with their financial professional.

946 Proposing Release, *supra* footnote 5, at n.555.

947 *Id.*, at n.556.

their own studies or survey evidence conducted by third party research firms, which we have discussed throughout the release.[949] In addition, the Commission's Office of the Investor Advocate collaborated with RAND to prepare the OIAD/RAND study,[950] which included focus groups and a survey about the retail market for investor advice. The Commission's Office of the Investor Advocate also engaged RAND to conduct investor testing of the proposed relationship summary using the dual registrant sample in the proposal. The report, RAND 2018,[951] discusses both larger sample survey results and smaller sample in-depth interview results. Finally, the proposal solicited public feedback from individual investors on a feedback form issued with the Proposing Release.[952] Responses and data from these sources inform our understanding of how investors approach the marketplace for financial services and how investors respond to disclosures about financial services generally.

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948 *Id.*, at n.557.

949 *See supra* footnotes 17-21.

950 OIAD/RAND consisted of focus group discussions with 35 participants in total. OIAD/RAND caveats in its report that the participants in its focus groups were neither nationally representative nor randomly selected and that their results are anecdotal. OIAD/RAND also included a nationally representative probability based survey to allow researchers to reliably construct population estimates. OIAD/RAND, *supra* footnote 3.

951 For RAND 2018, a sample of 1,816 individuals from the ALP Survey Panel were invited to complete the survey, and 1,460 (80.4%) actually completed the survey. 26% of respondents are categorized as non-investor. Median time spent going through the initial five screens of the relationship summary text was 4 minutes. RAND 2018, *supra* footnote 13.

952 Proposing Release, *supra* footnote 5; *see also* Feedback Forms Comment Summary, *supra* footnote 13. More than 90 individuals answered with a response or comment relevant to at least one of the questions on the form, using an online version of the feedback form or by submitting a copy of the feedback form to the comment file in PDF format.

a. How investors select financial firms or professionals

A number of surveys show that retail investors predominantly find their current financial firm or financial professional from personal referrals by family, friends, or colleagues.[953] For instance, the RAND 2008 study reported that 46% of survey respondents indicated that they located a financial professional from personal referral, although this percentage varied depending on the type of service provided (*e.g.*, only 35% of survey participants used personal referrals for brokerage services). After personal referrals, RAND 2008 survey participants ranked professional referrals (31%), print advertisements (4%), direct mailings (3%), online advertisements (2%), and television advertisements (1%), as their source of locating individual professionals. The RAND 2008 study separately inquired about locating a financial firm,[954] in which respondents reported selecting a financial firm (of any type) based on: referral from family or friends (29%), professional referral (18%), print advertisement (11%), online advertisements (8%), television advertisements (6%), direct mailings (2%), with a general "other" category (36%).

The 917 Financial Literacy Study provides similar responses, although it allowed survey respondents to identify multiple sources from which they obtained information that facilitated the selection of the current financial firm or financial professional.[955] In the 917 Financial Literacy

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953 *See* RAND 2008, *supra* footnote 912; 917 Financial Literacy Study, *supra* footnote 589.

954 The Commission notes that only one-third of the survey respondents that responded to "method to locate individual professionals" also provided information regarding locating the financial firm.

955 *See* 917 Financial Literacy Study, *supra* footnote 589.

Study,[956] 51% of survey participants received a referral from family, friends, or colleagues. Other sources of information or referrals came from: referral from another financial professional (23%), online search (14%), attendance at a financial professional-hosted investment seminar (13%), advertisement (*e.g.*, television or newspaper) (11.5%), other (8%), while approximately 4% did not know or could not remember how they selected their financial firm or financial professional. Twenty-five percent of survey respondents indicated that the "name or reputation of the financial firm or financial professional" affected the selection decision.

The OIAD/RAND focus group study notes that among the factors that group participants report for not working with a financial professional was participants being unsure how they would go about working with a professional.[957]

b. Investor confusion

As discussed in the Proposing Release and by commenters to the proposal, many sources indicate that retail investors do not understand or find confusing the distinctions between broker-dealers and investment advisers, particularly in terms of services provided and applicable standards of conduct. [958]

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956 The data used in the 917 Financial Literacy Study comes from the Siegel & Gale, Investor Research Report (Jul. 26, 2012), available at https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part3.pdf.

957 OIAD/RAND, *supra* footnote 3.

958 *See generally supra* Section II.B.2 (discussing benefits of including disclosure on individualized firm services); Section II.B.6 (discussing removal of generalized comparisons between advisers and broker-dealers); *see also* Proposing Release, *supra* footnote 5 (discussing commenters in response to Chairman Clayton's 2017 request for comment and commenters to the 913 Study).

Studies such as those conducted by Siegel & Gale[959] in 2005, RAND[960] in 2008, and CFA in 2010,[961] discussed in the Proposing Release, support findings that retail investors are confused about the roles and titles of financial professionals. The OIAD/RAND study assessed survey and focus group participants' understanding of the types of financial services and financial professionals they used.[962] Specifically, the authors of the OIAD/RAND study asked survey participants who were investors to identify which type of financial professional they worked with (investment adviser, broker-dealer, or dually-registered firm). The authors compared the types of financial professionals reported by the survey participants with the actual status of those financial professionals as verified on the IAPD database, and found that the

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959 Proposing Release, *supra* footnote 5, at Section IV.A.3.h. (stating that the Siegel & Gale Study found that focus group participants did not understand that the roles and legal obligations of broker-dealers differed from investment advisers' roles and legal obligations, and were further confused by different labels or titles used by advice providers (*e.g.*, financial planner, financial advisor, financial consultant, broker-dealer, or investment adviser). More specifically, participants in the Siegel & Gale Study focus groups believed that brokers executed trades and were focused on "near-term" advice, while financial advisors and consultants provided many of the same services as brokers, but also provided a greater scope of long-term planning advice (*e.g.*, portfolio allocation). "Investment adviser," on the other hand, was a term unfamiliar to many participants, but financial professionals using this label were perceived to provide similar services to financial advisors and financial consultants. Financial planners were viewed to provide services related to insurance and estate planning in addition to investment advice, and encompassed long-term financial planning including college, retirement, and other long-term savings and investment goals. The Siegel & Gale Study focus group participants assumed that financial advisors/consultants, investment advisers, and financial planners provided planning services, while brokers, financial advisors/consultants, and investment advisers provided trade execution services); *see also id.*, at n.5.

960 Similarly, the RAND 2008 study generally concluded that investors did not understand the differences between broker-dealers and investment advisers and that common job titles contributed to investor confusion. RAND 2008, *supra* footnote 909.

961 Infogroup/ORC, *U.S. Investors & The Fiduciary Standard*, National Opinion Survey (Sept. 15, 2010), *available at* https://www.cfp.net/docs/public-policy/us_investors_opinion_survey_2010-09-16.pdf ("CFA Survey"). The CFA Survey suggested that respondents were confused about differences between broker-dealers and investment advisers as described by the study's authors to the respondents.

962 OIAD/RAND, *supra* footnote 3.

verified types of financial professionals in many cases did not match the types of financial professionals that were reported by the survey participants.[963] For example, when financial professionals were verified to be dually registered, only 34% were reported by survey participants to be dually registered (and 56% were reported to be only investment advisers). In addition to the survey, the OIAD/RAND authors also asked a small focus group of participants that used financial professionals to identify which type of professional they were using, which was then verified by IAPD. Only one of the twelve participants was able to identify the correct type of financial professional unambiguously (although it was not clear if clients of verified dually-registered firms were only utilizing one type of that professional's services). The study authors concluded that this showed low awareness of the classification of investment advisers and broker-dealers.

Further, the OIAD/RAND survey asked all survey recipients whether they could identify the type of financial professional that would typically exhibit certain business practices (such as executing transactions or being paid by commission), and concluded that at least a significant minority of participants could not do so for any of the typical practices. Between 13% and 21% of survey participants incorrectly answered "none of the above" for each of the business practices offered by the survey, although those practices were aligned with either investment advisers or broker-dealers in the marketplace. Moreover, only 36% of participants were able to identify that investment advisers were typically paid by a percentage of assets, whereas 43% of

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963 OIAD/RAND, *supra* footnote 3. Note that the authors caveated that it was unclear if survey participants who were customers of verified dually registered firms had misidentified the type of financial professional because they only received one type of service (brokerage or advisory) from the dually registered firm.

participants thought that practice was typical of broker-dealers. Twenty-six percent of participants incorrectly indicated that investment advisers execute transactions for clients.[964] In all, the study authors concluded that the survey participants' knowledge of the marketplace for financial professionals appeared to be incomplete.

The OIAD/RAND study authors draw further conclusions from their focus group study, where after being offered explanations of the differences between investment advisers and broker-dealers, some focus group participants continued not to be able to understand the distinctions between the two types of professionals. For the OIAD/RAND study authors, the focus group exercise underscored the difficulty of the topic for some investors.

Investors are also confused about financial professionals' standards of conduct and legal obligations. As discussed in the Proposing Release, the Siegel & Gale and RAND 2008 studies found that focus group participants generally did not understand legal terms, such as "fiduciary" or "best interest."[965] In addition, the RAND 2008 study noted that the confusion about titles, services, legal obligations, and compensation persisted even after a fact sheet on broker-dealers and investment advisers was provided to participants.[966]

Similarly, many survey respondents in the OIAD/RAND study had difficulty understanding the basic relational aspects of financial advice and the responsibility for taking

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964 OIAD/RAND, *supra* footnote 3. The study authors also concluded that "an investor who works with an investment adviser because he or she is unaware that broker-dealers can execute transactions, and who seeks a professional solely to execute transactions on their behalf, might not necessarily be matched with the most appropriate professional."

965 Proposing Release, *supra* footnote 5.

966 RAND 2008, *supra* footnote 909.

risk in any form.[967] Thirty percent of survey respondents believed that financial professionals would get paid only if an investor made money on an investment, and another quarter of respondents indicated that they did not know if financial professionals would get paid only if an investor made money on an investment.[968] A majority of survey respondents expected that a financial professional acting in the client's best interest would monitor the account, help the client choose the lowest cost products, disclose payments they receive, and avoid taking higher compensation for selling one product over another when a similar but less costly product is available.[969] OIAD/RAND focus group discussions about the distinctions between investment advisers and broker-dealers also suggested that some focus group participants were not able to distinguish investment advisers from broker-dealers. The study's authors concluded that comments of those focus group participants also suggest that some individuals might value having a clear distinction between professionals who do act in the client's best interest and professionals who do not act in the client's best interest.[970] Similarly, in RAND 2018 and in interview-based studies submitted by a group of commenters that test the proposed sample dual-registrant relationship summary, it was observed that investors could have difficulty understanding distinctions between the standard of conduct applicable to broker-dealers and investment advisers.[971]

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967 OIAD/RAND, *supra* footnote 3.

968 OIAD/RAND, *supra* footnote 3.

969 OIAD/RAND, *supra* footnote 3.

970 OIAD/RAND, *supra* footnote 3.

971 *See supra* Section II.B.3.b at footnotes 470-479 and accompanying text.

With respect to investor perceptions of financial advisers' fees and potential conflicts of interest, the OIAD/RAND study revealed that "some participants seemed unconcerned with conflicts or took it as a good sign if their professional had not disclosed a conflict to them … In all three groups that had experience using a financial professional… participants reported that their professional had not disclosed any conflicts."[972] The OIAD/RAND study also found that almost a half of the investors who received investment advice in the study believed that their investment professional receives commissions. About a third believed the provider received payments from product companies (*e.g.*, mutual funds); another 20% of participants believed the provider received a bonus. Altogether, more than half of the participants believed the provider received some sort of compensation whether through commission, bonus or product payment.[973] The study concluded that "awareness of the nature of provider payments could help investors to recognize conflicts of interest…" and thus it could potentially improve investors' decision making. Potential investor recognition of the importance of the conflicts of interest is reflected in that 51% of the OIAD/RAND study respondents said that it was important or extremely important that the financial professional receive all compensation from the customer, and only 15% reported that it was not important at all.[974]

With respect to investor trust, one commenter discussed the results of an online survey it had initiated that found that 96% of survey respondents mostly or completely trusted their

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[972] OIAD/RAND, *supra* footnote 3.

[973] OIAD/RAND, *supra* footnote 3.

[974] OIAD/RAND, *supra* footnote 3.

financial professional.[975] The vast majority of survey respondents (97%) also believed that their financial professional always or mostly has their investors' best interest in mind.[976]

3. Investor Responses to Disclosures about Financial Professionals and Firms

a. Retail investors and financial disclosures generally

Commenters provided conclusions based on studies of potential limitations to the efficacy of financial disclosures, as discussed below.[977] With respect to the particular areas of disclosure that retail investors find helpful, commenters provided us with information about the usefulness of such disclosures to retail investors from surveys or assessments. We generally note that the RAND 2018 survey and other surveys that were provided by commenters gathered participants' subjective views and were not designed to objectively assess whether any sample disclosures improved participant comprehension.[978] However, the RAND 2018 qualitative interviews included some general questions to participants about comprehension and helpfulness of the sample proposed relationship summary, which provided some insight into participants' understanding of concepts introduced, as did another survey and two interview-based studies with respect to sample relationship summaries.[979] Further, the RAND 2018 report and surveys and studies submitted by commenters reported that their participants subjectively thought that they were informed from the sample disclosures that they were provided. The RAND 2018

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975 CCMC *Letter* (investor polling), *supra* footnote 21.

976 *Id.*

977 *See infra* Section IV.C for a discussion of this research.

978 *See generally supra* footnote 14.

979 *See supra* footnotes 14 and 20 and accompanying text.

study authors found that nearly 90% of respondents stated that the sample proposed relationship summary that they reviewed would help them make informed decisions about investment accounts and services.[980] Likewise, the RAND 2018 study authors also observed that interview participants demonstrated that they learned new information from the proposed relationship summary that they were provided. However, there was variation in understanding among participants and the interviews also revealed areas of confusion.[981] Similarly, the Woelfel survey authors noted that after survey respondents were given time to read a sample proposed dual registrant relationship summary, the majority, regardless of their current investments or relationship with an investment adviser or broker-dealer, believed that they knew a "little more" about investment advisers and broker-dealers.[982]

Several commenters suggest that generally not all investors fully read or are able to digest information from disclosures about financial professionals. One commenter reports that almost half of its survey participants said they selectively skim the disclosures and eight percent said they rarely or do not ever read them.[983] Along similar lines, commenters pointed to observations that investors may be overconfident in their ability to read and understand disclosures and that investors are unable to understand disclosures relating to compensation arrangements and conflicts of interest. [984] Similarly, the RAND 2008 study highlighted that participants' confusion about titles, services, legal obligations, and compensation persisted even after a fact sheet on

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980 *See* RAND 2018, *supra* footnote 13.

981 *Id*.

982 *See* Cetera Letter II (Woelfel) *supra* footnote 17.

983 Schwab Letter I (Koski), *supra* footnote 21.

984 *See*, e.g., AARP Letter. *See* also Better Markets Letter, CFA Letter I; Consumers Union Letter.

broker-dealers and investment advisers was provided to participants.[985]

With respect to what type of disclosures from firms or financial professionals retail investors find helpful, commenters provided two surveys of retail investors' general views of disclosures about financial professionals in response to the Proposing Release.[986] One commenter reported results from an online survey that provides support for the idea that retail investors value at least some disclosures from financial professionals. From the a survey of 801 individuals, a majority of the survey participants (62%) said they would be interested in reading a hypothetical standardized document provided to all new clients that explained the relationship between a financial professional and clients and thought that such a document would "boost transparency and help build stronger relationships between me and my financial professional" (72%).[987] Separately, with respect to what aspects of financial disclosures retail investors might find most helpful, Koski Research conducted an investor survey on behalf of another commenter and reported that the "majority of retail investors want communications that are relevant to them (91%), short and to the point (85%), and visually appealing (79%)."[988] The survey also reported that the top four things retail investors wanted communicated were the costs for advice,

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985 *See* RAND 2008, *supra* footnote 909. The fact sheet provided to RAND 2008 study participants included information on the definition of broker and investment adviser, including a description of common job titles, legal duties and typical compensation. Participants in the focus groups indicated that they were confused over common job titles of broker-dealers and investment advisers, thought that because brokers are required to be licensed, investment advisers were not as qualified as brokers, deemed the term "suitable" too vague, and concluded that it would be difficult to prove whether or not an investment adviser was not acting in the client's best interest.

986 *See* Schwab Letter I (Koski), *supra* footnote 21 and CCMC Letter (investor polling), *supra* footnote 21.

987 *See* CCMC Letter (investor polling), *supra* footnote 21.

988 *See* Schwab Letter I (Koski), *supra* footnote 21.

description of advice services, the obligations of the firm and its representatives, and the conflicts of interest.[989] Additionally, approximately 70% of the participants in the 917 Financial Literacy Study indicated that they would read disclosures on conflicts of interest if made available.[990]

b. Investor perceptions about specific disclosures concerning financial professionals

(1) Conflicts of Interest

As discussed in the Proposing Release, previous studies have found that investors consider conflicts of interest to be an important factor in disclosures from firms and financial professionals.[991] For example, in the 917 Financial Literacy Study, approximately 52.1% of survey participants indicated that an essential component of any disclosure would be their financial intermediary's conflicts of interest, while 30.7% considered information about conflicts of interest to be important, but not essential.[992] Investors also were asked to rate their level of concern about potential conflicts of interest that their adviser might have. Approximately 36% of the investors expressed concerns that their adviser might recommend investments in products for which its affiliate receives a fee or other compensation, while 57% were concerned that their adviser would recommend investments in products for which it gets paid by other sources. In addition to conflicts directly related to compensation practices of financial professionals, some

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989 *Id*. For similar evidence, *see* also CCMC Letter (investor polling), *supra* footnote 21 (reporting that issues that "matter most" to investors include: "explaining fees and costs," explaining conflicts of interest" and "explaining own compensation").

990 917 Financial Literacy Study, *supra* footnote 588

991 *See* Proposing Release, *supra* footnote 5, at Section IV.A.3.c.

992 917 Financial Literacy Study, *supra* footnote 588.

investors were concerned about conflicts related to the trading activity of these firms. For example, more than 26% of participants were concerned that an adviser might buy and sell from its own account at the same time it is recommending securities to investors; and more than 55% of investors were also concerned about their adviser's engaging in principal trading.

Among those participants in the 917 Financial Literacy Study who indicated that they would read disclosures on conflicts of interest if made available, 48% would request additional information from their adviser, 41% would increase the monitoring of their adviser, and 33% would propose to limit their exposure of specific conflicts. The majority of participants (70%) also wanted to see specific examples of conflicts and how those related to the investment advice provided.

(2) Fees

With respect to disclosures about fees, the Proposing Release also discussed the 917 Financial Literacy Study as well as the FINRA Investor Study[993] regarding the importance that investors place on disclosures about fees and compensation of financial professionals, and how those disclosures should be presented.[994] Similar to the findings regarding conflicts of interest, the 917 Financial Literacy Study found that a majority participants indicated that disclosure of the fees and compensation of investment advisers was an essential element to any disclosure.[995]

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993 FINRA Investor Education Foundation, *Investors in the United States 2016* (Dec. 2016), *available at* http://www.usfinancialcapability.org/downloads/NFCS_2015_Inv_Survey_Full_Report.pdf ("FINRA Investor Study").

994 *See* Proposing Release, *supra* footnote 5, at Section IV.A.3.c.

995 917 Financial Literacy Study, *supra* footnote 588.

(3) Disciplinary History

As discussed in the Proposing Release, survey evidence in the 917 Financial Literacy Study indicate that knowledge of a firm's and financial professional's disciplinary history is among the most important items for retail investors deciding whether to receive financial services from a particular firm.[996] Despite this, most investors do not actively seek disciplinary information for their advisers and broker-dealers. For example, a FINRA survey in 2009, found that only 15% of survey respondents checked their financial professional's background, although the Commission notes that the study encompasses a wide group of advisers, such as debt counselors and tax professionals.[997] The FINRA Investor Study found that only 7% of survey respondents use FINRA's BrokerCheck and approximately 14% of survey respondents are aware of the Investment Adviser Public Disclosure (IAPD) website.[998]

C. Broad Economic Considerations

We are adopting a requirement for broker-dealers and investment advisers and firms that are dually registered to deliver a relationship summary to retail investors because, as discussed in the baseline,[999] many retail investors can be confused about their choices in the market for brokerage

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996 *See* 917 Financial Literacy Study, *supra* footnote 588, at nn.311 and 498 and accompanying text (Approximately 67.5% of the online survey respondents considered information about an adviser's disciplinary history to be absolutely essential, and about 20.0% deemed it important, but not essential, and "When asked how important certain factors would be to them if they were to search for comparative information on investment advisers, the majority of online survey respondents identified the fees charged and the adviser's disciplinary history as the most important factors.").

997 FINRA Investor Education Foundation, Financial Capability in the United States: Initial Report of Research Findings from the 2009 National Survey (Dec. 1, 2009), available at http://www.usfinancialcapability.org/downloads/NFCS_2009_Natl_Full_Report.pdf

998 *See* FINRA Investor Survey, *supra* footnote 993

999 *See supra* Section IV.B.

and investment advisory services. To that end, the relationship summary is meant to assist retail investors with both the process of deciding whether to engage or remain with a particular firm or financial professional and whether to establish or maintain an investment advisory or brokerage relationship. Specifically, low financial literacy, lack of knowledge about the market for financial advice, and lack of information about important aspects of the relationship between particular firms and their customers or clients,[1000] may harm retail investors by deterring them from seeking brokerage or investment advisory services even if they could potentially benefit from it,[1001] or by increasing the risk of a mismatch between the investors' preferences and expectations and the actual brokerage or advisory services they receive from a firm or professional.[1002] To ameliorate this potential harm, the relationship summary is intended to reduce investor confusion and search costs in the process of (i) deciding whether to engage a particular firm or financial professional, (ii) whether to establish an investment advisory or brokerage relationship, and (iii) whether to terminate or switch the relationship or specific service provided. The relationship summary is expected to provide significant benefit to retail

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[1000] Examples of such aspects of the relationship include the services and fees of particular firms, and conflicts of interest that may arise between particular firms and customers or clients.

[1001] The potential loss to investors with low financial literacy from not seeking advice is illustrated by, *e.g.*, the study by Hans-Martin von Gaudecker, *How Does Household Portfolio Diversification Vary with Financial Literacy and Financial Advice?*, 70 J. FIN. 489 (2015), which showed that investors with low financial literacy that do not seek financial advice on average incur significantly larger losses (by more than 50 basis points) from underdiversification compared to investors who seek financial advice (irrespective of financial literacy) and investors with higher financial literacy who do not seek advice.

[1002] Studies provide results of investor misunderstanding that is consistent with some investors being at risk of entering into a mismatched relationship. For example, survey results in OIAD/RAND, *supra* footnote 3 suggest that a non-trivial subset of retail investors may misunderstand the type of their financial professional, the type of services the professional offers, and how the professional is compensated.

investors by focusing their attention on salient features of their potential relationship with a particular broker-dealer or investment adviser and highlighting the most important elements of this relationship in a single, succinct, and easy-to-understand document. The relationship summary also allows for comparability among broker-dealers and investment advisers by requiring disclosures on the same topics under standardized headings in a prescribed order to retail investors.[1003] As we discuss above in Section I, we do not believe that existing disclosures provide this level of transparency and comparability across investment advisers, broker-dealers, and dual registrants.

Below, we discuss in more detail the nature of the potential harm faced by retail investors from confusion about the market for brokerage and investment advisory services. We also discuss considerations involved in creating disclosures for retail investors that may reduce the potential for investor harm by increasing their knowledge about the market for brokerage and investment advisory services and facilitating their search for a firm or financial professional.[1004]

[1003] *See supra* discussion in Section II.A.2.

[1004] We are extending our discussion on broad economic considerations from the Proposing Release in response to concerns about the economic analysis in the Proposing Releases by commenters; *see, e.g.,* Letter from Charles Cox, Former SEC Chief Economist, *et al*. (Feb. 6, 2019), *available at* https://www.sec.gov/comments/s7-07-18/s70718-4895197-177769.pdf. ("Former SEC Senior Economists Letter"). The Former SEC Senior Economists Letter raised three main concerns about the economic analysis in the proposed Regulation Best Interest and the Proposing Release: 1) the discussion of the potential problems in the customer-advisor relationship was incomplete and identified other features of the market for ongoing retail investment advice that might be problematic; 2) there was inadequate discussion and analysis of the existing economic literature on financial advice; and 3) there were questions of whether the disclosure requirements in the proposing release would provide meaningful information for customers. These concerns more directly focused on the economic analysis of the proposed Regulation Best Interest. However, concerns 1) and 3) appear to also apply to the economic analysis of the Proposing Release to some extent, and we address those concerns in this economic analysis. For instance, with respect to 1), this section provides a more in depth discussion compared to the Proposing Release of the harm that may arise when retail investors lack knowledge or are confused about the market for investment advisory and brokerage services, including a discussion of why additional disclosure may be useful to investors. With

Academic studies have documented a multitude of potential benefits that accrue to retail investors as a result of seeking investment advice, including, but not limited to: higher household savings rates, setting long-term goals and calculating retirement needs, more efficient portfolio diversification and asset allocation, increased confidence and peace of mind, facilitation of small investor participation, improvement in financial situations, and improved tax efficiency.[1005] Further, financial professionals may also explain to retail investors the informational asymmetries between product providers and their customers. Retail investors might not be able to disentangle such information asymmetries on their own. Studies also find that low financial literacy is negatively associated with the propensity to seek financial

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respect to 3), the discussion in this section expands on the discussion already provided in the Proposing Release on the potential limits to the effectiveness of disclosure to address the identified investor harm, but also discusses how disclosure should be designed to be effective, including how appropriately designed disclosures can help overcome some of the identified potential limitations of disclosure. The latter discussion provides a framework that informs our analysis in Section IV.D of the anticipated economic impacts of the relationship summary. In addition, the Former SEC Senior Economists Letter stated that "[w]e feel (preliminarily) that the new CRS forms would provide some helpful information. But we would far prefer for there to be evidence that the intended targets of these disclosures feel the same." Our discussion takes into account the various investor surveys and studies that were conducted after the Proposing Release that reported that large majorities of investors believed the relationship summary would help them make more informed decisions about types of accounts and services. *See, e.g.,* RAND 2018.

[1005] *See, e.g.*, Mitchell Marsden, Catherine Zick, & Robert Mayer, *The Value of Seeking Financial Advice*, 32 J. FAM. & ECON. ISSUES 625 (2011); Jinhee Kim, Jasook Kwon, & Elaine A. Anderson, *Factors Related to Retirement Confidence: Retirement Preparation and Workplace Financial Education*, 16 J. FIN. COUNSELING & PLAN. (2005); Daniel Bergstresser, John Chalmers & Peter Tufano, *Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry*, 22 REV. FIN. STUD. 4129 (2009); Ralph Bluethgen, Steffen Meyer, & Andreas Hackethal, *High-Quality Financial Advice Wanted!*, EURO. BUS. SCH., Working Paper, (Feb. 2008), *available at* http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.596.2310&rep=rep1&type=pdf; Neal M. Stoughton, Youchang Wu, & Josef Zechner, *Intermediated Investment Management*, 66 J. FIN. 947 (2011). Francis M. Kinniry, *et al.*, *Putting a value on your value: Quantifying Vanguard Advisor's Alpha*, Vanguard Research (Sept. 2016) estimates the value to investors associated with obtaining financial advice of approximately 3% in net returns to investors, associated with suitable asset allocation, managing expense ratios, behavioral coaching, alleviating home bias, among others.

advice.[1006] These findings collectively suggest that retail investors of low level financial literacy might be harmed because they might be less likely to seek financial advice in spite of the potential benefit from it.

For a retail investor who decides to enter a relationship with a financial services provider, a low level of knowledge about the market for financial services might reduce the investor's ability to accurately identify whether any given firm or financial professional offers a type of relationship that matches his or her preferences and expectations. This, in turn, increases the risk that the firm or financial professional is a poor match for the retail investor when compared to an alternative financial services provider. A relationship that represents a poor match between an investor and a firm or financial professional can leave an investor worse-off, relative to a better match, or no match at all, because the relationship could result in a cost of services that is higher than the investor expects or a level or type of service that is different than the investor expects, such as episodic recommendations versus continuing advice.

A retail investor might search across a set of financial service providers to find a financial professional that best meets his or her needs.[1007] For an investor who is able to acquire information from the financial service providers the investor chooses to evaluate, the more extensive a search the investor engages in, the more likely the investor will locate a good match.

[1006] For a discussion of the academic research on the role of financial literacy in seeking financial advice *see*, *e.g.*, OIAD/RAND, *supra* footnote 3 at 8.

[1007] The evidence discussed in *supra* Section IV.B.2.a on how investors select a financial professional or firm suggests that a large majority of retail investors rely on personal or professional referrals, which may indicate that they evaluate very few, if any alternative providers. One potential reason for this reliance on referrals could be that investors currently perceive their search costs to be high. Another possible reason, among others, could be that investors value the information derived from other people's experiences more than other sources of information.

However, conducting such a search is costly and requires time, effort, and access to resources. Investors likely balance the benefits of evaluating each additional provider against the incremental cost of doing so, ending their search when the expected marginal cost of the search is greater than the expected marginal benefit from the search.[1008] Moreover, some investors may experience higher-level of uncertainty about the benefits or costs of a search. For example, investors who are less knowledgeable about the general differences between different types of financial professionals, the services these professionals provide, and the factors they should consider in their choice, may not fully appreciate the benefits of searching for a provider that best meets their needs. To the extent such investors perceive a search as burdensome because they underestimate the benefits of searching, they might refrain from conducting a search or conduct a less extensive search to learn about potential alternatives, thereby increasing their risk of entering a relationship with a firm or financial professional that is a poor match with their expectations and preferences or not engaging in a relationship even if one might be beneficial.[1009]

[1008] This assumes a sequential search process, but an analogous argument can be made if an investor instead searches by deciding ex ante on a fixed number of alternatives to evaluate, in which case the marginal decisions then relates to what this number will be. *See, e.g.*, Babur De los Santos, *et al.*, *Testing Models of Consumer Search Using Data on Web Browsing and Purchasing Behavior*, 102 AM. ECON. REV. 2955 (2012). We have expanded our discussion on search costs in response to main concern 1) of the Former SEC Senior Economists Letter; see *supra footnote* 1004.

[1009] This argument assumes that less knowledgeable investors can learn at least some information from engaging in an initial search or a continued search that could be used to evaluate fit (albeit imperfectly so). If less knowledgeable investors cannot learn from a search at all, the choice of a firm or financial professional becomes similar to a random draw and a search, no matter how extensive, will not decrease the risk of a mismatch.

General trust (in the sense of confidence) in financial markets can help alleviate certain behavioral biases and encourage participation in, for example, the stock market.[1010] Trust at an interpersonal level may be less beneficial in certain circumstances. Research suggests that lower financial literacy among investors is positively associated with higher personal trust in their financial professionals.[1011] However, to the extent retail investors substitute trust for knowledge in their relationship with a financial professional, overreliance on trust may induce some investors to maintain a mismatched relationship longer than they otherwise would if they had higher financial literacy and a better understanding of the costs and benefits of the financial advice they receive from the professional, as well as awareness of alternative services or providers.[1012] That is, particularly for less-knowledgeable investors, a high level of trust in a particular financial professional or firm may exacerbate the potential harm of a mismatched relationship. Similarly, some retail investors that select a firm or financial professional based on

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[1010] *See, e.g.*, the literature review in discussion in OIAD/RAND, *supra* footnote 3, at 11.

[1011] *See, e.g.*, Thomas Pauls, Oscar Stolper, & Adreas Walter, *Broad-Scope Trust and Financial Advice*, Working Paper (Nov. 2016), *available at* https://www.researchgate.net/publication/314235638_Broad-scope_trust_and_financial_advice.

[1012] We acknowledge commenters' concerns that higher financial literacy and more disclosures alone may not fully address the risk that retail investors would rely on trust in their financial services providers over other factors, such as knowledge about financial services industry participants, practices and products. *See* CFA Letter I ("We've seen anecdotal evidence in our own personal encounters with investors of their tendency to trust their "financial adviser" without actually verifying how or how much they are paying or how their investments are performing. Even investors who would be considered sophisticated by any reasonable measure can exhibit a level of trust and confidence in their financial professional that isn't based on data. Any disclosures about their financial professional's services, duties, costs, and conflicts are unlikely to change those views"); AARP Letter ("Recent behavioral science studies have shown that disclosures are largely ineffective because they tend to increase conflict in advisers and make the investor more likely to trust the adviser and thus follow biased advice"); *see also* Regulation Best Interest Release, *supra* footnote 47, (discussing how that rulemaking addresses the limitations of disclosure for customers of broker-dealers).

referrals from friends and family may do so solely on the basis of a high level of trust in these referring parties.[1013] This can exacerbate the potential harm of a mismatched relationship in particular for less sophisticated investors and/or for investors who relied on referrals from less financially sophisticated parties.[1014]

Further, investors may endure a mismatched relationship for a longer period of time than they would absent switching costs, including the cost of a new search and any transaction costs involved in moving assets from one firm to another. These costs lower a retail investor's incentive to look for a new firm or financial professional even if the current relationship turns out to be a poor match. Both overreliance on trust and the presence of switching costs increase the ex-ante value of avoiding a mismatched relationship in the first place.

Retail investors could increase their knowledge about the market for brokerage and investment advisory services, and thereby engage in a more efficient search, by accessing information and disclosures currently provided directly by firms or available in a number of existing regulatory forms and platforms. Current sources of information include, among others, Form ADV (and IAPD) and BrokerCheck.[1015] However, because existing disclosures are made on multiple and sometimes lengthy forms, and are obtained in different ways, it can be difficult

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[1013] We recognize that trust is not the only reason to rely on referrals; for example, there is informational value in other people's personal experiences.

[1014] *See supra* Section IV.B.2.a for survey evidence on the role of personal referrals in retail investors' choice of financial professionals.

[1015] *See* Proposing Release, *supra* footnote 5, at n.280. Investment advisers and broker-dealers may also provide additional information to retail investors through the firm's website and the retail investor's account agreement. Additionally, investment advisers and broker-dealers may provide information to retail investors through marketing materials (*e.g.*, brochures) and other customer communications (*e.g.*, fee schedules).

for investors to grasp the most important features of the financial services from reading these materials.[1016] In addition, the information available to retail investors about broker-dealers on BrokerCheck does not include the same information that investment advisers provide in the Form ADV brochure and brochure supplement, which makes direct comparisons between broker-dealers and investment advisers more difficult.

Voluntary disclosures and educational efforts made by financial services providers such as broker-dealers and investment advisers can potentially inform investors about the specific relationships they can have with providers and the types of services providers offer, but also about the overall market for financial advice and the different types of service providers and relationships available in the market. And such voluntary disclosure could, in principle, facilitate investor search. However, financial services providers may lack incentives to voluntarily disclose salient information or make the effort needed to educate investors about the various alternatives available to them because it is costly to do so. In addition to the costs of producing disclosures and training employees to deliver disclosures, providers may also perceive a risk that competitors would take advantage of disclosed information. Furthermore, disclosures that are not tailored to the provider and have more general educational value to retail investors have the features of a public good. If providers rely on their competitors to educate potential clients generally about the market for financial advice, there is an inefficiently low level of general educational material available to investors. Underprovision might occur even if such disclosures,

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[1016] There is some evidence suggesting investors are not reading current disclosures. For example, RAND 2018 reports that 13% of surveyed investors said that they had viewed Form ADV (11% said they viewed both an ADV and broker account opening document, 2% had only reviewed Form ADV). RAND 2018, *supra* footnote 13.

were they to be provided, would increase the overall efficiency of the market for financial advice and thus benefit financial services providers as a group in the long run, for example, by sufficiently reducing confusion among the general investing public that more investors are willing to search for a financial services provider.

Additionally, some broker-dealers and investment advisers may even privately gain from a lack of knowledge among retail investors to the extent they profit from attracting and retaining customers and clients who would be a better match with another provider.[1017] For example, a customer of a broker-dealer who has a preference for active investing may actually be better off being a client of an investment adviser and paying a fixed percentage of assets per year as a fee for the advice instead of broker commissions each time she receives a recommendation that results in a transaction. However, this investor is likely a profitable customer for the broker-dealer. Similarly, a client of an investment adviser who prefers buy-and-hold investments in a few index funds could potentially be better off in a relationship with a broker-dealer, by only paying a few one-time sales charges and commissions instead of a recurring percentage fee on the assets, which is likely more profitable to the investment adviser. In both of these cases, the firm has little incentive to provide the investor with information about available advice relationships that could persuade the investor to seek advice elsewhere or to switch to a different business line.

[1017] *See, e.g.*, CFA Letter I (stating that "[t]he problem is that investors are being misled into relying on biased sales recommendations as if they were objective, best interest advice and that they are suffering significant financial harm as a result. Investor confusion is relevant only because it limits the tools the Commission has available to address that harm…").

In the presence of the frictions described above, requiring firms and financial professionals to furnish a short summary disclosure like Form CRS can benefit retail investors by reducing information asymmetry between investors and firms and financial professionals and turning investor attention to more salient aspects of a firm and its services. In addition, as discussed above, no current required disclosure allows for comparability among broker-dealers and investment advisers by requiring disclosures on the same topics under standardized headings in a prescribed order to retail investors. A reduction in information asymmetry and improved comparability may reduce search costs for investors and increase their understanding about differences in offered relationships across firms and financial professionals, thereby reducing the risk of investors' hiring a provider that is a poor match for their needs. However, for the relationship summary to be effective for retail investors it must be understandable. Studies have found that the format and structure of disclosure may improve (or decrease) investor understanding of the disclosures being made.[1018] We discuss these studies below.

Some commenters questioned the general efficacy of disclosure in the context of investment advice to retail investors.[1019] We do not share this view. As we discussed above, we

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[1018] *See*, Justine S. Hastings & Lydia Tejeda-Ashton, *Financial Literacy, Information, and Demand Elasticity: Survey and Experimental Evidence from Mexico*, NBER Working Paper 14538 (Dec. 2008) (finding that providing fee disclosures to Mexican investors in peso rather than percentage terms caused financially inexperienced investors to focus on fees); *see* Richard G. Newell & Juha Siikamaki, *Nudging Energy Efficiency Behavior*, Resources for the Future Discussion Paper 13-17 (Jul. 10, 2013) (finds that providing dollar operating costs in simplified energy efficiency labeling significantly encouraged consumers to choose higher energy efficiency appliances, while another related study presents similar evidence from payday loans).

[1019] *See, e.g.*, AARP Letter (stating that "[r]ecent behavioral science studies have shown that disclosures are largely ineffective because they tend to increase conflict in advisers and make the investor more likely to trust the adviser and thus follow biased advice"); Comment Letter of Economic Policy Institute (Aug. 7, 2018) ("EPI Letter") (stating that "Disclosure requirements can be onerous, and disclosure may not only be

believe a short summary disclosure like Form CRS can provide benefits to retail investors. However, as we also discussed in the Proposing Release,[1020] we recognize that there may be limits to the efficacy of disclosure in some circumstances. For example, the documented low level of financial sophistication of many retail investors can make it harder for them to process the implications of disclosure.[1021] Another limitation of the efficacy of disclosure documented in research is that investors may have various behavioral biases, such as anchoring[1022] and over-confidence,[1023] which could affect how the disclosed information is interpreted.[1024] This could in turn lead investors to misinterpret, under-weight, or over-weight the implications of disclosures.

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ineffective, but counterproductive. For example, detailed disclosures can serve to bury important information, or disclosure of conflicts can be interpreted by consumers as evidence of honesty. Disclosure can make sellers more comfortable recommending products and services that are not in buyers' best interests, and it can make clients less comfortable rejecting these recommendations at the risk of giving offense").

1020 *See* Proposing Release, *supra* footnote 5, at Section IV.B.1.

1021 *See, e.g.*, L.E. Willis, *Decision making and the limits of disclosure: The problem of predatory lending: Price*, 65 MD. L. REV. 707 (2006) ("Willis Study"). Commenters discussed similar issues, *see, e.g.*, Comment Letter of Charles Ryan (Aug. 7, 2018); CFA Letter I; American Investment Council Letter.

1022 Anchoring bias implies undue reliance on a particular information signal at the expense of other signals. *See, e.g.*, Robert A. Prentice, *Moral Equilibrium: Stock Brokers and the Limits of Disclosure*, 2011 WIS. L. REV. 1059, at 1083 (2011) (explaining "people tend to anchor on the first information they receive, and then revise their judgments in the face of new information, but to an insufficient degree").

1023 Over-confidence bias implies over-estimation of probabilities of certain outcomes over objective probabilities. *Id.*, at 1072, explains that "studies indicate that people tend, in mathematically impossible percentages, to believe that they are above average in driving, auditing, and teaching."

1024 *See, e.g.*, Jorgen Vitting Anderson, *Detecting Anchoring in Financial Markets*, 11 J. BEHAV. FIN. 129 (2010).

Limited attention problems can also impede investors' ability to effectively process the implications of some disclosures.[1025]

In addition, academic studies find that sometimes certain disclosures may result in unintended consequences. In particular, existing research has found that conflict of interest disclosures can increase the likelihood that the disclosing party would act on the conflict of interest.[1026] This bias can be caused by "moral licensing," a belief that the disclosing party has already fulfilled its moral obligations in the relationship and therefore can act in any way (including to the customer's detriment), or it can be caused by "strategic exaggeration," aimed at compensating the disclosing party for the anticipated loss of profit due to the disclosure. Experimental evidence also suggests that disclosure could turn some clients or customers into "reluctant altruists."[1027] For example, if financial professionals disclose that they earn a referral fee if a customer enrolls in a program, the customer may implicitly feel that they are being asked to help their financial professional receive the fee. One study also found evidence that disclosure of a professional's financial interests (particularly in face-to-face interactions) can induce a "panhandler effect," whereby customers may face an implicit social pressure to meet the

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1025 *See, e.g.*, David Hirshleifer & Siew Hong Teoh, *Limited Attention, Information Disclosure, and Financial Reporting*, 36 J. ACCT. & ECON. 337 (2003) ("Hirshleifer and Teoh Study").

1026 *See*, Daylian M. Cain, George Loewenstein, & Don A. Moore, *The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest*, 34 J. LEGAL STUD. 1 (2005) ("Cain 2005 Article"); Daylian M. Cain, George Loewenstein & Don A. Moore, *When Sunlight Fails to Disinfect: Understanding the Perverse Effects of Disclosing Conflicts of Interests*, 37 J. CONSUMER RES. 836 (2011); Bryan K. Church & Xi (Jason) Kuang, *Conflicts of Disclosure and (Costly) Sanctions: Experimental Evidence*, 38 J. LEGAL STUD. 505 (2009); Christopher Tarver Robertson, *Biased Advice*, 60 EMORY L.J. 653 (2011). These papers study conflicts of interest in general, experimental settings, not specialized to the provision of financial advice.

1027 *See* Jason Dana, Daylian M. Cain, & Robyn M. Dawes, *What You Don't Know Won't Hurt Me: Costly (but Quiet) Exit in Dictator Games*, 100 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 193 (2006).

professional's financial interests.[1028] The above literature indicates that conflicts of interest disclosures may interact with psychological biases to produce unintended effects that undermine the intended benefits of the disclosures. However, these studies also suggest certain factors that may mitigate the unintended consequences. For example, in the case of the "panhandler effect," researchers have found that distancing the client or customer from the financial professional either in the decision or disclosure phase can dampen this effect.[1029]

Academic research has identified a set of characteristics that may increase the effectiveness of a disclosure document to consumers. These characteristics, discussed below, frame our analysis of the economic impacts of the proposed rule.[1030]

Studies have found that the structure or format of disclosure may improve (or decrease) investor understanding of the disclosures being made.[1031] Every disclosure document not only presents new information to retail investors but also provides a particular structure or format for this information that affects investors' evaluation of the disclosure.[1032] This "framing effect" could lead investors to draw different conclusions depending on how information is presented.

1028 Sunita Sah, George Loewenstein, & Daylian M. Cain, *The Burden of Disclosure: Increased Compliance With Distrusted Advice*, 104(2) J. PERSONALITY & SOC. PSYCHOL. 289-304 (2013).

1029 *See id.*

1030 *See* George Loewenstein, Cass R. Sunstein, & Russell Golman, *Disclosure: Psychology Changes Everything*, 6 ANN. REV. ECON. 391 (2014). The paper provides a comprehensive survey of the literature relevant to disclosure regulation.

1031 To that end, in order to facilitate more effective processing of disclosures by investors, some commenters emphasized the need to incorporate "design thinking" into the structure of the relationship summary. *See, e.g.*, Fidelity Letter. *See* also *supra* footnotes 58–59.

1032 *See* Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCI. 453 (1981).

For example, if the disciplinary history information is presented first, it could affect the way investors perceive all subsequent disclosures in the relationship summary and, possibly, discount more heavily the information provided by firms with disciplinary history relative to firms with no disciplinary history. If, instead, disciplinary history information were provided at the end of the relationship summary, the effect of the information could be moderated because it would no longer frame the other information provided to investors. Because of such framing effects, it is important that the structure of a disclosure document supports the intended purpose of the disclosure.

Because individuals can exhibit limited ability to absorb and understand the implications of the disclosed information, for example due to limited attention or low level of sophistication,[1033] more targeted and simpler disclosures may be more effective in communicating information to investors than more complex disclosures. Academic studies suggest that costs, such as increased investor confusion or reduced understanding of the key elements of the disclosure, are likely to increase as disclosure documents become longer, more convoluted, or more reliant on narrative text.[1034] Consistent with such findings, other empirical evidence suggests that disclosure simplification may benefit consumers of disclosed information.[1035] In general, academic research appears to support the notion that shorter and

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1033 *See, e.g.*, Hirshleifer and Teoh Study, *supra* footnote 1025; and Willis Study, *supra* footnote 1021.

1034 *See, e.g.*, Samuel B. Bonsall & Brian P. Miller, *The Impact of Narrative Disclosure Readability on Bond Ratings and the Cost of Debt*, 22 REV. ACCT. STUD. 608 (2017) and Alistair Lawrence, *Individual Investors and Financial Disclosure*, 56 J. ACCT. & ECON. 130 (2013); *see also* CCMC Comment Letter.

1035 *See, e.g.,* Sumit Agarwal, *et al.*, *Regulating Consumer Financial Products: Evidence from Credit Cards*, NBER Working Paper No. 19484 (Jun. 2014), *available at* https://www.nber.org/papers/w19484 (finding

more focused disclosures could be more effective at increasing investors understanding than longer, more complex disclosures.

Another characteristic of effective disclosures documented in academic research is disclosure salience.[1036] Salience detection is a key feature of human cognition allowing individuals to focus their limited mental resources on a subset of the available information and causing them to over-weight this information in their decision making processes.[1037] Within the context of disclosures, information disclosed to promote greater salience, such as information presented in bold text, or at the top a page, would be more effective in attracting attention than less saliently disclosed information, such as information presented in a footnote. Limited attention among individuals also increases the importance of focusing on salient disclosure signals. Some research finds that more visible disclosure signals are associated with stronger stakeholder response to these signals.[1038] Moreover, research suggests that increasing signal salience is particularly helpful in reducing limited attention of consumers with lower education

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that a series of requirements in the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), including several provisions designed to promote simplified disclosure, has produced substantial decreases in both over-limit fees and late fees, thus saving U.S. credit card users $12.6 billion annually).

1036 This is a view also supported by commenters. *See, e.g.*, AARP Letter ("A good disclosure statement will highlight the information most important to the consumer.").

1037 Daniel Kahneman, THINKING, FAST AND SLOW (2013). Susan Fiske & Shelley E. Taylor, SOCIAL COGNITION: FROM BRAINS TO CULTURE (3rd ed. 2017).

1038 *See* Hirshleifer and Teoh Study, *supra* footnote 1025. Commenters also addressed the benefit of visible disclosure signals. For example, the Fidelity Letter refers to Stanford Law School Design Principles stating "[u]se visual design and interactive experiences, to transform how you present legal info to lay people." Also, Kleimann II states that "[f]or good design, we want to build upon this tendency by identifying the key questions investors should or are likely to ask and featuring them prominently in the text, thus easing the cognitive task for readers…." Kleimann II, *supra* footnote 19.

levels and financial literacy.[1039] There is also empirical evidence that visualization improves individual perception of information.[1040] For example, one experimental study shows that tabular reports lead to better decision making and graphical reports lead to faster decision making (when people are subject to time constraints).[1041] Overall these findings suggest that problems such as limited attention may be alleviated if key information in Form CRS is emphasized, is reported closer to the beginning of the document, and is visualized in some manner. This is also consistent with the recommendation of several commenters.[1042] However, it is also important to note that given a choice, registrants may opt to emphasize elements of the disclosure that are most beneficial to themselves rather than investors, while deemphasizing elements of the disclosure that are least beneficial to them. As discussed further in the economic analysis below and discussions above, the final instructions of the relationship summary include requirements that are designed to mitigate this risk. For example, the final instructions require standardized headers in a prescribed order, certain other prescribed language (including for the required conversation starters), page limits, and certain text features, which mitigate providers' incentives to behave opportunistically.

1039 *See, e.g.*, Victor Stango & Jonathan Zinman, *Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Bank Overdraft Fees*, 27 REV. OF FIN. STUD. 990 (2014).

1040 *See* John Hattie, VISIBLE LEARNING. A SYNTHESIS OF OVER 800 META-ANALYSES RELATING TO ACHIEVEMENT (2008).

1041 *See* Izak Benbasat & Albert Dexter, *An Investigation of the Effectiveness of Color and Graphical Information Presentation Under Varying Time Constraints*, 10-1 MIS Q. 59 (1986). However, one commenter noted that participants in the RAND 2018 qualitative interviews did not appear to process side-by-side tabular disclosures effectively. *See* Schwab Letter II.

1042 *See, e.g.*, CFA Letter I; Morgan Stanley Letter.

There is also a trade-off between allowing more disclosure flexibility and ensuring disclosure comparability (*e.g.*, through standardization).[1043] Greater disclosure flexibility potentially allows the disclosure to reflect more relevant information, as disclosure providers can tailor the information to firms' own specific circumstances.[1044] Although disclosure flexibility allows for disclosure of more decision-relevant information, it also allows registrants to emphasize information that is most beneficial to themselves rather than investors, while deemphasizing information that is least beneficial to the registrants. Economic incentives to present one's services in better light may drive investment advisers and broker-dealers to deemphasize information that may be relevant to retail investors.[1045] Moreover, although standardization makes it harder to tailor disclosed information to a firm's specific circumstances, it also comes with some benefits. For example, people are generally able to make more coherent and rational decisions when they have comparative information that allows them to assess relevant trade-offs.[1046] The final rules are intended to strike a balance between the relative

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1043 *See* CFA Institute Letter I.

1044 *See, e.g.*, Cambridge Letter; FSI Letter I; Mutual of America Letter; Northwestern Mutual Letter; SIFMA Letter; Vanguard Letter; Primerica Letter; TIAA Letter.

1045 Commenters had similar concerns, *see, e.g.*, EPI Letter; Regulatory Impact Analysis, *supra* footnote 853; CFA Letter I.

1046 *See, e.g.,* JR Kling, *et al.*, *Comparison Friction: Experimental Evidence from Medicare Drug Plans*, 127 Q. J. ECON. 199 (2012) (finding that in a randomized field experiment, in which some senior citizens choosing between Medicare drug plans that were randomly selected to receive a letter with personalized, standardized, comparative cost information ("the intervention group") while another group ("the comparison group") received a general letter referring them to the Medicare website; plan switching was 28% in the intervention group, but only 17% in the comparison group, and the intervention caused an average decline in predicted consumer cost of about $100 a year among letter recipients); CK Hsee, *et al.*, *Preference Reversals Between Joint and Separate Evaluations of Options: A Review and Theoretical Analysis,* 125 PSYCHOL. BULL. 576 (1999).

benefits and costs of disclosure standardization versus disclosure flexibility; for example, by requiring standardized headings and a prescribed order of topics but allowing some flexibility in the firm's own wording and the order of presentation within each topic.

D. Economic Effects of the Relationship Summary

1. Retail Investors

a. Overall Anticipated Economic Effects of Form CRS

Overall, we expect that these final rules requiring firms to deliver a relationship summary will benefit retail investors in several ways, including by reducing information asymmetry between investors and firms (and their financial professionals), reducing search costs and facilitating easier comparisons between and among brokerage and investment advisory firms, and increasing understanding of, and confidence in, the market for financial services more generally.

First, in the specific context of a retail investor considering a firm or financial professional, the relationship summary will reduce the information asymmetry between the investor and the firm or professional by increasing transparency to that investor about a firm's services, fees, conflicts of interest, standard of conduct, and disciplinary history.[1047] Some—though not all—of this information is currently available in the marketplace. The relationship summary, however, will require all firms to provide information on these topics in one summary disclosure, which will be available on firms' websites, if they have one, at BrokerCheck and

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[1047] These aspects of the relationship summary are consistent with, for example, the disclosure items identified in the 917 Financial Literacy Study as essential for retail investors: adviser's fees (76%), disciplinary history (67%), adviser's conflicts of interest (53%), and adviser's methodology in providing advice (51%); *see* 917 Financial Literacy Study, *supra* footnote 588.

IAPD, and through Investor.gov. Current disclosure requirements do not provide this level of transparency and comparability for both broker-dealers and investment advisers. In addition, through the use of layered disclosure, the relationship summary will facilitate investors' access to additional, more detailed, information. The relationship summary is also the first narrative disclosure for broker-dealers' retail customers that will be filed with the Commission and widely available to the public. We believe providing this overview of information in one place will enhance the accessibility of this information for the retail investor reviewing it relative to the baseline. Moreover, some information, such as the payments to financial professionals, is not currently required to be publicly disclosed, making that information available for the first time. The relationship summary may also benefit investors by helping them separate "hard" information about services and fees from marketing communications. To the extent the relationship summary will be effective at informing retail investors,[1048] it should improve their ability to assess whether a relationship offered by a particular firm is a good match with their preferences and expectations. Moreover, a reduction in information asymmetry may also help retail investors increase the value from any given relationship they enter with a firm or financial professional by potentially increasing their ability to monitor the relationship and to make more informed decisions related to the relationship during its duration, including whether to terminate the relationship.

[1048] As discussed *supra*, in Sections I and II, we commissioned the RAND 2018 report and received several surveys and studies provided by commenters. *See supra* footnotes 13-21 and accompanying text. Results of the RAND 2018 survey and other surveys or studies submitted to the comment file indicate that survey and study participants indicated their subjective view that a relationship summary would be useful for retail investors; *see supra* Section I and IV.B.3.b.

Second, Form CRS will provide benefits to those retail investors that want to compare more than one provider or service, including those that want to compare brokerage and advisory services, relative to the baseline. Form CRS is distinct from other required disclosures as it is a standardized disclosure to retail investors that is broadly uniform between investment advisers and broker-dealers, or that requires dual registrants to describe both brokerage and advisory services. In facilitating this comparability, the relationship summary may promote competition between financial service providers along dimensions such as fees, costs, and conflicts, in ways that improve retail investor welfare. The comparative benefits discussed above could increase further should third-party data aggregators enter the market and use the information disclosed in relationship summaries to provide consolidated data on firms, as search and processing costs could be reduced even further for retail investors.[1049]

Third, we also believe that requiring all broker-dealers and investment advisers that serve retail investors to provide a relationship summary, along with the other initiatives we are adopting, will increase understanding of, and confidence in, the market for financial advice more generally. Specifically, because of confusion about the market for brokerage and advisory services or a general lack of confidence in the market, some retail investors are potentially discouraged from seeking a relationship with a financial provider and do not participate in the market for financial services.[1050] The relationship summary may help spread awareness and understanding about the market for financial services by increasing transparency about the

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[1049] The requirement that the headings should be machine-readable may facilitate such entry by third-party data aggregators.

[1050] *See, e.g.*, OIAD/RAND, *supra* footnote 3, for a review of the academic evidence on such effects.

services, fees, conflicts and standard of conduct of financial professionals; reducing confusion among investors generally; and increasing the general level of confidence. This general increase in understanding and confidence should, in turn, make it more likely that investors participate in the market for financial services when participation is likely to benefit them.

Some commenters suggested the general benefits to investors of the proposed relationship summary would be limited.[1051] More specifically, several commenters were concerned that retail investors may be subject to information overload from reading the relationship summary, reducing the potential benefits to investors because of the cognitive costs of digesting the information.[1052] We acknowledge that there are limits to investor cognition with respect to lengthy and detailed disclosures,[1053] however the relationship summary is shorter and more concise than disclosures currently available to investors, which should reduce the likelihood of information overload. Moreover, we have modified the relationship summary from the proposal to further streamline and shorten it, and minimize the use of legal or technical jargon, thereby further reducing the potential that the relationship summary poses a cognitive burden for retail investors that undermines the overall benefit of the disclosure.

1051 *See, e.g.*, CFA Letter I and EPI Letter.

1052 Such concerns are raised in, *e.g.*, AARP Letter; ACLI Letter; Rhoades Letter. Relatedly, some commenters argued that the relationship summary is duplicative of other disclosures and is unnecessary. *See, e.g.*, *supra* footnote 33.

1053 *See supra* footnote 1034 and accompanying text.

We also recognize that the relationship summary, as with other required disclosures, has costs.[1054] For example, as discussed above, there is a risk that disclosure of conflicts of interest can actually increase costs to investors by, for example, providing a perceived "moral license" to financial professionals to act on disclosed conflicts and encourage them to provide more conflicted advice at the expense of investors.[1055] In addition, some commenters expressed a belief that the disclosures in the proposed relationship summary, particularly due to the prescribed wording, may increase investor confusion[1056] or may "create misimpressions, and may even constitute outright misstatements, inaccuracies, or misrepresentations" in certain contexts.[1057] In consideration of these comments, the final requirements for Form CRS permit firms, within the parameters of the instructions, largely to describe their services, investment offerings, fees, and conflicts of interest using their own wording. The final requirements also incorporate many other changes in response to commenters' concerns and suggestions and insights from investor surveys and roundtables, which are intended to increase the benefits and reduce the costs to investors relative to the proposed disclosure. Additionally, as with required disclosures generally, we recognize that the relationship summary alone likely would not fully alleviate investor confusion or risk of mismatched relationships in the marketplace.

1054 *See* the discussion on the limits and potential costs of disclosures to retail investors in *supra* Section IV.C.

1055 Some commenters raised similar concerns. *See, e.g.*, CFA Letter I.

1056 *See, e.g.*, Financial Planning Coalition Letter (expressing concern that Form CRS may exacerbate investor confusion). *See supra* footnotes 77 and 80 and accompanying text.

1057 Committee of Annuity Insurers Letter. *See supra* footnotes 76–81 and accompanying text.

Moreover, firms may attempt to pass through some of the direct compliance costs we discuss further below to retail investors, for example, by charging higher commissions, asset-based management fees, or other fees. However, we believe such pass through of costs is likely to be limited because we expect these direct expenses to be relatively small in the context of the overall size of the brokerage and investment advisory industries.[1058] Additionally, to the extent the relationship summary may promote competition between financial service providers, as discussed above, any increase in competition both among and between broker-dealers and investment advisers could reduce the pricing power of firms, and thereby reduce the ability to pass through the compliance costs associated with the relationship summary.

The magnitude of the anticipated economic effects discussed above will depend on a number of factors, including the extent to which the relationship summary will increase investors' understanding about their potential or current relationships with firms and financial professionals, and in what ways such an increase in understanding would affect their behavior. Given the number and complexity of assumptions that would be required to be able to estimate how the relationship summary will affect investors' understanding and their decision-making, and the lack of data on relevant characteristics of individual firms and their prospective and existing retail investors, the Commission is not able to meaningfully quantify the magnitude of these anticipated economic effects.

We discuss the benefits and costs to retail investors of certain elements of the relationship summary requirements below, including requirements regarding length and presentation,

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[1058] *See infra* Section IV. D.2.b.(4) for a summary of estimates of certain compliance costs developed for the purpose of the Paperwork Reduction Act analysis.

standardization, content (including layered content), delivery, and filing. As part of these discussions, we also discuss certain changes from the proposal and how we anticipate those changes affect the benefits and costs of the final relationship summary relative to the proposed requirements.

b. Presentation and Format

The presentation and format of the relationship summary are designed to facilitate retail investors' processing of the provided information to help them compare information about firms' relationships and services, fees and costs, specified conflicts of interest and standards of conduct, and disciplinary history, among other things. The relationship summary is also designed to promote effective communication between firms and their retail investors. Several features of the relationship summary should reduce some of the limitations discussed above that may undermine the efficacy of disclosures, such as cognitive limitations and disclosure overload, as discussed further below.

The magnitude of the anticipated benefits and costs to retail investors discussed below will depend on a number of factors, including the extent to which the presentation and formatting requirements for the relationship summaries will help increase investors' understanding about the content of the relationship summaries, and in what ways such an increase in understanding would affect their behavior.

(1) Length and Amount of Information

Unlike many other required disclosures by financial firms, the relationship summary has a page limit. We believe that limiting the disclosure length and prescribing certain elements of the relationship summary's content could benefit investors relative to the baseline by forcing firms to provide concise and clear investor-relevant information, thereby reducing information

overload and increasing the likelihood that investors will focus their attention on the relationship summary. The optimal length of the relationship summary for investors may vary from investor to investor based on individual limits to attention and ability to process a lengthier document, though investor and commenter feedback indicated many investors preferred a relationship summary no longer than, and in some cases shorter than, what was proposed.[1059] We have also reduced the page limit for standalone broker-dealers' and standalone investment advisers' relationship summaries from four to two, thereby potentially increasing the benefits of a shorter document relative to the proposal.

However, we recognize that there are potential costs to requiring a page limit.[1060] For example, as pointed out by commenters, a prescribed page limit may make it more difficult for some firms to effectively describe the nature or range of the relationships and may prompt them to exclude details that investors might find important.[1061] To the extent the provided disclosure becomes too abbreviated it may confuse investors rather than inform them about the relationship, which could increase search costs and increase the risk of a mismatched relationship relative to the baseline. The relationship summary includes several elements to mitigate the potential costs of providing less comprehensive information by utilizing layered disclosure, which includes encouraging, and in some cases requiring, hyperlinks to additional information and other textual

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[1059] For example, 57% of RAND 2018 survey respondents indicated that the relationship summary was too long, 41% said it was about right, and roughly 2% said it was too short. RAND 2018, *supra* footnote 13. *See also supra* footnotes 129–139.

[1060] Just as reducing the maximum page length from four to two for standalone broker-dealers and investment advisers could increase the benefits relative to the proposal; this change could also increase these costs relative to the proposal.

[1061] *See supra* Section II.A.2 for examples of commenters raising this concern.

features, such as hovers, to provide descriptions or definitions of terms.[1062] The relationship summary also includes conversation starters that are designed to elicit more substantial conversations on certain topics. Such conversations could further mitigate the costs of less comprehensive information by encouraging the providers to elaborate on topics that investor may find confusing.

Finally, we believe that allowing only the required and permitted information will promote standardization of the information presented to retail investors, minimize information overload, and allow retail investors to focus on information that we believe is particularly helpful in deciding among firms. However, we acknowledge that the potential cost of this level of standardization is that firms will not be able to include other information that might also be helpful to investors.

(2) Organization of Information and Text Features

As discussed above, academic research has documented how individual perceptions of information can change depending on the framing of the information.[1063] The relationship summary's requirement to use standardized questions as headings should help retail investors frame the information that follows the question by establishing sufficient context and increasing salience of the information presented.[1064]

1062 *See generally supra* Section II.A.4 for examples of graphical features encouraged by the Relationship Summary instructions.

1063 *See supra* footnote 1032 and accompanying text.

1064 The proposal had required headings to frame the information, but did not require they be in the form of questions. *See supra* Section II.A.2 for a discussion of comments related to the question-and-answer format, including its potential utility to investors' understanding, and our decision to require this format.

The final instructions include an instruction encouraging the use of electronic and graphical features in the relationship summary.[1065] Additionally, the relationship summary requires the use of text features for certain information, such as the conversation starters, which should increase the salience of this particular information and increase the likelihood that investors will review it. Based on academic research on disclosure readability,[1066] we believe the use of text features, whether voluntary or required, will facilitate retail investors' absorption of the provided information. Additionally, certain electronic features, such as embedded hyperlinks and hovers, should facilitate retail investors' access to additional information if they are interested, thereby reducing their costs in locating the information.

We recognize that because we are encouraging, but not requiring, firms to use graphical and electronic features, some firms might not use text features beyond what is required, potentially reducing their use and the attendant benefits. We believe, however, that providing some flexibility in design to firms may provide a benefit to retail investors, because firms competing for retail investors likely have incentives to use graphical and electronic features to enhance the retail investor's experience. Moreover, flexibility also allows firms to continuously improve their use of graphical and electronic features as they learn over time what features are the most effective. We recognize, however, that one potential cost of allowing this flexibility is that firms may also have incentives to use certain text features to increase the salience of the

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[1065] For a non-exclusive list of features the instructions encourage firms to use, *see supra* Section II.A.3 Some features are exclusive to electronic versions of the disclosure, such as hovers, while others could be used as part of a paper disclosure, such as comparison boxes. The benefits and attendant costs of any electronic features will generally be limited to those retail investors that access the document electronically.

[1066] *See, e.g.*, *supra* footnote 1034 and accompanying text.

portions of the disclosed information that they prefer to highlight, rather than the information that may be the most useful to investors to highlight.

The final instructions do not include certain presentation requirements that we had proposed. For example, we proposed requiring that dual registrants present their information in a single relationship summary, using a two-column format. The final instructions permit dual registrants (or affiliated broker-dealers and investment advisers) to prepare either a single relationship summary describing both brokerage and investment advisory services, or two separate relationship summaries describing each service.[1067] Additionally, we are requiring such firms to use standardized headings in a prescribed order, and to design their relationship summary in a manner that facilitates comparison, but the final instructions do not specifically require a two-column format. We believe this modification could increase the benefits relative to the proposal to investors of the relationship summary by permitting firms to choose design elements that might facilitate comparison more effectively than a two column format. We recognize, however, that absent a specific design requirement, some firms might present this information in a manner that is less effective at facilitating investors' understanding than the proposed two-column format. We believe, however, that the potential benefits of allowing firms with differing business models to determine the design methods most effective at facilitating comparability justifies the change from a single, prescribed design element. Additionally, the final rule does not adopt the proposed restrictions on paper size, font size, or margin width, and instead requires them to be "reasonable." We believe that these modifications from the proposal

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[1067] *See generally* Section II.A.5 for a discussion of specific instructions, as well as comments received.

will incentivize firms to design relationship summaries that most effectively and accurately communicate their disclosed information to the benefit of investors, as well as encourage firms to make interactive, electronic disclosures available.

c. Standardization

(1) Standard Question-and-Answer Format and Standard Order of Information

The final rules require that firms present information under standardized headings and respond to all the items in the final instructions in a prescribed order.[1068] We expect that requiring the same set of headings in a prescribed order for each relationship summary will facilitate retail investors' ability to compare relationship summaries across firms. In addition, the prescribed wording of the headings reduces the risk that firms would use the headings to "frame" each topic in ways that would be less useful for retail investors' understanding of the disclosed information. As discussed above, academic research has documented how individuals' perceptions of information can change depending on the framing of the context of the information.[1069]

We expect retail investors to benefit from this standardization to the extent they review relationship summaries from more than one firm, as the standardized headings in the prescribed

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[1068] *See generally infra* Section II.A.2 for discussion of the specific instructions, as well as comments received. In terms of specifically adopting a question-and-answer format for the standardized headings, we believe that adopting this format is likely to increase the salience of the information under each heading and improve investors' cognitive engagement with the document, which should facilitate their understanding of the disclosed information.

[1069] *See supra* footnote 1032 and accompanying text.

order will allow them to compare firms' responses.[1070] Additionally, the requirement that firms structure the headings in machine-readable format could reduce the cost of third party data aggregators to analyze relationship summaries across many firms and display comparisons of responses, ultimately reducing search costs for investors.[1071]

Because firms will be given very limited flexibility in terms of language for headings and the order of the sections,[1072] some firms may find it more difficult to effectively present the information specific to their business and circumstances they believe should be made salient to retail investors. To the extent that the headings and the specified order do not specifically promote such information for a particular firm, and this information is relevant to investment decisions, investors may potentially find the relationship summary less useful in evaluating the specific firm. To mitigate this potential cost and provide some flexibility to firms, the final rules allow firms to discuss the required sub-topics within each item in an order that firms believe best promotes accurate and readable descriptions of their business.[1073] The final rules also allow firms to omit or modify a disclosure or conversation starter that is inapplicable to their business or specific required wording that is inaccurate. The benefit of such flexibility is that it allows

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1070 *See* Morningstar Letter (commenting on the importance of standardized disclosure, that "[f]urther, it is extremely important for conflict-mitigation disclosures to be standardized… The Commission could require a table, as we discuss below, for the Client Relationship Summary that standardizes how all broker/dealers list their relevant fees, making the costs of opening and maintaining an account transparent and comparable").

1071 Two commenters argued for machine-readability to allow for third party development of comparison tools. *See supra* footnotes 663 and 664.

1072 *See supra* footnote 91.

1073 The proposed instructions prescribed the order of information within each item. *See supra* footnote 121.

firms to increase saliency of and direct investor attention to the more relevant disclosures. We believe the mix of requiring standardized headings and a prescribed order of topics but allowing some flexibility in the order of presentation within each topic strikes an appropriate balance in the inevitable trade-off, discussed further below, between the relative benefits and costs of disclosure standardization versus disclosure flexibility.

The magnitude of the anticipated benefits and costs to retail investors discussed above will depend on a number of factors, including the extent to which the standardized headings and prescribed order of information will help increase investors' understanding about the content of the relationship summaries, and in what ways such an increase in understanding would affect their behavior.

(2) Prescribed wording

The final instructions include a mixture of limited prescribed wording that firms must include and requirements for firms to draft their own descriptions that comply with instructions about topics they must address.[1074] As with any disclosure document, there are inevitable trade-offs between prescribing specific wording for firms to use (when applicable) and providing discretion to firms to use their own wording. We describe those trade-offs, as they relate to the final instructions, below.

The proposed instructions would have required prescribed wording in several items of the relationship summary, including fees and costs and a comparison section for standalone broker-dealers and investment advisers. We explained in the Proposing Release that prescribed wording

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[1074] *See generally supra* Section II.A.1 for a discussion of these instructions, comments received on the proposal, and changes made regarding the amount of prescribed wording.

for these items could benefit investors through standardization and by improving comparability across relationship summaries, while at the same time could impose costs on investors if prescribed wording does not accurately represent a firm's services.[1075] We are adopting final instructions that largely eliminate prescribed wording for most of these items and instead permit firms, within the parameters of the instructions, to respond to the relationship summary items using their own wording.[1076] We continue to prescribe wording for headings, conversation starters, and the standard of conduct, as well as a factual disclosure concerning the impact of fees and costs on investments over time.[1077] However, firms may omit or modify required disclosures or conversation starters that are inapplicable to their business or specific wording required by the final instructions that is inaccurate.[1078] Based on feedback from commenters and observations reported by investor studies and surveys, this change will increase the benefits of the relationship summary to investors relative to the proposal. Specifically, several commenters suggested that some of the prescribed wording would not only reduce the accuracy of the information provided by firms but could also confuse investors about a firm's offerings, and we have made changes in light of those comments. We believe the final rules strike an appropriate balance between comparability between firms and the accuracy and relevance of information contained in relationship summaries, increasing potential benefits to investors relative to the proposal.

1075 *See* Proposing Release, *supra* footnote 5, at Section IV.B.2.a.

1076 *See generally* Section II.A.1.

1077 *See generally* Section II.A.1. We discuss the benefit and costs of these items, including related to the prescribed wording, below, in Section IV.A.c.

1078 *See supra* footnote 91.

We nevertheless recognize reductions in benefits relative to the proposal stemming from this approach. It decreases the degree of standardization of the information which could impact comparability across relationship summaries, as suggested by some academic research.[1079] However, to the extent some of the prescribed language in the proposed rules would be considered "boilerplate" by investors or would not be applicable to a particular firm's services or business, the reduction of such prescribed wording in the final rules is not likely to come at a cost to investors (and in fact is likely to benefit investors). The risk of lower standardization and comparability also is mitigated because, while not prescribing specific wording, the final instructions require prescribed topics that all firms must include in each item. For example, in their description of services, all firms must address monitoring, investment authority, limited investment offerings, and account minimums.[1080] Moreover, increased flexibility for firms to describe their services and offerings relative to the proposal could impose costs on retail investors if it increases the potential ability of some firms to provide information in a less useful or clear way in their own words than when required to use prescribed wording.[1081]

One section proposed for standalone broker-dealers and investment advisers, which we referred to as the Comparisons section, had entirely prescribed wording.[1082] We are not adopting

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1079 *See generally supra* Section IV.C.

1080 *See generally supra* Section II.A.3.

1081 We also acknowledge there is a risk that some firms could use the flexibility to strategically omit or obscure information. Such action, however, would risk liability under Form CRS or the antifraud provisions of the Advisers Act. *See, e.g.,* General Instruction 2.B. to Form CRS.

1082 *See generally supra* Section VI for a discussion of the proposed requirements as well as comments received.

this proposed section. Additionally, we removed prescribed wording from the proposed introduction, which would have noted that brokerage and advisory services were distinct.[1083] On one hand, omission of the Comparisons section potentially could reduce the risk of information overload for investors. On the other hand, omitting this section might reduce benefits relative to the proposal by reducing the salience of potentially valuable comparative information available to retail investors at the point of forming a relationship, particularly if a retail investor does not review relationship summaries of multiple firms. We have taken specific measures to maintain some of the benefits we had intended to achieve in the proposed Comparisons section by using other methods to enable retail investors to continue to view comparative information and access more general educational information. For example, all firms must provide at the beginning of the document a link to Investor.gov/CRS, which offers educational information about investment advisers, broker-dealers, financial professionals and other information about investing in securities. In addition, dual registrants and affiliated firms that offer their brokerage and investment advisory services together are required to provide information about both types of services with equal prominence and in a manner that clearly distinguishes and facilitates comparison. This instruction applies regardless if they prepare a single relationship summary or two separate relationship summaries describing each type of service. If dual registrants prepare two separate relationship summaries, they must cross-reference or link to the other and deliver both with equal prominence and at the same time. Affiliates offering brokerage and investment advisory services together have similar presentation and delivery requirements.

[1083] *See supra* Section I.

The magnitude of the anticipated benefits and costs to retail investors discussed above will depend on a number of factors, including the extent to which the specific requirements regarding wording will help increase investors understanding about the content of the relationship summaries, and in what ways such an increase in understanding would affect their behavior.

d. Content

The final instructions require firms to include specific items in the relationship summary. Below we discuss the anticipated benefits and costs to retail investors from these items.[1084] The magnitude of these anticipated benefits and costs to retail investors will depend on a number of factors, including the extent to which the specific items of disclosure will help increase investors understanding about their potential or current relationships with firms and financial professionals, and in what ways such an increase in understanding would affect their behavior.

(1) Relationship and Services

The relationship summary requires an overview of the services that the firm provides to retail investors.[1085] The topics that the firm must discuss include principal brokerage and advisory services, monitoring, investment authority, limited investment offerings, as proposed, and, new to the adopting release, account minimums and other requirements. The services firms provide to retail investors vary widely. These differences exist not only between broker-dealers and investment advisers, but also within different types of broker-dealers and investment

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1084 *See supra* Section II.B.

1085 *See supra* Section II for a discussion of the requirements and comments received on the proposal.

advisers. We believe that this section will increase the transparency, saliency, and comparability of information about the types of services, accounts, and investments provided by firms, which should likewise improve matching between firms and retail investors.

We have made some changes from the proposal intended to increase the potential matching benefit. In particular, instead of using prescribed wording, firms will describe their services using their own wording. Firms must also describe account minimums, which could improve matching with the provider and may reduce investor search costs, especially for investors that fall short of required minimums so that retail investors can be aware of potential limitations on their initial or continued eligibility for services.[1086] Because all firms must describe particular topics, we believe investors can also use this information to compare firm services if they review multiple relationship summaries. We believe the approach of firms using their own wording to describe their services will increase the benefit to investors relative to the proposal by allowing firms to provide descriptions that are a better match for their particular services. This approach also avoids the cost of firms being required to make inaccurate or confusing disclosures given their specific business models, as raised by commenters.[1087] This potential increase in benefit, however, comes with attendant potential increases in costs to the extent that firms do not present the most relevant aspects of their services or their descriptions are unclear, as discussed in the considerations regarding prescribed wording above. On balance,

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[1086] Disclosures of account minimums could also help make retail investors more focused on their future planning needs, for example, by incentivizing them to target minimal future investment levels to reach an asset value level that will make lower fees or additional services available from a particular provider.

[1087] *See, e.g., supra* footnote 269.

we believe that allowing for a description that is accurate and better matched to a firm's services likely would be more beneficial and less confusing to investors.

(2) Fees and Costs, Standard of Conduct, and Conflicts of Interest

The relationship summary requires several prescribed questions and required responses about fees, conflicts of interest, and the standard of conduct.[1088] Some of this information will be required to be provided to investors for the first time, such as an articulation of the standard of conduct. Other information, while currently available in various sources, will be presented centrally in the relationship summary, with links to more detailed, layered information about fees and conflicts. Additionally, providing retail investors with context for the more detailed information could potentially pique their interest and lead retail investors to seek more information about fees and conflicts through the required links. We believe both the information not previously required and the consolidated summary of information already available elsewhere will benefit investors by increasing salience, transparency, and comparability, and reducing information asymmetry compared to the baseline. More specifically, including these disclosures prominently, in one place, in a digestible manner, at or before the start of a retail investor's relationship with a firm or financial professional could facilitate meaningful disclosure in the relationship summary, as well as conversations between the retail investor and his or her financial professional, and help the retail investor decide on the types of services that are right for him or her. In addition, to the extent that the specified conflicts of interest disclosures could

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[1088] *See supra* Section III for a discussion of the requirements and comments received on the proposal.

draw retail investors' attention to conflicts, they may improve retail investors' ability to select and monitor firms and financial professionals.

The fees, costs, and conflicts disclosure also potentially has costs for investors. In particular, and as discussed above,[1089] the perception that an investor has been warned (via the disclosure) of a firm's and financial professional's potential bias may lead some financial professionals to believe that they are less obligated to provide unbiased advice. Further, the standard of conduct and conflict disclosures could make firms and financial professionals appear more trustworthy and as a result reduce the incentives for retail investors to examine additional information more carefully. Conversely, a potential cost for investors of such disclosures is that some investors may mistakenly leave the market for financial services or choose to not engage with a financial professional because they infer from the discussion of conflicts of interest and fees that a financial professional could provide bad advice or recommend products that will reduce their financial well-being. However, the placement of the prescribed standard of conduct disclosure immediately preceding the conflicts disclosure may alleviate the risk that investors will overreact to the conflicts of interest disclosure in this manner, because the standard of conducts disclosure clarifies that the firm or financial professional must act in the investor's best interest.

We received significant comments about the potential efficacy of the proposed disclosures related to fees and costs, conflicts, and the standard of conduct, and the ultimate benefit of such disclosures to investors. Likewise, feedback from investors through surveys and

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[1089] *See supra* footnote 1026 and accompanying text.

studies and in Feedback Forms revealed confusion about the proposed standard of conduct section in particular.[1090] Results reported in investor surveys and studies also showed that the proposed conflicts section was rated one of the least useful sections, which may suggest that some investors did not understand the role of conflicts based on the disclosure as presented by the sample proposed dual registrant relationship summary.[1091] We have made several changes from the proposed relationship summary designed to increase the clarity and salience of the disclosures, thereby increasing the potential benefit and reducing the potential costs discussed above relative both to the baseline and the proposal. We also believe the changes will reduce the risk that investors will not read the section or will misinterpret it, increasing the effectiveness of these disclosures and therefore the potential benefit.

First, by integrating the section covering fees, costs, conflicts of interests, standard of conduct, and how representatives are paid, [1092] we believe retail investors may be more primed to process implications of these disclosures in a more integrated fashion due to their proximity. In particular, providing these disclosures in the same section could increase the salience of this information for investors,[1093] both relative to the proposal and the baseline, and may potentially improve investor cognitive processing of how conflicts of interest can have an impact on the services and advice provided and costs paid by investors.

1090 *See supra* footnotes 475–478 and accompanying text.

1091 *See supra* footnotes 522–524 and accompanying text.

1092 *See supra* discussion in Section II.A.4.

1093 This is also consistent with some commenters' suggestions and the organization of several sample relationship summaries submitted by commenters. *See supra* footnote 373 and accompanying text.

Second, with respect to fees, the relationship summary requires firms to discuss under separate question headers (i) the principal fee and the incentive that it creates and (ii) other fees and costs that the investor will pay. We are requiring firms to summarize, in their own words, the principal fees and costs that retail investors will incur, including how frequently they are assessed and the conflicts of interest that they create. We think investors will be better able to process the implications of the principal fee disclosure through this requirement. Additionally, requiring firms to describe other fees and costs investors will pay, distinct from the principal fee, will clarify for investors that they pay not only a principal fee for advice, but also additional fees and costs. This may potentially prompt investors to use the required link to learn more information, ask follow-up questions, or monitor for such fees and costs.

Third, the instructions require that the standard of conduct disclosure be placed under the same header as the summary of firm-level conflicts. The expected benefit of placing these conflicts of interest and standard of conduct disclosures together is to improve investor processing of the implications of conflicts of interest disclosure and legal obligations underlying the particular standard of conduct (*i.e.*, best interest for broker-dealers and fiduciary duty for investment advisers) as well as to prevent investor misinterpretation of these disclosures. We continue to prescribe wording for the standard of conduct, which we believe will have greater benefits than giving firms flexibility to describe the standard of conduct. Unlike other areas where we are allowing firms to use their own words, the standard of conduct, whether a fiduciary duty for an investment adviser or Regulation Best Interest for a broker-dealer, applies during the course of the adviser's relationship or where a broker-dealer makes recommendations. We also changed from the proposal the specific wording in an effort to simplify the disclosure relating to the standard of conduct and thereby increase understanding by investors. We believe reducing

the length and the complexity of the prescribed wording for the standard of conduct will increase the salience and comprehension of the required standard of conduct disclosure, because a more readable and shorter disclosure is less likely to be ignored by investors due to information overload and limited attention.

While retail investors may benefit from understanding the standard of conduct that firms and financial professionals are subject to when providing investment advice or recommendations, discussing the standard of conduct in connection with conflicts of interest may benefit investors by making it clear that the standard of conduct does not mean that advice is conflict-free.

Regarding the conflicts disclosure itself, we have added a new requirement that if none of the enumerated conflicts required to be disclosed by the instructions is applicable to a firm, the firm must select at least one of its material conflicts to describe. This was designed to eliminate the potential that firms would not have to disclose any conflicts, which would have been costly to investors if it caused them to believe that the firm had no conflicts. The relationship summary does not require disclosure of all conflicts but does require firms to include a link to additional information about their conflicts. We believe this will benefit investors relative to the baseline by providing sufficient information about certain conflicts to increase their understanding of incentives generally and potentially inducing them to review the linked information, which also minimizes the potential for information overload.

Finally, in addition to requiring firm-level conflicts, the relationship summary includes a separate question and required response about how financial professionals are compensated and the conflicts of interest those payments create. This disclosure will distinguish firm-level from financial professional-level conflicts, which we believe will benefit retail investors by helping

them better understand the role of conflicts and how these conflicts might impact a financial professional's motivation when providing investment advice.

Despite the changes to presentation of fees, costs, conflicts, and standard of conduct relative to the proposal to increase clarity, we recognize the complexity of these issues. Accordingly, we recognize benefits to investors could be limited by investors' potential lack of ability to comprehend the disclosure.[1094] In the extreme, standards of conduct disclosure may also have a reverse effect of unduly enhancing investor trust in providers because investors may misperceive providers as holding themselves to a standard higher than legally required, and making investors discount the severity of the disclosed conflicts.[1095] Because firms have some flexibility to decide what additional fees and costs to describe and, in the case of a firm with none of the enumerated conflicts, which conflict to use as an example, benefits could be reduced to the extent that they choose examples that are not informative to the retail investor. Additionally, there could be a cost to investors to the extent they believe the enumerated fees and conflicts in the relationship summary are the only fees and conflicts the firm has, although we believe that the required wording that explains the summarized conflicts are examples, as well as the required links to more information about fees and conflicts, mitigate the risk of this misperception.

[1094] *See supra* footnotes, 378–382, 475–478, 522–524, and accompanying text, for a discussion of comments and investor survey results on the comparative difficulty for investors to comprehend these disclosures.

[1095] *See, e.g.*, Betterment Letter I (Hotspex), *supra* footnote 18 (reporting that only 26% of participants correctly identified as false a statement that broker-dealers are held to a fiduciary standard).

In addition, referencing academic research on the potential negative effects of conflicts of interest disclosure, several commenters expressed concerns that the proposed required disclosure of conflicts of interest in the relationship summary could lead to a "moral license" for financial professionals to provide even more biased advice and thus take unfair advantage of investors, or lead investors to fail to discount biased advice, trust their providers even more or make them feel pressured to remain in a potentially disadvantageous relationship, *i.e.*, the panhandler effect.[1096] Despite the changes we have made from the proposal to the required conflicts of interest disclosure in the final instructions, we acknowledge that there is still some risk for such negative unintended consequences.

(3) Disciplinary History

As proposed, the relationship summary will contain a section where firms must state in binary fashion whether or not they have disciplinary history, as well as include a reference to Investor.gov/CRS, where investors can conduct further search for additional information on those events.[1097] We have made a change to increase the salience of this information relative to the proposal by making a separate Disciplinary History section, including its own question and required response, rather than—as proposed—including it with other content in an Additional Information section, which should increase any benefits or costs relative to the proposal.

The primary benefit of the disciplinary history disclosure relative to the baseline is that investors will be alerted to a potential need to search and review their provider's disciplinary

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[1096] *See, e.g.*, Better Markets Letter; AARP Letter; Warren Letter; CFA Letter I; *see also supra* Section IV.C for a discussion of moral license.

[1097] *See supra* Section II.B.4 for a discussion of the requirements and comments received on the proposal.

information and will have a mechanism to find more information about any disciplinary history. Although this information already exists publicly, clearly linking to Investor.gov/CRS for further information about disciplinary history at the time investors are selecting a firm or financial professional will help retail investors know where to find additional information about those events, which should reduce search costs and is an improvement relative to the baseline.[1098] The conversation starters also will provide investors with a cue to the importance of understanding the disciplinary history and could trigger more information gathering and ultimately more effective cognitive processing of this disclosure. As a result, an investor may choose to not engage a firm or financial professional if the disciplinary history is considered to be too problematic, or, if an investor chooses to proceed with a provider that has some concerning disciplinary history, awareness of those events could provide incentives to the investor to monitor his or her account more carefully than if she were not aware.

The potential cost is that investors may overreact to the "yes" or "no" response reported in the Disciplinary History section. Investors may attribute the disciplinary history of one or few financial professionals at a firm to the entire firm, and thus choose not to select a provider that could be a good match for them (for example, a larger firm with more employees and thus a greater likelihood of disclosable events)[1099] or avoid hiring a financial professional altogether. Retail investors may also misinterpret a higher baseline rate of disciplinary history for broker-

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[1098] *See, e.g.*, RAND 2018, *supra* footnote 13 (when investors were asked why they would not look up disciplinary history, 37% of all respondents indicated that they did not know where to get the information, whereas 19% of all respondents indicated that it would take too much time or effort).

[1099] *See supra* Section II.B.4.

dealers than for investment advisers, given that the scope of events that trigger a disclosure event is arguably broader for broker-dealers than for investment advisers.[1100] As a result, retail investors may avoid choosing a broker-dealer, even when such a relationship would be a better match for the investors. Relatedly, investors may over-rely on lack of disclosure of disciplinary history as evidence of more ethical conduct; however, lack of such disclosures may be due to unrelated factors such as a comparatively short history of a particular firm or fewer employees (and thus less likelihood of having employees with disclosable events). However, the risk of some investors misinterpreting, or over-relying on, the disciplinary history should be mitigated to the extent firms or financial professionals provide more information about and encourage retail investors to ask follow-up questions regarding the nature, scope, or severity of any disciplinary history. On balance, we believe the benefits to investors from including the disclosure on disciplinary history, as discussed above, justify any potential negative effects.[1101]

(4) Additional Information

The relationship summary will conclude with a section where registrants will let investors know where investors can find additional information about their services and request a copy of the relationship summary, which should benefit investors relative to the baseline by providing this general resource, in addition to the links or references provided throughout the document.[1102] In a change from the proposal, the Additional Information section eliminates the proposed

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1100 *See id.*

1101 This view is supported by survey evidence that suggests that investors consider disciplinary history to be an important factor when searching for a provider of investment advice. See *supra* footnote 996; *see also supra* footnotes 566 and 567.

1102 *See supra* Section II.B.5 for a discussion of the requirements and comments received on the proposal.

requirement to provide information on how investors should report complaints about their investments, accounts, or financial professionals. Instead, we are requiring a conversation starter on whom investors should contact about their concerns. The benefit of this approach is that it improves readability of the form by reducing prescribed wording and potentially facilitates a conversation between investors and their financial professionals; the cost of this approach is that some investors will not have access to direct instructions on how to report their complaints. Finally, investors with limited or no access to internet (*e.g.*, due to costs of internet access or due to a disability) will also benefit from a requirement that firms provide a number through which retail investors can request up-to-date information or a copy of the relationship summary.

(5) Conversation Starters

Disclosures currently required by investment advisers and broker-dealers generally do not have suggested questions for investors to ask their financial professional. The relationship summary will require firms to incorporate suggested follow-up questions for the investor to ask, which the instructions refer to as "conversation starters."[1103]

Conversation starters should benefit investors relative to the baseline by improving the potential to match investors with providers that provide services more suitable to the investors' preferences and needs. We believe that this is accomplished through enabling the investor to be more engaged, potentially assisting the investor with comprehension of relevant disclosures, and assisting the investor in receiving more personalized information than the firm-level disclosure documents, such as Form ADV or documents issued by broker-dealers. That is, to the extent that

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[1103] *See supra* Section II.B.2.c for a discussion of the requirements and comments received on the proposal.

these conversation starters promote more transparency and better communication between investors and financial professionals, retail investors are more likely to understand the information and select the right firm or financial professional to meet their preferences and expectations. In addition, to the extent the conversation starters help increase investors' engagement in a selected relationship it may also increase their monitoring of their relationship and more critically evaluate any advice or recommendations they receive. However, a closer personal engagement between retail investors and financial professionals may cause some investors to feel social pressure to act on the advice or recommendations of the professional due to a panhandler effect,[1104] which may attenuate some of the benefits of the conversation starters.

A potential cost associated with the conversation starters is that the particular required questions may anchor the attention of retail investors to those prescribed questions and reduce the likelihood that they would explore other potential questions that could be important to them based on their individualized circumstances. In response, we have reframed the proposed questions, which were at the end of the proposed relationship summary as "Key Questions," and instead have integrated them within the relevant information item throughout the relationship summary to reduce the risk that investors only focus on this set of questions in their discussions.[1105] Moreover, many of the conversation starter questions are broad and open-ended, which could further mitigate the risk of investors' anchoring on the content of these questions at the expense of the other disclosures in the relationship summary.

[1104] *See supra* footnote 1028 and accompanying text.

[1105] *See supra* Section II.A.4. for discussion on conversation starters.

As pointed out by one commenter, unless the "Key Questions" in the relationship summary are provided to investors in advance, some retail investors may entirely ignore these questions.[1106] As discussed above, the final rules incorporate the questions as "conversation starters" directly in the different sections of the relationship summary, which should increase their salience and reduce the risk of them being ignored by investors compared to the proposal. In addition, because the relationship summaries will be available to investors online on firms' websites or through Investor.gov/CRS, the relationship summaries may be downloaded and accessed by some investors prior to meeting a financial professional, which would give such investors the opportunity to review the conversation starters before meeting a financial professional.

e. Filing, Delivery, and Updating Requirements

(1) Filing Requirements

The final instructions require firms to file their relationship summaries with the Commission (using IARD, Web CRD®, or both, as applicable), and make their relationship summaries available on their websites. In addition to firms' websites, firms' most recent relationship summaries will be accessible to the public through IAPD and BrokerCheck, public interfaces of IARD and Web CRD®, respectively. Investors also will be able to use the Commission's website Investor.gov, which has a search tool on its main landing page and at Investor.gov/CRS that links to BrokerCheck and IAPD. If investors prefer, they may request copies of firms' relationship summaries by calling the numbers that firms must include in their

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[1106] *See* CFA Institute Letter I.

relationship summaries. We expect that making firms' relationship summaries accessible in these ways should reduce investor search costs in connection with selecting investment firms or financial professionals. We also believe that retail investors could benefit from their ability to access the relationship summaries independently through the companies' websites, BrokerCheck, IAPD, or Investor.gov prior to any contact with a financial professional. Such access could increase retail investors' understanding about differences between firms and financial professionals even before approaching a particular firm or financial professional, which could reduce search costs for investors early on in the search process and further reduce the risk of a mismatched relationship. The online availability of the relationship summaries will also enable investors who are currently not participating in the market to become better informed about the market for financial advice and the particular relationships provided without the need to incur the cost of actively contacting a firm or financial professional, which may ultimately encourage them to seek out a relationship with a provider.

In addition, the online availability of the relationship summaries in central locations and the machine-readable headers of the summaries will allow third-party data aggregators to more easily collect relationship summaries and facilitate the development of comparison tools for the investing public. To the extent such tools and metrics are developed, it could facilitate investors' searches by helping them narrow the set of available financial service providers to those that are most likely to provide a good match. However, the benefits to investors from the development of such tools will be mitigated by any fees charged by third-party aggregators for access to the tools.

(2) Delivery and Updating Requirements

Firms will deliver a relationship summary to each new or prospective retail investor based on the initial delivery triggers specific to investment advisers, broker-dealers, and dual registrants.[1107] Firms also must deliver the relationship summary to existing clients and customers who are retail investors in certain circumstances.[1108] For these existing clients and customers, the final rules require that firms deliver the relationship summary (including updates) in a manner consistent with the Commission's electronic delivery guidance and the firm's existing arrangement with that client or customer.[1109]

Because retail investors may face substantial switching costs when they move from one financial professional to another, the benefits associated with finding a good match may be particularly significant. Accordingly, investors' benefits should increase in accordance with their ability to understand and compare relationship summaries, which may take time. We recognize that, as some commenters noted, if a financial professional delivers the relationship summary at the time of service, retail investors may not have sufficient time to thoroughly evaluate the financial professional or may have already made a preliminary decision to engage the particular financial professional by the time they receive the relationship summary. As discussed above, however, there are compliance uncertainties and other costs associated with requiring a relationship summary be delivered at first contact or requiring a waiting period, as

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1107 *See supra* Section II.C.3.b.

1108 *See supra* Section II.C.3.c.

1109 *See supra* Section II.C.3.a.

suggested by some commenters.[1110] First contact between an investor and a financial professional may include circumstances that are not limited to the seeking of investment advice, such as business interactions for other purposes or social interactions. In addition, as noted by commenters, a waiting period may prevent investors from meeting certain deadlines.[1111] As we discuss above, the availability of relationship summaries online may mitigate the concern that retail investors will not have enough time to review them, to the extent that it provides retail investors an opportunity to compare firms before contacting them to obtain services.

We expect that the rules regarding form of delivery—electronic or paper—generally will be beneficial for retail investors relative to the baseline by enabling a form of delivery that is a good match for the particular retail investor. For retail investors who prefer electronic delivery, electronic forms of delivery should facilitate both the engagement with and the processing of the disclosed information, particularly the required and optional hyperlinks and other features. For the investors who prefer paper documents, paper delivery should result in greater likelihood of the investor paying attention to the relationship summary disclosures. We believe that maintaining the mode of delivery consistent with the way information was requested for new customers and consistent with existing arrangements for existing customers will help to further ensure that the investors will not miss and will process the information contained in the relationship summaries. Customers requesting the relationship summary in paper format may be less likely to access the additional information available through the electronic means of access

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[1110] *See supra* footnotes 720–724 and accompanying text.

[1111] *See supra* footnote 719 and accompanying text.

discussed above, which could result in their inability to process potentially important additional information.

We also believe that existing clients and customers of broker-dealers and investment advisers that are retail investors will benefit from the requirement that firms deliver the relationship summary again if they: (i) open a new account that is different from the retail investor's existing account(s); (ii) recommend that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommend or provide a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account, for example, the first time purchase of a direct-sold mutual fund or insurance product that is a security through a "check and application" process, *i.e.*, not held directly within an account.

This requirement should have the benefit of increasing retail investors' attention to disclosures provided in the relationship summary and the implications of new services or account options at the time of that decision. Additionally, the instructions require firms to update their relationship summaries to existing retail clients or customers if the existing relationship summary becomes materially inaccurate, which would include information that is materially outdated or materially incomplete. Firms must communicate the changes by delivering the amended relationship summary or by communicating the information through another disclosure that is delivered to the retail investor. Firms delivering the amended relationship summary must highlight the most recent changes by, for example, marking the revised text or including a summary of material changes and attaching the changes as an exhibit to the unmarked amended relationship summary. Investors should benefit from receiving updated relationship summaries under these circumstances because this information is relevant to the decision of whether to enter

into new services or continue existing services, based upon whether the new or existing services match or continue to match their preferences and expectations. The requirement to attach revised text or a summary of material changes to the amended relationship summary should benefit retail investors by helping them to process the new information quickly. However, we recognize that to the extent that retail investors with established financial professional relationships tend to remain in such relationships, it may attenuate the benefits of receiving the relationship summary again.

2. Broker-Dealers and Investment Advisers (Registrants)

a. Benefits to Registrants

Beyond benefits to retail investors, we also expect broker-dealers and investment advisers potentially to benefit from the relationship summary. Some retail investors, who could benefit from obtaining advice and other services from financial professionals, currently may choose to stay out of the market for financial services because they do not understand what type of firm or financial professional they require. The relationship summary may provide a clear and concise document that may draw new investors to the market. If the relationship summary draws new retail investors to the market for financial services, both broker-dealers and investment advisers may gain new customers and clients, respectively. An increase in new retail investors could enhance revenues for firms and financial professionals, although firms and financial professionals could also bear additional costs, which are discussed below.

Moreover, the relationship summary could provide additional benefits to firms and financial professionals by improving the efficiency of the search process in the market for financial advice. For example, retail investors will be able to access and obtain relationship

summaries for any number of firms online, including both broker-dealers and investment advisers. To the extent investors use this feature at the start of their search for a firm, they are more likely to opt to approach only firms that ex ante meet their preferences and expectations. Thus, broker-dealers and investment advisers may be less likely to expend time and effort meeting and discussing their business model and services with prospective customers and clients, who are seeking a different kind of relationship and that would ultimately not engage in a relationship with the firm or financial professional. Instead, firms and financial professionals can devote their efforts to acquiring customers and clients that are more likely to contract for their services. In addition, to the extent the relationship summary leads to fewer retail investors entering or remaining in a mismatched relationship that does not meet their expectations, it may benefit firms by reducing costly customer complaints and arbitrations.

While some commenters suggested that brokers have incentives to provide ineffective disclosures,[1112] academic studies show that sellers can benefit from better disclosure of product quality information to the buyers, and competitive sellers thus have incentives to disclose better information.[1113] While some disclosure documents may contain topics of material that investors may not understand or prioritize, the relationship summary has been designed to focus on issues already identified by retail investors to be of first-order importance with respect to their

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[1112] *See, e.g.*, CFA Letter; Warren Letter.

[1113] Steven Tadelis & Florian Zettelmeyer, *Information Disclosure as a Matching Mechanism: Theory and Evidence from a Field Experiment*, 105 AM. ECON. REV. 886 (2015); *see also* Tao Zhang, *et al.*, *Information disclosure strategies for the intermediary and competitive sellers*, 271 EUR. J. OPERATIONAL RES. 1156 (2018).

relationship with their financial professional,[1114] such as fees and costs, conflicts of interest, and disciplinary history of firms and financial professionals, among other items.[1115] Further, the relationship summary is intended to be clear, concise, and readable, while permitting firms the flexibility to provide information pertinent to their business model and services offered. Finally, firms may benefit from providing more clear and understandable disclosures to the extent it will facilitate a more efficient matching process with prospective investors. Firms could also bear potential legal liability[1116] and reputational costs as a result of providing potentially less transparent disclosures. For these reasons we believe registrants will generally have incentives to use the discretion permitted in the final instructions to design a relationship summary that is effective at informing retail investors about the nature of their business and offerings.

The magnitude of the anticipated benefits discussed above will depend on a number of factors, including the extent to which investors' will change their behavior as a result of receiving the relationship summary and how firms and financial professionals will react to such a change. Given the number and complexity of assumptions that would be required to be able to estimate how the relationship summary will affect investors' understanding and their decision-making, and the lack of data on relevant characteristics of individual firms and their prospective and existing retail investors, the Commission is not able to meaningfully quantify the magnitude of these anticipated benefits.

1114 RAND 2018, *supra* footnote 13 (survey results re: importance of each topic to respondents).

1115 *See supra* Section IV.B.3.b.

1116 *See supra* footnotes 92–105 and accompanying text (discussing the parameters for the scope of information expected within the relationship summary and the antifraud standard as applied to the relationship summary).

b. Costs to Registrants

The final rule will also impose costs on affected broker-dealers and investment advisers, including: costs associated with preparation, filing, delivery, and firm-wide implementation of the relationship summary; costs of the associated recordkeeping rules; and as well as training, monitoring, and supervision for compliance. We expect that these costs may differ across firms depending on their type (broker-dealer or investment adviser), size, and complexity of business. We discuss these costs in more detail below. The Commission has, where possible, quantified the costs expected to result from the final rules in the analysis below. However, we are unable to quantify some of the potential costs discussed below, because of the number and complexity of assumptions that would be required to be able to estimate how the relationship summary will affect investors' understanding and choice of financial services provider and the lack of data on relevant characteristics of individual firms and their prospective and existing retail investors.

(1) Preparation, Implementation, and Content

Registrants will incur costs in connection with preparing and implementing the relationship summary. With respect to aggregate compliance costs, as discussed in more detail below, some commenters suggest these costs could be high.[1117] One commenter provided a survey of financial professionals that indicate that 79% of survey participants agree that implementation costs may be higher at first but will likely lessen over time, and 40% of firms in

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[1117] *See infra* Sections V.A.1 and V.D.1 for examples of commenters discussing the costs.

the same survey anticipate moderate or substantial time to implement the requirements of Form CRS (and Regulation Best Interest).[1118]

Broker-dealers currently are not required to prepare a consolidated disclosure document for their customers similar to the Form ADV, Part 2A brochure and may incur comparatively greater costs in preparing the relationship summary than investment advisers, given that investment advisers can draw on their experience with preparing and distributing Form ADV Part 2A. The Commission believes that costs of preparation would also fall differently across firms with relatively smaller or larger numbers of retail investors as customers or clients. For example, to the extent that developing the relationship summary entails a fixed cost, firms with a relatively smaller number of retail investors as customers or clients may be at a disadvantage relative to firms with a larger number of such customers or clients since the former would amortize these costs over a smaller retail investor base.

The relationship summary requires the use of standardized headings in a prescribed order, while permitting some flexibility in other aspects of the relationship summary's wording and design within the parameters of the instructions. There is a trade-off in terms of preparation costs to registrants between requirements that prescribe specific wording and formats for disclosures and requirements that do not provide any prescribed language and format. For example, we would expect that the more extensively the relationship summary would rely on prescribed format and wording, the lower the preparation costs for providers, because there

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[1118] *See* CCMC Letter (Survey conducted by FTI Consulting of 30 individuals at 15 broker-dealers and dually-registered firms representing $23.1 trillion in assets under management and administration (AUM/AUA), and 78.54 million investment accounts).

would be less need for them to devote resources to construct their own format and wording. On the other hand, the more extensively the relationship summary would rely on prescribed format and wording, the more likely it would turn into a "one-size-fits-all" document with largely boilerplate language, and firms would lose the benefit of being able to more precisely and accurately describe their own business and offerings to investors. We believe the final instructions strike an appropriate balance in this trade-off, with some higher-level prescribed format and language, such as the standardized language and order of headings, while firms generally will be able to (and have to) choose their own wording and organization of the required information under each heading.

The final instructions provide for more flexibility than the proposed instructions. We acknowledge that this change could increase certain compliance costs relative to the proposal, as firms will have to develop more of their own wording and organization of the information that is required to be included. However, the flexibility permitted by the final instructions is mainly in terms of the wording while the topics and sub-topics of information that are required to be discussed are largely proscribed. This narrows the field of subjects that firms could choose to discuss and potentially mitigates the cost increase from additional flexibility. Moreover, we believe that the expected benefits of this additional flexibility justify this cost increase. In particular, we expect this change from the proposal to benefit firms by allowing them to more accurately describe their services and offerings to retail investors.[1119] We also expect the

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[1119] *See, e.g.*, SIFMA Letter requesting greater flexibility for this reason (stating that "greater flexibility is needed to accommodate various business models, given that different firms offer different products and services").

additional flexibility to benefit both firms and retail investors to the extent it results in disclosures that are more engaging and useful to investors and mitigates the possibility of a mismatch. In addition, several commenters requested greater flexibility to provide accurate descriptions of their business models and services, noting the potential for liability for prescribed disclosures in the proposal that might not be accurate for a particular registrant's business.[1120] Some topics, however, will require firms to use prescribed wording, such as the headings, conversation starters, statement of their legal standard of conduct, and two statements related to fees and costs, for the reasons generally discussed in Section II.A.1.[1121]

In a change from the proposed instructions, the final instructions encourage rather than require dual registrants and affiliates to prepare one single relationship summary, but also allow them to instead prepare two separate relationship summaries.[1122] In addition, if firms prepare one combined relationship summary, the final instructions required them to employ design elements of their own choosing to promote comparability, rather than the two-column format, as prescribed in the proposed instructions. This increased flexibility in presentation relative to the proposal can benefit dual registrants and affiliates because it allows them to design disclosures more suitable to their business models. For example, a firm which generally is marketing both sides of its business to retail investors may find it less costly and/or more beneficial to provide a combined summary. However, dual registrants for which either the brokerage or investment

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[1120] *See generally* footnotes 76–83 and accompanying text.

[1121] *See supra* footnotes 85–90 and accompanying text.

[1122] *See supra* Section II.A.5.

advisory side of their business is not generally marketed to most customers or clients may find it more beneficial to provide two separate relationship summaries. If a firm chooses to prepare two distinct relationship summaries, it may incur an extra cost of preparing the second summary, but we expect firms will only elect to prepare two separate summaries if they believe the benefits of separate summaries justify such additional preparation costs.

Beyond the more general costs discussed above from the prescribed formatting and wording requirements, some specific requirements may be costly for certain firms. For example, because the relationship summary requires information to be organized by standardized headings in a prescribed order, some firms may find it difficult to effectively present the most salient information specific to their business and services. As such, certain firms may incur costs associated with trying to fit their business model and other relevant information into the standardized headings. This is mitigated by the fact they have flexibility to present the required sub-topics of information in the order of their choosing within each subtopic and by firms' ability to omit irrelevant information. Firms and financial professionals also may bear costs in providing additional information to potential or existing investors to clarify any information that is salient to their business but does not fit into the standardized headings of the relationship summary. These costs are mitigated by firms' ability to supplement their relationship summaries with cross-references or hyperlinks to additional information.

The page limit for the relationship summary also has potential costs, particularly for firms with complex business models, even under the increased flexibility provided by the final instructions, because they would have to distill the complexity of their business into the same space as less complex firms. The use of layered disclosure, through mediums such as hyperlinks,

will permit firms to provide more detailed information that may ameliorate this cost to some extent, while still adhering to the formatting requirements of the relationship summary.

Firms will also incur costs associated with the production and verification of information in the relationship summary. Although some of the information that will be summarized in the relationship summary is contained in other disclosures that firms already provide, firms will bear the cost of editing this information for the relationship summary and cross-referencing or hyperlinking to additional information. For example, to the extent that some firms do not already have in place a concise description of how fees, costs, conflicts, and standards of conduct are potentially connected, that also will allow for meeting the relationship summary's space constraints, firms will have to expend time and effort to develop an accurate, clear, and concise description of these items, written in plain English, for insertion into the relationship summary, and cross-referencing or hyperlinking to additional information about these items. These costs may be larger for broker-dealers than for investment advisers, who can directly draw on the disclosures of fees, costs, and conflicts they have to provide to retail investors in Part 2 of Form ADV. Also, to the extent the costs of developing this section have a fixed component, the relative burden of developing this section may be higher for smaller firms. On the other hand, smaller firms are likely to have fewer types of fees, costs, and conflicts to report compared to larger firms, potentially making it less burdensome for them to summarize the required information.

In addition, the relationship summary requires "conversation starters" as part of each section, and the conversation starters must be highlighted through text features to improve their prominence relative to other discussion text. Firms will incur costs associated with the conversation starters, particularly with respect to preparation and training on how financial

professionals provide accurate and complete responses to the "conversation starters" when asked. We do not have access to data and information that would allow us to estimate these costs to firms, but we expect them to be comparatively greater for firms with more complex business, a wider range of offered services and products, because training and supervision costs for such firms could be more extensive. For firms that provide automated investment advisory or brokerage services, those firms will incur burdens to prepare answers to each conversation starter question and make those available on the firm's website (while providing in the relationship summary a means of facilitating access, *e.g.*, by providing a hyperlink, to that section or page).[1123]

We also anticipate that firms will bear some costs in the production of the electronic format as well as other graphical elements, such as charts and tables, which may make important information more salient to investors. Smaller firms may disproportionately incur costs associated with electronic and graphical formatting, particularly if they do not have an existing web presence or currently produce brochures or other disclosures that make use of graphical formatting. However, because the final instructions encourage, but do not require electronic formatting and graphical, text, and online features, firms would only bear these costs if they expected these features to provide benefits that justify these costs.

Finally, there could also be some indirect costs to firms from some of the required content in the relationship summary. In particular, to the extent that including disciplinary history information in the relationship summary increases the propensity of retail investors to

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[1123] See supra footnote 184

consider this information when selecting firms and financial professionals, firms that affirm they have one or more reportable disciplinary events may face a loss in competitiveness compared to firms that have no event to report. This can in particular be costly for firms that have few or less serious disciplinary events that may be overlooked by investors that do not research the nature of the disciplinary history in more detail.[1124] We also recognize larger firms might be more likely to incur such competitive costs, because larger firms are more likely to have at least one reportable disciplinary event than smaller firms. Similarly, holding size constant, older firms, by virtue of having a longer business history, are more likely to have one or more reportable events than younger firms. Although we acknowledge the potential for firms to incur competitive costs from having to affirm they have reportable disciplinary history, those costs are justified by the potential benefits to investors from this disclosure, as discussed above.

(2) Filing, Delivery, and Updating Requirements

As proposed, the final instructions require firms to file their relationship summaries with the Commission and make them available on firms' publicly available websites, if they have one. The relationship summary must be filed in a text-searchable format with machine-readable headings. Further, the final instructions will require investment advisers to file their relationship summaries using IARD, as proposed; however, the final instructions—in a change from the proposal—will require broker-dealers to file through Web CRD® instead of EDGAR. This should reduce overall burdens relative to the proposal as broker-dealers already have extensive experience filing on Web CRD®, which is more accessible for broker-dealers. As proposed, dual

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[1124] Commenters raised similar concerns. *See supra* footnote 586 and accompanying text.

registrants will be required to file on two systems. Instead of filing on EDGAR and IARD, as proposed, dual registrants will be required to file using both Web CRD® and IARD. We recognize that requiring dual registrants to file using both Web CRD® and IARD may be more costly than filing through just one system; however, we believe that any such cost is justified to ensure a complete and consistent filing record for each firm and to facilitate the Commission's data analysis, examinations, and other regulatory efforts.

As discussed above, the firms that deliver relationship summaries electronically must do so within the framework of the existing Commission guidance regarding electronic delivery.[1125] With respect to initial delivery of the relationship summary to new or prospective investors, firm are required to deliver the relationship summary in a manner consistent with how the retail investor requested information, consistent with the Commission's electronic delivery guidance.[1126] Flexibility in the method of delivery, consistent with Commission guidance, could promote efficiency by allowing firms to communicate with retail investors in the same medium by which they typically communicate other information.[1127] Regardless of the method of delivery (*e.g.*, paper or electronic delivery), firms will incur costs associated with delivering the relationship summary to retail investors.

Moreover, requiring firms to make a copy of the relationship summary available upon request without charge will require firms to incur costs. For example, firms that provide a paper

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[1125] *See supra* Section II.B.3 and footnote 678.

[1126] *See supra* footnotes 679–681 and accompanying text.

[1127] *See supra* Section II.B.3 and footnote 680.

version of the relationship summary to retail customers that request it will incur printing and mailing costs when such requests are made. Further, firms may incur additional costs associated with systems for tracking customer delivery preferences.

Firms will also incur costs for updating and filing the relationship summary within 30 days of whenever any information becomes materially inaccurate.[1128] Firms could communicate this information by delivering the amended relationship summary or by communicating the information another way to the retail investor. For example, if an investment adviser communicated a material change to information contained in its relationship summary to a retail investor by delivering an amended Form ADV brochure or Form ADV summary of material changes containing the updated information, the ability to disclose material changes by delivering another required disclosure containing the updated information should mitigate the cost of the requirement to communicate updated information in the relationship summary to investors. Firms could also incur costs to keep records of when the initial or updated relationship summary was delivered; however, we believe that firms will be able to leverage their current compliance infrastructures in maintaining such information.

The Commission anticipates that the costs associated with delivery for an average broker-dealer or average dual registrant will be higher than the costs for the average investment adviser. As Table 1 and Table 3 in Section IV.A.1 indicate, broker-dealers maintain a larger number of accounts than investment advisers; therefore, delivery costs for broker-dealers could exceed those of investment advisers, if the number of accounts is a good indicator of the number of retail

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[1128] Along this line, firms could also incur some costs in modifying certain referenced disclosures per the parameters of General Instruction 3.B to Form CRS.

investors.[1129] Similarly, given that the average dual registrant has more customer accounts than the average investment adviser, and that the preparation of relationship summaries and any updates for dual registrants may require more effort than for standalone broker-dealers or investment advisers, the compliance costs could be larger for those firms.

Firms will be required to deliver the relationship summary to retail investors. The final instructions have adopted a definition of retail investor that is similar to the definition of retail customer in Regulation Best Interest, but differs to reflect the differences between the relationship summary delivery requirement and the obligations of broker-dealers under Regulation Best Interest, including that the retail investor definition covers prospective as well as existing clients and customers and natural persons who seek services from investment advisers as well as broker-dealers. This definition of retail investor relative to the proposal may reduce uncertainty for broker-dealers and investment advisers about which customers should obtain relationship summaries. We do not believe this changes the scope of retail investors that will benefit collectively from the final rules.

(3) Recordkeeping Amendments

As adopted and discussed above, firms will be required to make and preserve records of each version of their relationship summary and each amendment filed with the Commission. Firms will also be required to make and preserve a record of the dates that each relationship summary was given to any client, customer, or prospective client or customer who subsequently

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[1129] The Commission is unable to obtain from Form BD or FOCUS data information on broker-dealer numbers of customers, and instead, is only provided with the number of customer accounts. The number of customer accounts will exceed the number of customers as a customer could have multiple accounts at the same broker-dealer.

becomes a client or customer and such records will be maintained in the same manner, and for the same period of time, as other books and records under the applicable recordkeeping rules. As previously discussed, commenters stated that they believe the requirement to maintain records of the dates that the relationship summary was given to prospective clients or customers may impose significant and unnecessary costs and burdens.[1130] Commenters stated that firms do not have compliance and recordkeeping systems in place that could, without substantial and costly modification, maintain records of related to prospective clients or customers who might not become actual clients or customers of the firms for weeks, months or years after firms begin communicating with such individuals. As an alternative, commenters suggested that firms only be required to maintain a record of the most recent date they delivered the relationship summary to a prospective client that becomes an actual client preceding the opening of an account. Commenters suggested only requiring a record that the relationship summary was delivered at account opening or when a retail investor becomes an investment advisory client.

The inclusion of the recordkeeping requirements in the amended rules will impose costs on firms in the form of revised recordkeeping policies and procedures and possible modifications to their recordkeeping systems. The record requirements, however, may be less burdensome if their recordkeeping and compliance systems are already capable of creating and maintaining records related to communications with prospective clients. For example, investment advisers are required to keep similar records for the delivery of the Form ADV Part 2 brochure and broker-dealers are subject to comparable recordkeeping requirements with respect to communications

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[1130] *See, e.g.*, Edward Jones Letter.

and correspondence with prospective retail investors.[1131] Further, these recordkeeping requirements may benefit firms by assisting them in monitoring their compliance with the relationship summary delivery requirements. Finally, these records will facilitate the Commission's ability to inspect for and enforce compliance with the relationship summary requirements.

(4) Estimates of certain compliance costs

Although we are unable to quantify all costs discussed above, we quantify certain direct compliance costs based on the estimates developed for the purpose of the Paperwork Reduction Act analysis in Section V. These costs, which we discuss below, are estimated separately for investment advisers and broker-dealers that are required to prepare and file a relationship summary. We note that all aggregate cost estimates for either category of firms include the 318 dually registered firms.[1132] In addition, the costs estimates are calculated for the average investment adviser or average broker- dealer. We recognize that the actual compliance costs burdens for some firms will exceed our estimates and the burden for others will be less because firms vary in the size and complexity of their business models.

First, we quantify certain one-time costs associated with the initial preparation and filing of the relationship summary. The cost burden for an average investment adviser to initially prepare and file the proposed Form CRS for the first time is estimated to range between

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1131 *See supra* footnote 810.

1132 *See supra* footnote 863 and accompanying text.

approximately $5,460 and $9,165, depending on the extent to which external help is used.[1133] The estimated aggregate non-amortized combined internal and external costs for all current investment advisers of initially preparing and filing the relationship summary will be approximately $65.3 million.[1134] In addition, based on IARD system data, the Commission estimates that each year approximately 656 newly investment advisers will be required to prepare and file the relationship summary with us.[1135] The aggregate non-amortized initial preparation and filing costs of the relationship summary for these new investment advisers is estimated to be approximately $5.2 million.[1136] Similarly, for broker-dealers, the cost to an average broker-dealer for preparing Form CRS for the first time is estimated to range between approximately $10,920 and $14,625.[1137] We estimate the aggregate non-amortized aggregate

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[1133] The lower end estimate is based on the assessment that, without additional external help, it will take an average investment adviser 20 hours to prepare the relationship summary for the first time, *see infra* Section V.A.2.a. We assume that performance of this function will be equally allocated between a senior compliance examiner and a compliance manager at a cost of $237 and $309 per hour, (*see infra* footnote 1232 for how we arrived at these costs). Thus, the cost for one investment adviser to produce the relationship summary for the first time is estimated at $5,460 (10 hours x $237 + 10 hours x $309 = $5,460) if no external help is needed. In addition, we estimate that if the investment adviser needs external help, the average cost to an investment adviser for the most expensive type of such help (*i.e.*, compliance consulting services) would be $3,705, *see infra* footnote 1239, which brings the total cost to $9,165.

[1134] We estimate that the aggregate internal cost of initial preparation and filing of the relationship summary for existing investment advisers is $44,963,100 (= $5,460 per investment adviser x 8,235 existing investment advisers). The aggregate external cost for existing investment advisers is estimated to be $20,371,331. *See infra* Sections V.A.2.a and V.A.2.b for more detailed descriptions of how we arrived at these estimates.

[1135] *See infra* footnote 1227 and accompanying text.

[1136] We estimate that the aggregate internal cost of initial preparation and filing of the relationship summary for expected newly registered investment advisers is $3,3,581,760 (= $5,460 per investment adviser x 656 expected new investment advisers). The aggregate external cost for expected new investment advisers is estimated to be $1,622,780. *See infra* Sections V.A.2.a and V.A.2.b for more detailed descriptions of how we arrived at these estimates.

[1137] The lower end estimate is based on the assessment that, without additional external help, it will take an average broker-dealer 40 hours to prepare the relationship summary for the first time, *see infra* Section V.D.2.a. We assume that performance of this function will be equally allocated between a senior

combined internal and external costs to all current broker-dealers of initially preparing and filing the relationship summary will be approximately $38.8 million.[1138] We do not expect any new broker-dealer firms based on the secular decline in broker-dealer firms we have seen in recent years.[1139]

Firms will also incur one-time costs of the initial delivery of relationship summaries to their existing retail investors. We expect the non-amortized initial delivery costs to be approximately $4,941 for the average investment adviser. [1140] In total, we estimate that the aggregate non-amortized initial delivery costs to existing retail investors will be approximately $40.7 million for all current investment advisers,[1141] and $3.2 million for newly registered investment advisers.[1142] For the average broker dealer, we expect costs for the initial delivery to

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compliance examiner and compliance manager at a cost of $237 and $309 per hour, respectively (*see infra* footnote 1365 for how we arrived at these costs). Thus, the cost for one broker-dealer to produce the relationship summary for the first time is estimated at $10,920 (20 hours x $237 + 20 hours x $309 = $10,920) if no external help is needed. In addition, we estimate that if the broker-dealer needs external help, the average cost to a broker-dealer for the most expensive type of such help (*i.e.*, compliance consulting services) would be $3,705, *see infra* footnote 1378, which brings the total cost to $14,625.

1138 We estimate that the aggregate internal cost of initial preparation and filing of the relationship summary for existing broker-dealers is $30,204,720 (= $10,920 per broker-dealer x 2,766 existing broker-dealers). The aggregate external cost for existing broker-dealers is estimated to be $8,560,770. *See infra* Sections V.D.2.a and V.D.2.b for more detailed descriptions of how we arrived at these estimates.

1139 See infra Section IV.B.c for a discussion of this decline.

1140 See supra Section V.C.2.b.(1) for a description of how this is estimated.

1141 Calculated as $4,941 per firm x 8,235 current firms= $40,689,135.

1142 Calculated as $4,941 per firm x 656 expected new firms = $3,241,296.

existing retail investors to be approximately $45,801.[1143] The aggregate non-amortized initial delivery cost for all current broker-dealers is estimated to be approximately $126.7 million.[1144]

Moreover, firms are required to post a current version of their relationship summary prominently on their public website (if they have one). We estimate that the initial posting will cost approximately $93 per firm (whether an investment adviser or a broker-dealer).[1145] In aggregate we expect the initial cost of posting the relationship summary to firms' websites to be approximately $686,437 for existing investment advisers,[1146] $54,682 for newly registered investment advisers,[1147] and $257,238 for broker-dealers.[1148]

In addition to the estimates of one-time costs discussed above, for the purposes of the Paperwork Reduction Act analysis, we have also developed estimates of certain expected ongoing compliance costs of the final rules. For example, firms will incur costs each year due to the requirement to re-deliver the relationship summary to existing retail investors in certain situations. We estimate that the annual average cost to re-deliver the relationship summary will be approximately $992 for an average investment adviser and in aggregate approximately $8.8

[1143] Calculated as $126,684,600 (the estimated aggregate costs)/ 2,766 (number of broker-dealers with retail customers). *See infra* Section V.D.2.d. (1) for how the aggregate cost is estimated.

[1144] *Id*.

[1145] *See infra* sections V.C.2.a (for investment advisers) and V.D.2.a (for broker-dealers) for how the average cost per firm is estimated.

[1146] Based on IARD system data, 91.6% of investment advisers with individual clients report having at least one public website; *see infra* Section IV.B.2.a. Therefore the aggregate cost for existing investment advisers is estimated as: 91.6% x $91(average cost per firm) x 8,235 (number of existing investment advisers) = $686,437.

[1147] Assuming that the fraction of firms with at least one public website is the same for newly registered investment advisers as it is for existing investment advisers (*see id*), we estimate the aggregate costs as: 91.6% x $91(average cost per firm) x 8,235 (excepted number of new investment advisers) = $54,682.

[1148] *See infra* footnote 1370 and accompanying text.

million annually for all investment advisers.[1149] For broker-dealers, we estimate that the annual average cost to re-deliver the relationship summary will be approximately $9,222 for the average firm, and in aggregate approximately $25.5 million annually for all broker-dealers.[1150] Firms will also be required to deliver relationship summaries to new and prospective retail investors. Based on the Commission's projections of future client and customer account growth, we estimate that the annual costs to current firms of delivery to new and prospective retail investors would be between approximately $223 for an average investment adviser and $5,072 for an average broker-dealer, or approximately $1.8 million annually in aggregate for investment advisers and approximately $14.0 million annually in aggregate for broker-dealers.[1151] The difference in cost estimates between investment advisers and broker-dealers is mainly due to the fact that investment advisers serving retail investors generally have fewer clients than broker-dealers serving retail investors have customer accounts, but also because we project a lower growth rate for retail clients for investment advisers (4.5%)[1152] than for retail customer accounts for broker-dealers (11.0%).[1153] In addition, firms will also incur costs associated with making paper copies of the relationship summary available upon request. We estimate that such annual costs would be approximately $31 for the average firm (whether investment adviser or broker-

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1149 *See infra* Section V.C.2.b.(2).

1150 *See infra* Section V.D.2.d.(2).

1151 *See infra* section V.C.2.c for how we estimate the costs to investment advisers, and *see infra* Section V.D.2.e for how we estimate the costs for broker-dealers.

1152 See infra footnote 1341 and accompanying text.

1153 See infra footnote 1415 and accompanying text.

dealer), and the aggregate annual costs for investment advisers and broker-dealers combined would be approximately $338,272.[1154]

In Section V, for the purposes of the Paperwork Reduction Act analysis, we also estimate the quantifiable expected ongoing costs associated with updating the relationship summary. These costs would be associated with preparing updated relationship summaries when information becomes materially inaccurate, re-posting updated relationship summaries to a public website, and communicating changes to the relationship summary through re-delivery to existing retail investors. We estimate that the annual costs for firms to update and file amended relationship summaries will be approximately $467 for the average investment adviser, or approximately $3.8 million in aggregate for all investment advisers.[1155] For investment advisers with a public website, we estimate the average annual costs of re-posting amended relationship summaries to be approximately $53.32 per adviser, or $402,207 in aggregate for all investment advisers with public websites.[1156] Finally, we expect investment advisers will incur quantifiable costs of communicating changes to amended relationship summaries, if they choose to do so by delivery. We estimate the average annual costs of communicating changes to amended relationship summaries by delivery will be $8,450 per adviser that to choose to do so, and in aggregate approximately $34.8 million for all investment advisers that we expect to choose delivery to communicate updated information.[1157] For broker-dealers, we estimate the annual

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1154 *See infra* footnote 1339 and accompanying text for how we estimate the costs for investment advisers, and *see infra* footnote 1413 and accompanying text for how we estimate the costs for broker-dealers.

1155 *See infra* Section V.A.2.c for how we estimate these costs.

1156 *See infra* Section V.C.2.b.(3) for how we estimate these costs.

1157 *Id.*

costs to update, file, and post amended relationship summaries will be approximately $608 for the average firm and approximately $1.7 million in aggregate for all broker-dealers.[1158] We estimate annual delivery costs will be approximately $ 91,602 for the average broker-dealer that will choose delivery to communicate updated information, and in aggregate approximately $126.7 million annually for all broker-dealers that we expect to choose delivery.[1159]

Finally, for the purposes of the Paperwork Reduction Act analysis, we also developed estimates of certain compliance costs associated with the recordkeeping requirements in the final rules. We estimate that the annual costs to firms related to these recordkeeping requirements will be $12.67 for an average investment adviser and approximately $104,354 in aggregate for all investment advisers. [1160] For broker-dealers, we estimate annual recordkeeping and record retention costs to be approximately $39 for an average broker-dealer, and $107,017 in aggregate for all broker-dealers.[1161]

3. Impact on Efficiency, Competition, and Capital Formation

In addition to the specific benefits and costs discussed in the previous section, we expect that the relationship summary could produce a number of broader long-term effects on the

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1158 *See infra* Section V.D.2.c for how we estimate these costs.

1159 See infra Section V.D.2.d.(3) for how we estimate these costs.

1160 For investment advisers we estimate 0.2 additional burden hours related to the recordkeeping requirements in the final rule; *see infra* footnote 1280 and accompanying text. We expect that this incremental burden will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function at a total cost of $70 per hours, and general clerks performing 83% of the function at total cost of $62 per hour; *see infra* footnote 1282. The average costs per investment adviser is then estimated as (17% x 0.2 hours x $70) + (83% x 0.2 hours x $62) = $12.672. The aggregate cost is then $12.672 x 8,235 (number of investment advisers) = $104,354.

1161 *See infra* Section V.E for the estimation of recordkeeping costs (estimated at $32 annually per broker-dealer, or $87,627 in aggregate), and *see infra* section V.F.1 for the estimation of record retention costs (estimated at $7 annually per broker-dealer, or $19,390 in aggregate).

market for financial advice. Below, we elaborate on these potential effects, in particular as they pertain to their impact on efficiency, competition, and capital formation.

a. Efficiency

The final rule requiring broker-dealers, investment advisers, and dually registered firms to produce a relationship summary could result in increased informational or allocative efficiency for retail investors by reducing the risk of matching with a firm or financial professional that is different from the investor's expectations and preferences. As discussed above, the risk of mismatch potentially imposes costs on investors, financial professionals, and firms. Investors may inadvertently, in the absence of information provided by the relationship summary, select the wrong type of financial professional or account, leading to increased costs (direct and indirect) and potentially suboptimal outcomes as it pertains to meeting the investor's financial goals. For firms and financial professionals, cultivating relationships with potential investors requires resources in terms of time and effort. If an investor and financial professional or firm is mismatched, then both sides of the relationship can incur costs. For example, the financial professional may devote time and resources to develop a relationship with a retail investor that is comparatively costly to maintain because of a mismatch between the investor's expectations and the services offered by the professional,[1162] and the investor incurs costs associated with obtaining services that do not fit his or her needs. As such, the relationship summary may reduce the costs associated with mismatch for investors, firms, and financial

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[1162] However, as discussed previously in, *e.g., supra* Section IV.B, a mismatch from the retail investors' perspective may be advantageous for firms in certain circumstances, in which case firms may not overall benefit from a decrease in the number of mismatched investors.

professionals and increase the efficiency of the market for financial advice. We expect these efficiency gains particularly in the initial matching between investors and firms and financial professionals. For some retail investors, receipt of the relationship summary from their existing firm or financial professional could highlight that they are mismatched in their current relationship. Those investors may benefit from terminating the mismatched relationship and looking for a more appropriate match, but such gains are likely to only be realized to the extent investors anticipate the long-term benefits from a better match will be greater that the short-run switching and search costs. Moreover, these efficiency benefits may be attenuated to the extent that investors tend to stay in relationships with financial professionals once investors are committed to the relationship, even if the relationship is mismatched.

Informational efficiencies could also be enhanced with the relationship summary because key information is focused on information that has been previously identified as important to retail investors, salient and consistently disclosed across broker-dealers and investment advisers. The relationship summary will provide concise, user-friendly information which will allow retail investors to better understand the relationship that they will have with their financial professionals and will allow them to seek services commensurate with their expectations. In addition, to the extent the information asymmetry between investors and financial professionals is reduced, investors may make more informed investment decisions, or become more able to critically evaluate any investment advice they receive. Further, the use of layered disclosure and conversation starters will allow retail investors to access additional information that may be relevant to them when selecting their firm or financial professional, further reducing the risk of mismatch.

The firm-specific nature of the relationship summary required by the final rules about a particular firm will enhance retail investors' information set about each firm, providing them with a more concise and simple document, which should alleviate potential investor confusion about the key elements of the relationship that the investor could expect to have with that firm.

However, such improved efficiency could be lower than that expected under the proposal because, unlike the proposed relationship summary, the adopted relationship summary will include less prescribed language and greater flexibility. For example, the relationship summary will not include a comparison between general broker-dealer and investment adviser standards and services.[1163] The elimination of this proposed requirement will likely reduce (relative to the proposal) the usefulness to retail investors from obtaining this general information from a single source (*e.g.*, any firm's relationship summary) and instead will require effort from investors in the form of search costs to provide an adequate comparison across firms within a given type of firm (*e.g.*, investment advisers). Moreover, for investors that may not know which type of firm is likely to best meet their preferences and expectations with respect to financial services, a less general relationship summary requires that investors that expend search costs also select the correct types of firms in order to make such a comparison. This may be difficult for some retail investors, and could increase the costs of search and the risk of mismatch. Also, allowing dual registrants the flexibility to prepare two separate relationship summaries rather than one combined document may result in some efficiency loss in terms of less direct comparability. Nonetheless, we believe that investors having access to specific and tailored information about

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[1163] *See supra* Section II.B.6 for why the generalized comparison discussion was not included in the relationship summary.

the firms, as provided in the final rules, is more important for reducing investors search costs and risk of mismatch, thereby justifying the potential efficiency losses (relative to the proposal) discussed above.

Beyond informational efficiencies that could arise, the relationship summary also may lead to more efficient investor allocation of assets within their portfolios relative to the baseline. Some retail investors that previously avoided the market for financial services because they did not understand the material characteristics of either broker-dealers or investment advisers may be more likely to hire a financial professional if the costs associated with the acquisition of this information are reduced relative to the baseline. The relationship summary is a simple, concise document providing investors information about key elements of the investor-provider relationship that could incent some investors to seek the services of a financial professional. As such, for some investors that previously abstained from hiring a financial professional, portfolio efficiency could be improved, for example, through increased portfolio diversification.[1164] Furthermore, because of being provided the relationship summary, some current investors may realize that other services provided by their financial professional could be more appropriate for them. For example, an advisory client of a dual registrant may learn more about the broker-dealer services offered by the firm and realize that those services better match his or her preferences and make a switch, which may ultimately improve portfolio efficiency for the client.

[1164] As discussed above, academic studies have identified several potential benefits to retail investors from seeking investment advice, including increased diversification; *see supra* footnote 1005 and accompanying text.

However, as noted in Regulation Best Interest, certain studies suggest that for some financial professionals, the improvements to portfolio efficiency could be limited if the financial professionals are subject to the same behavioral biases, such as limited attention or anchoring, as retail investors in their portfolio allocation decisions.[1165] Further, to the extent the relationship summary makes the conflicts of interest of financial professionals more salient to retail investors relative to the baseline, there is a risk that some professionals would feel they have a "moral license" to act on their conflicts,[1166] which could harm the efficiency of retail investors' portfolio allocations. Despite such potential negative effects related to conflicts of interest disclosure, we believe that, on balance, retail investors will benefit from the inclusion of this disclosure in the relationship summary. In particular, the conflicts of interest disclosure should enhance investors' ability to evaluate which relationship is best for them and also help them more critically evaluate the recommendations or investment advice they receive, which should ultimately improve the efficiency of their portfolio allocations.

In addition, and in a modification from the Proposing Release, the headings on the relationship summary will be machine readable, which will facilitate third-party data aggregators', as well as the Commission's, analysis and comparison of certain elements of the relationship summary across firms to the benefit of retail investors. Comparability will lead to greater informational efficiency because retail investors will be better able to choose the right type of firm or financial professional and the right type of account and services, thereby

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1165 *See* Regulation Best Interest, Section III.B.3.b.

1166 *See supra* footnote 1027 and accompanying text.

increasing the likelihood that they choose what best meets their needs and reduces the likelihood of mismatch. Providers may likewise benefit from higher information acquisition efficiency because firms may be more likely to initially attract retail investors who prefer their services, thereby potentially reducing customer acquisition costs, such as time and effort spent on initial engagement with prospective customers who ultimately do not contract for their services.

b. Competition

Beyond increased efficiency for retail investors, the relationship summary may also increase competition among broker-dealers and investment advisers. Provision of the relationship summary by firms could enhance the competitiveness of broker-dealers and investment advisers by allowing retail investors to better evaluate and compare firms and financial professionals through increased transparency, and more generally increase retail investors' understanding of the market for brokerage and investment advisory services. In particular, increased transparency may allow investors to better assess the types of services available and the types of fees and costs associated with such services. Moreover, and as discussed above, the relationship summary may facilitate comparisons across firms and lead to reduced search costs for retail investors, allowing investors to match their preferences and expectations for certain financial services, possibly at lower costs relative to the baseline, and may increase competitiveness between firms to lower prices for some services. We believe the changes made to the relationship summary in the final rules have potentially strengthened such competitive effects, for example, by using less prescribed general language and instead requiring disclosure of firm-specific information about services, fees, costs, and conflicts, and by making the headings machine readable, which may encourage the development of search tools by third party providers. An increase in competition may apply only between like firms (*i.e.*, broker-

dealers only or investment advisers only) or may have intra-industry effects across broker-dealers and investment advisers.

As discussed above, increased competition both among and between broker-dealers and investment advisers could reduce the pricing power of firms, benefitting investors through lower fees. Lower fees could draw more retail investors that are not currently seeking investment advice to the market, although some retail investors may be willing to pay higher prices for other reasons, including enhanced services and firm reputation. Combined with improved informational efficiency, increased competition for retail investors resulting from information provided by the relationship summary may drive prices at the margin to competitive levels across all types of firms, depending on how price sensitive retail investors are. Alternatively, and similar to what we have today, a separating equilibrium may result where investors' demand for particular services is relatively price insensitive and they cannot be persuaded to move to a different level of service simply because of lower prices (*e.g.*, investors seeking ongoing advice may be more likely to pay higher prices for advisory services provided by investment advisers, even though a potentially lower cost option could be available through broker-dealers).

Further, lower costs of information acquisition and processing due to the content, format, and structure of the relationship summary may lead to more people entering the market for brokerage and investment advisory services and may increase overall retail investor participation. Such an increase in the number of retail investors in the market for financial services could raise demand for brokerage and investments advisory services and mitigate the potential increase in competition discussed above. However, increased levels of retail investor participation could also encourage new broker-dealer and investment adviser entrants to meet the needs of the new pool of investors, and may increase competition for investor capital through lower fees and costs.

How the competitive landscape will shift as a result of the relationship summary is difficult to determine and the effect on aggregate level of competition among and between broker-dealers and investment advisers could be limited. For example, the relationship summary may not necessarily increase the number of new broker-dealer or investment adviser entrants to the market, but could lead to shifts of investors between broker-dealers and investment advisers to the extent that some currently engaged retail investors are mismatched, and that search and switching costs associated with correcting the mismatch do not justify the costs associated with the potential mismatch. Moreover, the incidence of mismatched relationships with retail investors could be likely for both broker-dealers and investment advisers, so competition could be relatively unaffected in the aggregate; therefore, any mismatch corrected as a result of the relationship summary may not result in a significant net loss of investors for either broker-dealers or investment advisers. In addition, to the extent currently mismatched investors are customers of dual registrants, any switch in account type (brokerage or investment advisory), as a result of the relationship summary, may take place within a dual registrant rather than between different firms, further attenuating any competitive impact.

By reporting legal or disciplinary history, the relationship summary may provide benefits to retail investors by prompting them to seek out additional information (*e.g.*, from Investor.gov or BrokerCheck) on their current or prospective firms and financial professionals and take that information into account when considering whom to engage for financial services. Competition between firms may be enhanced if firms and financial professionals with better disciplinary records drive out those with worse records. We note, however, that legal and disciplinary history reported in the relationship summary may bias firms towards hiring financial professionals with fewer years of experience (*i.e.*, fewer opportunities for customer complaints) and against hiring

experienced financial professional with some (minor) complaints. Further, investors may also bias their choice of firm or financial professional in the same manner. One commenter stated that reporting of legal and disciplinary history "imposes an inappropriate competitive imbalance and inaccurate picture concerning the relative number of disciplinary actions in sales organizations with large number of financial professionals."[1167] The expected economic impact of disciplinary reporting on competition across large and small firms, however, is generally unclear because small firms may suffer disproportional reputational penalties from more salient disciplinary history disclosure. In general, reportable disciplinary history is less common for smaller firms than for larger firms.[1168] Thus, small firms may appear to have better disciplinary history reputation than large firms solely because of their size of operations, rather than their actual legal and regulatory compliance or the professional ethics or integrity of their employees. At the same time, investors may over-react to generally more frequent disciplinary history disclosure by larger firms and forego potentially well-matched relationship with the larger firms as a result.

Disclosing reportable legal and disciplinary history in the relationship summary may confer a small competitive advantage for investment advisers over broker-dealers because broker-dealers are more likely to have to report that they have a disciplinary history due to

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1167 *See* ACLI Letter.

1168 For example, while only 36% of registered investment advisers with less than $1 million of AUM disclose at least one disciplinary action as of January 1, 2019, 71% of registered investment advisers with more than $50 billion of AUM disclosed at least one disciplinary action that year. Form ADV. Similarly, while 42% of broker-dealers with less than $1 million in total assets disclose at least one disciplinary action as of January 1, 2019, 100% of broker-dealers with more than $50 billion total assets disclosed at least one disciplinary action that year. Form BD.

broader broker-dealer disclosure obligations. Reporting from Form BD with respect to broker-dealer disclosures of disciplinary actions taken by any regulatory agency or SRO show than 308 (86%) out of 318 retail-facing dual-registered broker-dealers disclosed a disciplinary action. In contrast, 1,330 (54%) out of 2,448 retail-facing standalone broker-dealers disclosed a disciplinary action. For investment advisers, Form ADV requires disclosure of any disciplinary actions taken in the past 10 years, and 284 (79%) of 318 retail-facing dual-registered investment advisers disclosed a disciplinary action. However, for standalone investment advisers, only 1,176 (15%) of 7,917 retail-facing investment advisers disclosed a disciplinary action.[1169] As broker-dealers have relatively more reportable legal and disciplinary history than investment advisers, retail investors may engage investment advisers with greater frequency than broker-dealers as a result of the disciplinary history reporting on the relationship summary, potentially creating a competitive advantage for some investment advisers.

Although the relationship summary applies to SEC-registered broker-dealers and SEC-registered investment advisers, it could exhibit some spillover effects for other categories of firms not affected by the rule changes such as investment advisers not registered with the SEC (*e.g.*, state registered investment advisers), bank trust departments, insurance companies, and others. In particular, the relationship summary could change the size of the broker-dealer and

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[1169] Source: Items 11C, 11D, and 11E of Form BD and Items 11.C., 11.D. and 11.E. of Form ADV. Form BD asks if the SEC, CFTC, other federal, state, or foreign regulatory agency, or a self-regulatory organization have ever found the applicant broker-dealer or control affiliate to have 1) made a false statement or omission, 2) been involved in a violation of its regulations or statues, 3) been a cause of an investment related business having its authorization to do business denied, suspended, revoked, or restricted, or 4) have imposed upon it a civil money penalty or cease and desist order against the applicant or control affiliate. Likewise, Form ADV asks similar questions of registered investment advisers and advisory affiliates.

investment adviser markets—relative to each other, as well as relative to other markets. To the extent the relationship summary reduces retail investors' confusion and makes it easier for them to choose a relationship in line with their preferences and expectations, this could attract new retail investors to the broker-dealer and investment adviser markets from firms in other markets. At the same time, it is possible that, as a result of conflicts of interest and the existence of disciplinary history being saliently disclosed in the relationship summary, some investors may be deterred from seeking services of registered investment advisers or broker-dealers and instead seek the services provided by a state registered advisor or another professional not regulated by the Commission, or forego seeking financial services altogether.

Firms' current retail investors also may consider switching to a different type of firm if the relationship summary makes the different services provided and the types of fees and costs of investment advisory and brokerage services more prominent. Such a switch could be within the market for investment advisory and brokerage services, or to a financial services provider outside this market (such as a bank or insurance company). The information disclosed in the relationship summary may also lead some investors to realize a relationship with any financial services provider may not be in their best interest, and therefore withdraw altogether from the market. The exact extent and direction of substitution among different types of providers' services is hard to predict and depends on the nature of the current mismatch between retail investor preferences and expectations and the type of services for which they have contracted, and the extent to which investors will digest and use the provided information in firms' relationship summaries.

To the extent the relationship summary increases competition between broker-dealers and investment advisers, and between these firms and other financial services providers, it may result in development of new products and services, and general innovation by the industry at large.

Competition among firms could provide incentives for firms to seek alternative ways to attract retail investors and generate profits. In the process, firms could develop new and better ways of providing services to retail investors, for example, by utilizing information technology to deliver information to retail investors at lower costs. In this way, innovation could improve retail investors' welfare as well as the profitability of financial service providers.

Another possible long-term effect of the relationship summary is that it could decrease the prevalence of third-party selling concessions in the market by requiring broker-dealers and dual registrants to include disclosure about indirect fees associated with investments that compensate the broker-dealer, including mutual fund loads. Currently, selling concessions constitute a significant part of the compensation of broker-dealers selling mutual fund products.[1170] For example, a mutual fund may provide a selling concession, in the form of a sales charge, some portion of which could be remitted to the broker-dealer that recommended the product. To the extent the relationship summary increases the transparency and salience of such selling concessions and related conflicts of interest, investors may start to avoid investing in products that provide selling concessions, encouraging broker-dealers to avoid such arrangements. To compensate for the potential loss of concession-based revenue, dually registered firms could try to switch customers from their brokerage account to their advisory accounts. As noted above, however, if the relationship summary also increases the competitiveness in the broker-dealer and investment adviser markets, the increased competitiveness would create some general downward price pressure in the market which may

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[1170] *See supra* Table 2, Section IV.B.1.a.

spillover to selling concessions.

c. Capital Formation

As discussed above, the relationship summary may improve retail investors' understanding about, and confidence in, the market for brokerage and investment advisory services, which may increase participation in this market by investors that previously avoided it. Such additional entry by new investors could increase the level of total capital across markets and increase the demand for new investment products and securities, which could precipitate capital formation in aggregate across the economy. Depending on the magnitude of these effects, the increased availability of funds could result in lower cost of capital for companies, which could facilitate economic growth.

However, to the extent the disclosure of certain information such as conflicts of interest or disciplinary history decreases some retail investors' level of confidence in market for brokerage and investment advisory services, or the information provided makes some investors believe that they do not benefit from a relationship with a firm or financial professional, such investors could exit this market, which could attenuate any effects on capital formation. In addition, to the extent that the market for financial services is already saturated, there may only be a redistribution between broker-dealers, investment advisers, and other financial service providers (such as state-registered investment advisers, banks, and insurance companies) as a result of retail investors becoming more informed, and any effects on capital formation would be attenuated.

4. Alternatives to the Relationship Summary

To reduce retail investor search costs and costs of potential mismatch between retail investors and professionals in brokerage and investment advisory services, we considered

various alternative approaches to the relationship summary, including whether to adopt additional disclosure requirements. We have previously learned through public comments, investor testing, and a staff financial literacy study that industry commenters and survey participants generally supported a short disclosure document to retail investors that would address firms' nature and scope of services, fees, and material conflicts of interest.[1171] Accordingly, we proposed rules and rule amendments to require firms to provide retail investors with disclosures designed for those purposes. In our proposal, we solicited comment on alternatives to various elements of the relationship summary. As discussed in Section I above, we also conducted extensive public outreach, including investor roundtables, specific solicitation of investor comments through the Feedback Forms, and investor testing.[1172] We considered the suggestions and recommendations received through these processes as alternative approaches in our rulemaking, many of which we discussed in greater detail in Sections I and II above. In determining the required scope and level of detail of information in the relationship summary, we balanced the need for robust disclosures with the risk of investor information overload and failure to properly process these disclosures, a recurring theme in both comment letters and investor feedback received through surveys and studies, roundtables and on Feedback Forms.

[1171] *See* Proposing Release, *supra* footnote 5, at nn.13–21 and accompanying text.

[1172] *See supra* footnotes 11–21 and accompanying text.

a. Amending Existing Disclosures

The relationship summary will be a new, separate disclosure, in addition to other disclosures that firms already must provide.[1173] As noted in Section I above, some commenters argued that the relationship summary is duplicative of other disclosures, for example in Form ADV or in Form BD, and is thus unnecessary.[1174] The Commission considered amending Part 2A of Form ADV to require a brief summary at the beginning of the brochure in addition to the existing narrative elements, or changing certain existing Part 2A requirements to reduce or eliminate redundancy with parts of the relationship summary. Similarly, the Commission considered whether to amend and require delivery to retail investors of a revised Form BD to include the same information as in the relationship summary, and make that information publicly available.[1175]

After careful consideration and for the reasons discussed in Section I above, we believe that a separate summary disclosure will be more effective to help retail investors to choose from among firms and investment services than modifying existing disclosures.[1176] We believe that a short, standalone relationship summary that facilitates comparisons across different providers

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[1173] Broker-dealers and investment advisers have disclosure and reporting obligations under state and federal laws, including, but not limited to, obligations under the Exchange Act, the Advisers Act, and the respective rules thereunder. Broker-dealers are also subject to disclosure obligations under the rules of SROs.

[1174] *See supra* footnote 33 and accompanying text.

[1175] For example, the instructions to Form BD contain a section on the explanation of terms which could be extended to include basic (registrant-specific) information on the business practices of the registrant.

[1176] *See supra* footnotes 42–44 and accompanying text.

and types of services is necessary to highlight information that is relevant to a retail investor before or at the time she is deciding to select a firm, financial professional, account type, or services. To that end, the short and succinct relationship summary includes topics that retail investors indicated would be important to them in selecting a provider. Specifically, because the relationship summary is a shorter document and designed to be more of an overview than the existing investor-facing disclosures, such as Form ADV, and is specifically targeted to help retail investors obtain certain information before deciding to enter into a relationship with a financial professional, retail investors facing that decision can process its information content more efficiently. The relationship summary facilitates layered disclosures and highlights where investors can access more detailed information, including existing documents that investors receive, which could facilitate review of those documents, such as Form ADV Part 2. The relationship summary also promotes the investor receiving more detailed information about the provider and its services, as necessary, through conversation starters. Furthermore, when compared to other disclosures that financial professionals may make on, for example, Form ADV and Form BD, the relationship summary seeks to enhance comparability across both adviser and broker-dealer provider types for retail investors.

Thus, despite some content duplication with other existing disclosure requirements and firms having to bear the cost of creating additional disclosures, we believe that retail investors will benefit from having information relevant to deciding on a firm, financial professional, and/or accounts and services in one place in a more succinct, salient and standardized fashion. Overall, we believe that the relationship summary will enable better-informed decision-making, reduce risk of mismatch, and reduced search costs by retail investors.

b. Form and Format of the Relationship Summary

Under the final instructions, firms will be required to describe, largely in their own wording, different topics related to their offerings in a question-and-answer format. In comparison, we proposed instructions providing for standardized, declarative headings for each section of the relationship summary and a mix of prescribed and firm-specific language within each section. As discussed in Section I above, nearly all commenters and investors providing feedback at roundtables and on Feedback Forms suggested modifications to the sample relationship summary and proposed instructions, and numerous commenters submitted alternative sample relationship summaries.[1177]

Delivery of SEC-authored form. Commenters suggested that the SEC author a standard industry-wide disclosure to deliver to retail investors, which could then be supplemented by firm-specific documents.[1178] For example, one commenter suggested using as a potential framework the Buyers Guides developed by the National Association of Insurance Commissioners that insurance companies must deliver under certain circumstances.[1179] Commenters supporting an SEC-authored educational layer believed that the SEC was better placed than firms to discuss areas viewed to be educational in nature, such as comparisons, standard of conduct, and key questions to ask.

[1177] *See supra* footnotes 36–40 and accompanying text.

[1178] Primerica Letter.

[1179] ACLI Letter

We have incorporated an element of these commenters' suggestion by removing the comparisons section, which many commenters viewed as educational, and adding a link at the beginning of the relationship summary to Investor.gov/CRS where investors can obtain educational materials. However, we believe that investors are better served by keeping certain disclosures that may be viewed as more educational in nature, such as the standard of conduct and some of the "conversation starters" (replacing the "Key Questions to Ask"), in the relationship summary. We believe investors are more likely to understand how such content will affect them when presented in the context of the particular firm.

Level of Flexibility in the Disclosure.

As discussed in more detail above, we considered the appropriate level of prescribed wording and topics in the disclosure. Several commenters suggested that, as an alternative to the prescriptive wording in the proposed relationship summary, we provide firms with more flexibility to craft their responses to items, with or without an SEC standardized disclosure to accompany the relationship summary or available on Investor.gov. We considered the relative merits of prescribed wording and formatting versus allowing firms to use their own, as well as a mix of prescribed requirements and discretionary choices. We considered this for different topics and sub-topics in the relationship summary, as well as for the relationship summary overall. In some instances, we determined that prescribed wording would provide targeted benefits that discretionary wording could not, for example, through the use of standardized headings and a prescribed order of topics in order to maintain the benefits of comparability and

utility for retail investors.[1180] For the reasons discussed in Section II, above, we also determined to prescribe wording for conversation starters, the standard of conduct, and a factual statement regarding the effect of fees over time. In the event that prescribed wording is inapplicable to a firm's business or inaccurate, the firm may omit or modify that wording. We believe that this approach will allow firms greater flexibility to tailor their relationship summary disclosures to reflect their offerings more closely and accurately. However, greater flexibility in terms of wording could also allow firms to present disclosures in a more advantageous manner to them, rather than in a manner that would maximize the benefits to investors from the disclosures. Nonetheless, we believe retail investors will benefit under this adopted approach by receiving disclosures that may be more understandable, and also more informative about a particular firms' offerings that they are considering.

c. Summary of Fees, Costs, Conflicts, and Standard of Conduct

In response to comments and investor feedback through surveys and studies, roundtable and the Feedback Forms, we are adopting changes from the proposal to the relationship summary's required discussion of fees, costs, conflicts of interest, and standard of conduct, as described above.[1181]

In connection with fee disclosure, the Commission considered many alternative approaches relating to the scope and types of fees firms must include in their relationship

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[1180] *See supra* Section II.A.1.

[1181] *See supra* Section II.B.3.

summaries, as well as the presentation of the fee disclosure.[1182] As discussed in Section II.A.4 above, commenters' views varied on the scope and types of fees that should be disclosed and their level of detail.[1183] In addition to what we had proposed and what we have adopted, the Commission considered other alternatives, such as whether to require firms to list all fees that retail investors may incur, to allow firms the flexibility to determine what fees to highlight, and variations or combinations of these approaches. The final approach is designed to balance the need to provide a comprehensive view of what fees retail investors will pay with the need to produce relevant, succinct and understandable disclosures. The final instructions do not require firms to disclose every single fee and instead permit firms to highlight examples of the categories of the most common fees that their retail investors will pay directly or indirectly.[1184] We believe this approach benefits retail investors because they will be able to compare fee information that is more closely tailored to firms' particular business practices, but also reflective of common fees that retail investors are likely to incur.

The Commission also considered alternative ways in which firms should present their fees, such as whether to require firms to link to or include a fee schedule directly in the relationship summary,[1185] or to require firms to include a hypothetical fee example.[1186] Under

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1182 *See supra* Section II.A.4. In addition, the Commission considered alternative approaches with respect to the disclosure regarding a firm's conflicts of interest and standard of conduct. A discussion of the Commission's consideration may be found in Section II.A.4.

1183 *See supra* footnotes 420–423 and accompanying text.

1184 *See* Item 3.A. of Form CRS.

1185 *See supra* footnotes 426–435 and accompanying text.

1186 *See supra* footnotes 438–435 and accompanying text.

the final instructions, firms must summarize their principal fees and costs and other fees and also include specific cross-references to more detailed information about their fees available in other sources.[1187] The Proposing Release discussed the option of including an example of the impact of fees in the relationship summary.[1188] While some commenters supported the inclusion of various forms of additional examples of fees calculations,[1189] after careful consideration of the comment file and investor feedback received through studies and surveys, roundtables and Feedback Forms, we are declining to include a hypothetical fee example in the relationship summary. We do so in light of commenters who suggested that such an example could be operationally difficult to implement, and that it could be perceived as confusing.[1190] Specifically, we believe the assumptions required to make a fee example relevant for investors vary for individual investors to the extent that a standardized example risks increasing investor confusion.

Instead, to help stimulate this discussion, a firm must include in the relationship summary the following conversation starter: "Help me understand how these fees and costs might affect my investments. If I give you $10,000 to invest, how much will go to fees and costs, and how

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1187 *See* Item 3.A.(ii) of Form CRS.

1188 Proposing Release, *supra* footnote 5.

1189 *See, e.g.*, Wahl Letter; AARP Letter; Betterment Letter I.

1190 NSCP Letter; Edward Jones Letter (noting that given the range of services available, it would be very difficult for financial professionals to fully address this question at the outset of the relationship, particularly for investors selecting transaction-based services); TIAA Letter; LPL Financial Letter; Primerica Letter; ICI Letter; SIFMA Letter (noting most firms do not currently have systems in place to allow financial professionals to answer customer-specific questions).

much will be invested for me?"[1191] As discussed above,[1192] this represents a different wording from the corresponding "Do the Math for Me" Key Question in the proposal, but we expect it to similarly encourage the retail investor to ask about the amount they would typically pay per year for the account and what is included in those fees, while being easier and less costly to answer for firms at the outset of the relationship.

d. Filing and Delivery

In connection with filing and delivery, Commission considered alternatives relating to filing formats, filing systems, and timeframes for firms' initial relationship summary and subsequent updates. As discussed in Section II.C. above, firms will file copies of their relationship summaries with the Commission. The proposed instructions provided that firms must file their relationship summaries in a text-searchable format but did not specify one. We solicited comment on whether the relationship summary should be filed as a text-searchable PDF, similar to how Form ADV is currently filed, or other enumerated formats. We also asked about what type of format would facilitate greater comparability across forms. Two commenters advocated that the relationship summary should be filed not only in a text-searchable, but also machine-readable format, in order to facilitate development of data aggregation tools allowing for comparability of forms across providers.[1193] The Commission believes that although a PDF

[1191] Item 3.A.(iv) of Form CRS.

[1192] See supra Sections II.A.4 and II.B.3.a.

[1193] CFA Letter I ("past experience regarding investors' limited use of existing databases, such as IARD and BrokerCheck, cautions against placing too much reliance on investors' accessing the documents directly. We therefore urge the Commission to require that the documents be filed, not just in a text-searchable format, but in a machine-readable format."); Schnase Letter ("the data contained in the Relationship

submission format would not be the most ideal for comparing or aggregating data across relationship summary filings, it would likely be the easiest and least costly. A fillable form allowing the firm to enter text, similar to Form ADV Part 1, also would not be costly, but would not easily accept formatted tables or other graphical information. The final instructions, as with the proposed instructions, do not specify a particular format, but the current filing systems default firms to PDF format. In a change from the proposal, we are requiring firms to implement machine-readable headings for their filings. We agree with the commenters that suggested this change that this approach facilitates some degree of data aggregation, while imposing limited costs on registrants.

Furthermore, we requested comments on alternative filing systems for the relationship summary. In response to comment and upon further consideration, as discussed in Section II.C.2 above,[1194] we are requiring broker-dealers to file their relationship summaries through Web CRD®, instead of EDGAR, as proposed.

As discussed in Section II.C.3.a above, we also considered whether to allow more permissive use of electronic delivery. As proposed, we are affirming that the relationship summary must be delivered in accordance with the Commission's electronic delivery guidance. We are adopting an additional instruction, however, that a firm may deliver the relationship summary to new or prospective clients or customers in a manner that is consistent with how the retail investor requested information about the firm or financial professional, and that this

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Summary should be required to be filed in a structured data format, so the document can be utilized as a stand-alone human-readable document and serve as the source for a machine-readable data set").

1194 *See supra* footnotes 666 – 669 and accompanying text.

method of initial delivery for the relationship summary would be consistent with the Commission's electronic delivery guidance.[1195] Commenters suggested different approaches to electronic delivery, such as the "notice plus access" model, and a more comprehensive updating of the Commission's electronic delivery guidance, which we considered as alternative approaches in this rulemaking. While we recognize the potential cost savings to firms of allowing greater use of electronic delivery, we place great importance on how investors prefer to receive information. Some commenters said that investors prefer to receive electronic disclosures because they are delivered faster and can be in more engaging formats, including video and audio. On the other hand, investor surveys and investor testing show that some investors still prefer to receive paper disclosures, including in a hybrid approach of electronic disclosure with the option for paper.[1196] As discussed in greater detail in Section II.C.3.a, the adopted approach of encouraging electronic presentations that are engaging to retail investors, while preserving the option for paper, within the framework of the Commission's electronic delivery guidance and in accordance with retail investors' preferences, is appropriate for the relationship summary.

e. Transition Provisions

As discussed above, we are adopting an initial date of June 30, 2020 for all firms that are registered, or investment advisers who have an application for registration pending with, the

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1195 *See* Proposing Release, *supra* footnote 5, at nn.344–45 and accompanying text; *see also* 2000 Guidance, *supra* footnote 678, at 65 FR 25845–46; 96 Guidance, *supra* footnote 678, at 61 FR 24647; and 95 Guidance, *supra* footnote 678, at 60 FR 53461.

1196 *See supra* footnotes 682-689and accompanying text.

Commission prior to June 30, 2020, to file their initial relationship summaries with the Commission. We considered tiered compliance dates for firms of different sizes. We believe that the compliance dates, as adopted, balance the time and resources needed by different firms, as well as the assets under management and the number of firms that would be covered within the different compliance periods.

V. PAPERWORK REDUCTION ACT ANALYSIS

The amendments that we are adopting here contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[1197] In the Proposing Release, we solicited comment on the proposed collection of information requirements. We also submitted the proposed collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information we are amending are (i) "Form ADV" (OMB control number 3235-0049); (ii) "Rule 204-2 under the Investment Advisers Act of 1940" (OMB control number 3235-0278); (iii) "Rule 17a-3; Records to be Made by Certain Exchange Members, Brokers and Dealers" (OMB control number 3235-0033) and (iv) "Rule 17a-4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers" (OMB control number 3235-0279). The new collections of information we are adopting[1198] relate to (i) "Rule

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1197 44 U.S.C. 3501 *et seq.*

1198 The Commission is not adopting two other rules in the Proposing Release that would have contained collections of information. Proposed rule 211h-1 under the Advisers Act and proposed rule 15l-3 under the Exchange Act relate to the disclosure of Commission registration status and financial professional association. As discussed in Section I above, we have concluded that the combination of the disclosure requirements in Form CRS and Regulation Best Interest should adequately address the objectives of the proposed Affirmative Disclosures.

204-5 under the Investment Advisers Act of 1940" (OMB control number 3235-0767); and (ii) "Form CRS and rule 17a-14 under the Exchange Act" (OMB control number 3235-0766). We are also amending 17 CFR 200.800 to display the control number assigned to information collection requirements for "Form CRS and rule 17a-14 under the Exchange Act" by OMB pursuant to the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control OMB number.

A. Form ADV

Form ADV (OMB Control No. 3235-0049) is currently a two-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2A is the client brochure. We use the information to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use certain of the information to determine whether to hire or retain an investment adviser. The collection of information is necessary to provide advisory clients, prospective clients, and the Commission with information about the investment adviser and its business, conflicts of interest and personnel. Rule 203-1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204-4 under the Advisers Act requires certain investment advisers exempt from registration with the Commission ("exempt reporting advisers") to file reports with the Commission by completing a limited number of items on Form ADV. Rule 204-1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to

submit electronic filings through IARD. The paperwork burdens associated with rules 203-1, 204-1, and 204-4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information. These collections of information are found at 17 CFR 275.203-1, 275.204-1, 275.204-4 and 279.1 (Form ADV itself) and are mandatory. Responses are not kept confidential.

We are adopting amendments to Form ADV to add a new Part 3, requiring registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary, as discussed in greater detail in Section II above. Advisers will deliver the relationship summary to both existing clients and new or prospective clients who are retail investors. As with Form ADV Parts 1 and 2, we will use the information to determine eligibility for registration with us and to manage our regulatory and examination programs. Similarly, clients can use the information required in Part 3 to determine whether to hire or retain an investment adviser as well as what types of accounts and services are appropriate for their needs.

The collection of information is necessary to provide advisory clients, prospective clients, and the Commission with information about the relationships and services the firm offers to retail investors, fees and costs that the retail investor will pay, specific conflicts of interest and standards of conduct, legal or disciplinary history, and how to obtain additional information about the firm. The amendment requiring investment advisers to deliver the relationship summary is contained in a new collection of information under new rule 204-5 under the

Advisers Act, for which estimates are discussed below. We did not propose amendments to Part 1 or 2 of Form ADV.[1199]

As discussed in Sections I and II of this release, we received comments that addressed whether the relationship summary is duplicative of other disclosures and necessary for investment advisers, and whether we could further minimize the burden of the proposed collections of information. One commenter specifically addressed the accuracy of our burden estimates for the proposed collection of information, suggesting that our estimates were too low because compliance professionals estimated it would take 80-500 hours to prepare, deliver, and file the relationship summary, depending on the firm's size and business model.[1200] Another commenter said the current Form ADV requirements are a burden to smaller firms and that the currently approved burdens of 23.77 hours and $6,051 are too low.[1201] Others commented more broadly that certain costs to prepare and file the relationship summary would be higher than we estimated in the proposal.[1202] We have considered these comments and are increasing our PRA burden estimates from 5 hours to 20 hours for investment advisers to prepare and file the relationship summary. We also modified several substantive requirements to mitigate some of these estimated increased costs relative to the proposal.

1199 We are adopting technical amendments to the General Instructions of Form ADV to add references to the Part 3, but these amendments would not affect the burden of Part 1 or Part 2. *See* amended General Instructions to Form ADV.

1200 *See* NSCP Letter.

1201 *See* Marotta Letter.

1202 *See, e.g.*, MarketCounsel Letter. Others argued that the cost of Form CRS and Regulation Best Interest would be high. *See, e.g.,* Raymond James Letter; CCMC Letter (investor polling results); SIFMA Letter.

1. Respondents: Investment Advisers and Exempt Reporting Advisers

The respondents to current Form ADV are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers.[1203] Based on the IARD system data as of December 31, 2018, approximately 13,299 investment advisers were registered with the Commission, and 4,280 exempt reporting advisers file reports with the Commission.

As discussed above, we are adopting amendments to Form ADV that will add a new Part 3, requiring certain registered investment advisers to prepare and file a short and accessible relationship summary for retail investors. Based on IARD system data as of December 31, 2018, the Commission estimates that 8,235 investment advisers have some portion of their business dedicated to retail investors, including either individual high net worth clients or individual non-high net worth clients,[1204] which is higher relative to the estimate in the Proposing Release.[1205]

[1203] An exempt reporting adviser is an investment adviser that relies on the exemption from investment adviser registration provided in either section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds or 203(m) of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million. An exempt reporting adviser is not a registered investment adviser and therefore would not be subject to the relationship summary requirements.

[1204] Proposing Release, *supra* footnote 5, at Section V.A.1. Based on responses to Item 5.D. of Form ADV, these advisers indicated that they advise either high net worth individuals or individuals (other than high net worth individuals), which includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships in Item 5.D.(a)(1) of Form ADV or have regulatory assets attributable to either high net worth individuals or individuals other than high net worth individuals in Item 5.D.(a)(3) of Form ADV. The definition of retail investor will include the legal representatives of natural persons who seek to receive or receive services primarily for personal, family, or household purposes. As discussed in Section II.C.1 above, a legal representative of a natural person will cover only non-professional legal representatives (e.g., a non-professional trustee that represents the assets of a natural person and similar representatives such as executors, conservators, and persons holding a power of attorney for a natural person). We are not able to determine, based on responses to Form ADV, exactly how many advisers provide investment advice to these types of legal representatives or trustees; however, we believe that these advisers most likely also advise individuals and are therefore included in our estimate.

This will leave 5,064 registered investment advisers that do not provide advice to retail investors[1206] and 4,280 exempt reporting advisers that will not be subject to Form ADV Part 3 requirements, but are included in the PRA analysis for purposes of updating the overall Form ADV information collection.[1207] We also note that these figures include the burdens for 318 registered broker-dealers that are dually registered as investment advisers as of December 31, 2018.[1208] We did not receive comments related to the methodology used for estimating the number of investment advisers that will be subject to Form ADV Part 3 requirements. We are maintaining the methodology we used in the Proposing Release and are updating our estimates to reflect the increased number of investment advisers and exempt reporting advisers since the last burden estimate.

2. Changes in Average Burden Estimates and New Burden Estimates

Based on the prior revision of Form ADV,[1209] the currently approved total aggregate annual hour burden estimate for all advisers of completing, amending, and filing Form ADV (Part 1 and Part 2) with the Commission is 363,082 hours, or a blended average of 23.77 hours

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1205 We estimated in the Proposing Release that approximately 7,625 registered investment advisers of the 12,721 registered investment advisers would be subject to the relationship summary requirements, based on IARD system data as of December 31, 2017. *See* Proposing Release, *supra* footnote 5 at Section V.A.

1206 13,299 registered investment advisers – 8,235 = 5,064 registered investment advisers not providing advice to retail investors.

1207 Based on IARD system data.

1208 *See supra* footnote 863.

1209 *See* Form ADV and Investment Advisers Act Rules, Final Rule, Investment Advisers Act Release No. 4509 (Aug. 25, 2016) [81 FR 60418 (Sept. 1, 2016)] ("2016 Form ADV Paperwork Reduction Analysis").

per adviser,[1210] with a monetized total of $92,404,369, or $6,051 per adviser.[1211] The currently approved annual cost burden is $13,683,500. This burden estimate is based on: (i) the total annual collection of information burden for SEC-registered advisers to file and complete Form ADV (Part 1 and Part 2); and (ii) the total annual collection of information burden for exempt reporting advisers to file and complete the required items of Part 1A of Form ADV. Broken down by adviser type, the current approved total annual hour burden is 29.22 hours per SEC-registered adviser and 3.60 hours per exempt reporting adviser.[1212] The amendments will increase the current burden estimate due in part to the amendments to Form ADV to add Form ADV Part 3: Form CRS (the relationship summary) and the increased number of investment advisers and exempt reporting advisers since the last burden estimate. We did not propose amendments to Part 1 or Part 2 of Form ADV.

The amendments to Form ADV to add Part 3 will increase the information collection burden for registered investment advisers with retail investors. As discussed above in Sections I and II of this release, registered investment advisers providing services to retail investors will be required to prepare and file a relationship summary with the Commission electronically through IARD in the same manner as they currently file Form ADV Parts 1 and 2. We are also requiring that all relationship summaries be filed in a text-searchable format with machine-readable

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[1210] 363,082 hours / (12,024 registered advisers + 3,248 exempt reporting advisers) = 23.77 hours.

[1211] $92,404,369 hours / (12,024 registered advisers + 3,248 exempt reporting advisers) = $6,051.

[1212] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR 60454.

headings. These investment advisers also will be required to amend and file an updated relationship summary within 30 days whenever any information becomes materially inaccurate.

As noted above, not all investment advisers will be required to prepare and file the relationship summary. For those investment advisers, the per adviser annual hour burden for meeting their Form ADV requirements will remain the same, in particular, 29.22 hours per registered investment adviser without relationship summary obligations. Similarly, because exempt reporting advisers also will not have relationship summary obligations, the annual hour burden for exempt reporting advisers to meet their Form ADV obligations will remain the same, at 3.60 hours per exempt reporting adviser. However, although we did not propose amendments to Form ADV Part 1 and Part 2, and the per adviser information collection burden will not increase for those without the obligation to prepare and file the relationship summary, the information collection burden attributable to Parts 1 and 2 of Form ADV will increase due to an increase in the number of registered investment advisers and exempt reporting advisers since the last information collection burden estimate. We discuss below the increase in burden for Form ADV overall attributable to the adopted amendments, *i.e.*, new Form ADV Part 3: Form CRS, and the increase due to the updated number of respondents that will not be subject to the adopted amendments.

a. Initial Preparation and Filing of Relationship Summary

As discussed above in Section II, investment advisers will be required to prepare and file a relationship summary summarizing specific aspects of their investment advisory services that they offer to retail investors. Much of the required information overlaps with that required by Form ADV Part 2A and therefore should be readily available to registered investment advisers because of their existing disclosure obligations. Investment advisers also

already file the Form ADV Part 2A brochure on IARD, and we have considered this factor in determining our estimate of the additional burden to prepare and file the relationship summary.

In the Proposing Release, we estimated that the initial first year burden for preparing and filing the relationship summary, for investment advisers that provide advice to retail investors, would be 5 hours per registered adviser.[1213] Some commenters said that these estimated burdens were too low,[1214] and one argued that the current burden estimates for Form ADV are too low.[1215] One commenter specifically argued that preparing, delivering, and filing the relationship summary would take from 80 to 500 hours, based on input from compliance professionals, and noted there would be additional costs that are hard to quantify, including human resources and information technology programming.[1216] Commenters also said more broadly that the relationship summary would be burdensome for investment advisers[1217] and would result in additional compliance burdens including training.[1218]

1213 *See* Proposing Release, *supra* footnote 5, at nn.356 –367 and accompanying text.

1214 *See, e.g.,* NSCP Letter; *see also* CCMC Letter (costs to implement the proposal were underestimated and greater than 40% of firms surveyed anticipate having to spend a moderate or substantial amount to implement Regulation Best Interest and Form CRS); SIFMA Letter (stating that implementation costs of Regulation Best Interest and Form CRS would be significant).

1215 *See* Marotta Letter.

1216 *See* NSCP Letter.

1217 *See* MarketCounsel Letter.

1218 *See* NSCP Letter (stating that a minimum of two hours of firm level training or two hours of training per independent registered representative will be required prior to implementation and delivery of the relationship summary).

We are revising our estimate of the time that it would take each adviser to prepare and file the relationship summary in the first year from 5 hours in the proposal to 20 hours in light of these comments and the changes we are making to the proposed relationship summary.[1219] For example, as discussed in the Proposing Release, we estimated that it would take firms a shorter amount of time to prepare the relationship summary than to prepare more narrative disclosures due to the standardized nature and prescribed language of the relationship summary. As discussed above, the final instructions require less prescribed wording relative to the proposal and require firms to draft their own summaries for most of the sections. In addition and in a change from the proposal, we are now requiring that all relationship summaries be filed with machine-readable headings, as well as in a text-searchable format as proposed. We acknowledge that these changes will increase cost burdens because advisers will have to develop their own wording and design, as well as implement machine-readable headings, to comply with these requirements.

The relationship summary will also require more layered disclosures relative to the proposal and will encourage the use of electronic formatting and graphical, text, online features to facilitate access to other disclosures that provide additional detail. Although much of the information that will be summarized in the relationship summary is contained in other disclosures that firms already provide, firms will bear the cost of preparing a new relationship summary and cross-referencing or hyperlinking to additional information. The higher estimated burden estimate also reflects our acknowledgement that it will take firms longer to

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[1219] *See infra* footnote 1221.

draft certain disclosures than we estimated in the Proposing Release, such as answers to "conversation starters" that advisers providing automated investment advisory without a particular individual with whom a retail investor can discuss these questions must include on their website. We believe these factors and the other changes we made to the proposal will increase the burden to prepare a relationship summary relative to the proposal.

We are estimating the same hourly burden for investment advisers and investment advisers that are dually registered as broker-dealers because we are counting dually registered firms in the burden calculation for Form ADV and the Exchange Act rule that requires the relationship summary for broker-dealers.[1220] We recognize that the burden for some advisers will exceed our estimate, and the burden for others will be less due to the nature of their business, but we do not believe that the range could be as high as some commenters suggested.[1221] After consideration of comments and changes we made to the requirements

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[1220] The burden estimates for dual registrants to prepare and file the relationship summary are accounted for in the burden estimates for Form ADV and under Exchange Act rule 17a-14. For example, a dual registrant that prepares an initial relationship summary that covers both its advisory business and broker-dealer business has an estimated burden of 60 hours amortized (20 hours to prepare and file relationship summary related to the advisory business + 40 hours to prepare and file relationship summary related to the broker-dealer business).

[1221] *See* NSCP Letter (estimating that the time required to prepare, deliver and file the relationship summary would be anywhere from 80 to 500 hours). In estimating the cost for the initial preparation of Form ADV Part 2, we estimated that small, medium, and large advisers would require 15, 97.5, and 1989 hours respectively to prepare Form ADV Parts 1 and 2, for investment advisers overall, and the per adviser annual hour burden for meeting their Form ADV Parts 1 and 2 requirements is 36.24 hours. *See* Brochure Adopting Release, *supra* footnote 576, at 75 FR at 49257. In comparison, as discussed above, the relationship summary is limited to two pages in length for standalone investment advisers and four pages in length for dual registrants in paper format (or equivalent in electronic format). While we recognize that different firms may require different numbers of hours to prepare and file the relationship summary, we believe that a first year average of 20 hours for investment advisers with relationship summary obligations is an appropriate estimate for purposes of calculating an aggregate burden for the industry, for purposes of the PRA analysis, particularly given our experience with the burdens for Form ADV Parts 1 and 2.

relative to the proposal and in light of the current approved burden for Part 2 of Form ADV, which requires more disclosures than the relationship summary, we are increasing the estimated burden relative to the proposal to 20 hours in the first year.[1222] We therefore estimate that the total burden of preparing and filing the relationship summary will be 164,700 hours.[1223]

As with the Commission's prior Paperwork Reduction Act estimates for Form ADV, we believe that most of the paperwork burden will be incurred in advisers' initial preparation and filing of the relationship summary, and that over time this burden will decrease substantially because the paperwork burden will be limited to updating information.[1224] The estimated initial burden associated with preparing and filing the relationship summary will be amortized over the estimated period that advisers will use the relationship summary, *i.e.*, over a three-year period.[1225] The annual hour burden of preparing and filing the relationship summary will therefore be 54,900.[1226] In addition, based on IARD system data, the Commission estimates that 1,227 new investment advisers will file Form ADV with us

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[1222] We believe that much of the information required in the relationship summary overlaps with that required by Form ADV Part 2 and therefore should be readily available to investment advisers because of their existing disclosure obligations. Accordingly, although these new requirements will cause an increase in the information collected, the increased burden should largely be attributable to data entry and not data collection.

[1223] 20.0 hours x 8,235 investment advisers = 164,700 total aggregate initial hours.

[1224] We discuss the burden for advisers making annual updating amendments to Form ADV in Section V.A.2.c below.

[1225] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209. Amortizing the 20 hour burden imposed by the relationship summary over a three-year period will result in an average annual burden of 6.67 hours per year for each of the 8,235 investment advisers with relationship summary obligations.

[1226] 20.0 hours x 8,235 investment advisers / 3 = 54,900 total annual aggregate hours.

annually; of these, 656 will be required to prepare and file the relationship summary.[1227] Therefore, the aggregate initial burden for newly registered advisers to prepare and file the relationship summary will be 13,120[1228] and, amortized over three years, 4,373 on an annual basis.[1229] In sum, the annual hour burden for existing and newly registered investment advisers to prepare and file a relationship summary will be 59,273 hours,[1230] or approximately 6.67 hours per adviser,[1231] for an annual monetized cost of $16,181,529, or $1,965 per adviser.[1232]

b. Estimated External Costs for Investment Advisers Preparing the Relationship Summary

The currently approved total annual collection of information burden estimate for Form ADV anticipates that there will be external costs, including (i) a one-time initial cost for outside

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[1227] The number of new investment advisers is calculated by looking at the number of new advisers in 2017 and 2018 and then determining the number each year that serviced retail investors. (644 for 2017 + 668 for 2018) / 2 = 656.

[1228] 656 new RIAs required to prepare relationship summary x 20.0 hours = 13,120 hours for new RIAs to prepare relationship summary.

[1229] 656 x 20.0 hours / 3 = 4,373.

[1230] (164,700 + 13,120) / 3 years = 59,273 annual hour burden for existing and new advisers to prepare and file relationship summary.

[1231] 59,273 hours / (8,235 existing advisers + 656 new advisers) = 6.67 hours per year.

[1232] 59,273 is the total aggregate initial hour burden for preparing and filing a relationship summary. We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the Securities Industry Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013 ("SIFMA Management and Professional Earnings Report"), modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $237 and $309 per hour, respectively. (59,273 hours x 50% x $237) + (59,273 hours x 50% x $309 = $16,181,529). $16,181,529 / 8,235 investment advisers = $1,965 per investment adviser. The SIFMA Management and Professional Earnings Report was updated in 2019 to reflect inflation. The numbers in the report are higher than the numbers we used in the Proposing Release and, along with the higher hourly burden, result in higher cost estimates in this release, relative to the proposal.

legal and compliance consulting fees in connection with the initial preparation of Part 2 of Form ADV, and (ii) the cost for investment advisers to private funds to report the fair value of their private fund assets.[1233] We do not anticipate that the amendments to add a new Part 3 will affect the per adviser cost burden for those existing requirements but anticipate that some advisers may incur a one-time initial cost for outside legal and consulting fees in connection with the initial preparation of the relationship summary. We do not anticipate external costs to investment advisers in the form of website set-up, maintenance, or licensing fees because they will not be required to establish a website for the sole purpose of posting their relationship summary if they do not already have a website. We also do not expect other ongoing external costs for the relationship summary.

In the Proposing Release, we estimated that an external service provider would spend 3 hours helping an adviser prepare an initial relationship summary. While we received no specific comments on our estimate regarding external costs in the Proposing release, one commenter suggested that there would be additional implementation costs such as legal advice, but that these costs are difficult to quantify.[1234] Another argued that that the current burden estimates for Form ADV did not take into consideration the time spent on learning about the complexities of what is needed to comply with similar requirements.[1235] Based on the concerns expressed by these

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[1233] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR 60452. The estimated external costs of outside legal and consulting services for the relationship summary are in addition to the estimated hour burden discussed above.

[1234] *See* NSCP Letter.

[1235] *See* Marotta Letter.

commenters and the changes we are making to the relationship summary, we are increasing the estimate relative to the proposal from 3 to 5 hours. While we recognize that different firms may require different amounts of external assistance in preparing the relationship summary, we believe that this is an appropriate average number for estimating an aggregate amount for the industry purposes of the PRA analysis, particularly given our experience with the burdens for Form ADV.[1236]

Although advisers that will be subject to the relationship summary requirement may vary widely in terms of the size, complexity, and nature of their advisory business, we believe that the strict page limits will make it unlikely that the amount of time, and thus cost, required for outside legal and compliance review will vary substantially among those advisers who elect to obtain outside assistance.

Most of the information required in the relationship summary is readily available to investment advisers from Form ADV Part 2A, and the narrative descriptions are concise, brief, and at a summary level. As a result, we continue to anticipate, as discussed in the proposal, that only 25% of investment advisers will seek the help of outside legal services and 50% of investment advisers will seek the help of compliance consulting services in connection with the initial preparation of the relationship summary.[1237] We estimate that the initial per existing

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[1236] In estimating the external cost for the initial preparation of Form ADV Part 2, we estimated that small, medium, and large advisers would require 8, 11, and 26 hours of outside assistance, respectively, to prepare Form ADV Part 2. *See* Brochure Adopting Release, *supra* footnote 576, at 75 FR at 49257. In comparison, as discussed above, the relationship summary is limited to two pages in length for standalone investment advisers and four pages in length for dual registrants in paper format (or equivalent in electronic format).

[1237] *See* Proposing Release, *supra* footnote 5 at Section V.A. We did not receive comments on these estimates. While we recognize that the instructions have changed, we continue to believe that only 25% of advisers will seek help of outside legal services and 50% of advisers will seek compliance consulting services, and

adviser cost for legal services related to the preparation of the relationship summary will be $2,485.[1238] We estimate that the initial per existing adviser cost for compliance consulting services related to the preparation of the relationship summary will be $3,705.[1239] Thus, the incremental external cost burden for existing investment advisers is estimated to be $20,371,331, or $6,790,444 annually when amortized over a three-year period.[1240] In addition, we estimate that 1,227 new advisers will register with us annually, 656 of which will be required to prepare a relationship summary. For these 656 new advisers, we estimate that they will require $1,622,780 in external costs to prepare the relationship summary, or $540,927 amortized over three years.[1241] In summary, the annual external legal and compliance consulting cost for existing and

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that these estimates are appropriate for purposes of the PRA analysis, particularly given our experience with the external burdens for Form ADV Parts 1 and 2.

[1238] External legal fees are in addition to the projected hour per adviser burden discussed above. Data from the SIFMA Management and Professional Earnings Report suggest that outside legal services cost approximately $497 per hour. $497 per hour for legal services x 5 hours per adviser = $2,485. The hourly cost estimate of $497 is based on an inflation-adjusted figure and our consultation with advisers and law firms who regularly assist them in compliance matters.

[1239] External compliance consulting fees are in addition to the projected hour per adviser burden discussed above. Data from the SIFMA Management and Professional Earnings Report, modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation, suggest that outside management consulting services cost approximately $741 per hour. $741 per hour for outside consulting services x 5 hours per adviser = $3,705.

[1240] 25% x 8,235 existing advisers x $2,485 for legal services = $5,115,994 for legal services. 50% x 8,235 existing advisers x $3,705 for compliance consulting services = $15,255,338. $5,115,994 + $15,255,338 = $20,371,331 in external legal and compliance consulting costs for existing advisers. $20,371,333 / 3 = $6,790,444 annually.

[1241] 25% x 656 new advisers x $2,485 for legal services = $407,540. 50% x 656 new advisers x $3,705 for compliance consulting services = $1,215,240. $407,540 + $1,215,240 = $1,622,780 in external legal and compliance consulting costs for new advisers. $1,622,780 / 3 = $540,927.annually in external legal and compliance consulting costs for newly registered advisers.

new advisers relating to obligations to prepare the relationship summary is estimated to total $7,331,370, or $825 per adviser.[1242]

c. Amendments to the Relationship Summary and Filing of Amendments

The current approved information collection burden for Form ADV also includes the hour burden associated with annual and other amendments to Form ADV, among other requirements. In the Proposing Release, we estimated that the relationship summary would increase the annual burden associated with Form ADV by 0.5 hours[1243] due to amendments to the relationship summary, for those advisers required to prepare and file a relationship summary. We did not receive comments regarding hour burdens associated with preparing and filing amendments to the relationship summary. As discussed in section II.C.4 above, in a change from the proposal, we are adding a requirement that firms preparing updated relationship summaries to existing clients also highlight the most recent changes by, for example, marking the revised text or including a summary of material changes.[1244] To account for this change, we are increasing the annual burden to 1 hour per year to amend and file a relationship summary.[1245]

[1242] $6,790,444 in annual external legal and compliance consulting costs for existing advisers + $540,927 annually for new advisers = $7,331,370 annually for existing and new advisers. $7,331,370 / (8,235 existing advisers + 656 new advisers) = $825 per adviser.

[1243] We have previously estimated that investment advisers would incur 0.5 hours to prepare an interim (other-than-annual) amendment to Form ADV. *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR at 60452.

[1244] Additionally, we are requiring that the additional disclosure showing the revised text or summarizing the material changes be attached as an exhibit to the unmarked relationship summary.

[1245] We believe that the time estimated to prepare and file an amendment to the relationship summary is closer to the amount of time to prepare an interim-other-than-annual amendment to Form ADV. *See, e.g.*, Brochure Adopting Release, *supra* footnote 576, at 75 FR at 49257.

We do not expect amendments to be frequent, but based on the historical frequency of amendments made on Form ADV Parts 1 and 2, we estimate that on average, each adviser preparing a relationship summary will likely amend and file the disclosure an average of 1.71 times per year.[1246] We therefore estimate that for making and filing amendments to their relationship summaries, advisers will incur an estimated total paperwork burden of 14,082 hours per year,[1247] or approximately 1.58 hours per adviser,[1248] for an annual monetized cost of $3,844,386, or $467 per adviser.[1249]

Although advisers will be required to amend the relationship summary within 30 days whenever any information becomes materially inaccurate, we expect that amendments will require relatively minimal wording changes, given the relationship summary's page limitation and summary nature. We believe that investment advisers will be more knowledgeable about the information to include in the amended relationship summaries than outside legal or compliance consultants and will be able to make these revisions in-house. Therefore, we do not estimate that

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[1246] Based on IARD data as of December 31, 2018, 8,235 investment advisers with retail clients filed 14,118 other-than-annual amendments to Form ADV. 14,118 other-than-annual amendments / 8,235 investment advisers = 1.71 amendments per investment adviser. We estimated in the Proposing Release that advisers with relationship summary obligations will amend and file disclosures on average of 1.8 times per year, based on IARD system data as of December 31, 2017. *See* Proposing Release, *supra* footnote 5 at Section V.A.

[1247] 8,235 investment advisers amending relationship summaries x 1.71 amendments per year x 1 hour = 14,082 hours.

[1248] 14,082 hours / (8,235 existing advisers + 656 new advisers) = 1.58 hours per year.

[1249] 14,082 is the total aggregate initial hour burden for amending relationship summaries. We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. (14,082 hours x 50% x $237 + 14,082 hours x 50% x $309 = $3,844,386. $3,844,386 / 8,235 investment advisers = $467 per investment adviser.

investment advisers will need to incur ongoing external costs for the preparation and review of relationship summary amendments.

d. Incremental Increase to Form ADV Hourly and External Cost Burdens Attributable to Form ADV Part 3 Amendments

For existing and newly-registered advisers with relationship summary obligations, the additional burden attributable to amendments to Form ADV to add Part 3: Form CRS, (including the initial preparation and filing of the relationship summary and amendments thereto) totals 73,355 hours,[1250] or 8.25 hours per adviser,[1251] and a monetized cost of $20,025,915, or $2,252 per adviser.[1252] The incremental external legal and compliance cost is estimated to be $7,331,370.[1253]

3. Total Revised Burden Estimates for Form ADV

a. Revised Hourly and Monetized Value of Hourly Burdens

As discussed above, the currently approved total aggregate annual hour burden for all registered advisers completing, amending, and filing Form ADV (Part 1 and Part 2) with the Commission is 363,082 hours, or a blended average per adviser burden of 23.77 hours, with a

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[1250] 59,273 hours for initial preparation and filing of the relationship summary + 14,082 hours for amendments to the relationship summary = 73,355 total aggregate annual hour burden attributable to the Form ADV amendments to add Part 3: Form CRS.

[1251] 73,355 hours / (8,235 existing advisers + 656 newly registered advisers) = 8.25 hours per adviser.

[1252] 73,355 total aggregate annual hour burden for preparing, filing, and amending a relationship summary. We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. 73,355 hours x 50% x $237 = $8,692,568. 73,355 hours x 50% x $309 = $11,333,348. $8,692,568 + $11,333,348 = $20,025,915. $20,025,915 / (8,235 existing registered advisers + 656 newly registered advisers) = $2,252 per adviser.

[1253] *See supra* footnote 1242.

monetized cost of $92,404,369, or $6,051 per adviser. This includes the total annual hour burden for registered advisers of 351,386 hours, or 29.22 hours per registered adviser, and 11,696 hours for exempt reporting advisers, or 3.60 hours per exempt reporting adviser. For purposes of updating the total information collection based on the amendments to Form ADV, we consider three categories of respondents, as noted above: (i) existing and newly-registered advisers preparing and filing a relationship summary, (ii) registered advisers with no obligation to prepare and file a relationship summary, and (iii) exempt reporting advisers. One commenter said that the current Form ADV requirements are a burden to smaller firms and that the currently approved burdens for Form ADV Parts 1 and 2 are too low.[1254] We disagree. We recognize that the burden for some advisers will exceed our estimate and the burden for others will be less due to the nature of their business, but we continue to believe that on average our estimates are appropriate for purposes of the PRA analysis. For example, the current burden estimates for Form ADV Parts 1 and 2 range from 15 hours for smaller advisers to 1989 hours for larger advisers.[1255]

For existing and newly-registered advisers preparing and filing a relationship summary, including amendments to the disclosure, the total annual collection of information burden for preparing all of Form ADV, updated to reflect the amendments to Form ADV, equals 37.47 hours per adviser, with 8.25 hours attributable to the adopted amendments.[1256] On an aggregate

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1254 *See* Marotta Letter.

1255 *See supra* footnote 1221.

1256 29.22 hours + 8.25 hours for increase in burden attributable to initial preparation and filing of, and amendments to, relationship summary = 37.47 hours total.

basis, this totals 333,146 hours for existing and newly registered advisers, with a monetized value of $90,978,858.[1257]

As noted above, we estimate 5,064 of existing registered advisers will not have retail investors; therefore, they will not be obligated to prepare and file relationship summaries, so their annual per adviser hour burden will remain unchanged.[1258] To that end, using the currently approved total annual hour estimate of 29.22 hours per registered investment adviser to prepare and amend Form ADV, we estimate that the updated annual hourly burden for all existing and newly-registered investment advisers not required to prepare a relationship summary will be 164,655,[1259] with a monetized value of $44,950,816.[1260] The revised total annual collection of information burden for exempt reporting advisers, using the currently approved estimate of 3.60

[1257] 37.47 hours x (8,235 existing RIAs required to prepare a relationship summary + 656 newly registered RIAs required to prepare a relationship summary) = 333,146 total aggregate annual hour burden for preparing, filing and amending a relationship summary. We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. 333,146 hours x 0.5 x $237 = $39,477,801. 333,146 hours x 0.5 x $309 = $51,471,057. $39,477,801 + $51,471,057 = $90,948,858.

[1258] 13,299 registered investment advisers – 8,235 registered investment advisers with retail investors = 5,064 registered investment advisers without retail investors.

[1259] 29.22 hours x (5,064 existing and 571 newly-registered investment advisers without retail investors) = approximately 164,655 total annual hour burden for RIAs not preparing a relationship summary.

[1260] We believe that performance of this function for registered advisers will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. 164,655 hours x 50% x $237 = $19,511,618. 164,655 hours x 50% x $309 = $25,439,198. $19,511,618 + $25,439,198 = $44,950,816.

hours per exempt reporting adviser, will be 16,996 hours,[1261] for a monetized cost of $4,639,908, or $983 per exempt reporting adviser.[1262]

In summary, factoring in the amendments to Form ADV to add Part 3, the revised annual aggregate burden for Form ADV for all registered advisers and exempt reporting advisers will be 514,797,[1263] for a monetized cost of $140,569,582.[1264] This results in an annual blended average per adviser burden for Form ADV of 29.28 hours[1265] and $7,996 per adviser.[1266] This is an increase of 151,715 hours, [1267] or $48,165,213 [1268] in the monetized value of the hour burden, from the currently approved annual aggregate burden estimates, increases which are attributable

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[1261] 3.60 hours x 4,280 exempt reporting advisers currently + 441 new exempt reporting advisers = 16,996 hours.

[1262] As with preparation of the Form ADV for registered advisers, we believe that performance of this function for exempt reporting advisers will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. 16,996 hours x 0.5 x $237 = $2,014,026. 16,996 hours x 0.5 x $309 = $2,625,882. $2,014,026 + $2,625,882 = $4,639,908. $4,639,908 / (4,280 exempt reporting advisers currently + 441 new exempt reporting advisers) = $983 per exempt reporting adviser.

[1263] 333,146 annual hour burden for RIAs preparing relationship summary + 164,655 annual hour burden for RIAs not preparing relationship summary + 16,996 annual hour burden for exempt reporting advisers = 514,797 total updated Form ADV annual hour burden.

[1264] $90,948,858 for RIAs preparing relationship summary + $44,950,816 for RIAs not preparing relationship summary + $4,639,908 for exempt reporting advisers = $140,539,582 total updated Form ADV annual monetized hourly burden.

[1265] 514,797 / (13,299 registered investment advisers + 4,280 exempt reporting advisers) = 29.28 hours per adviser.

[1266] $140,569,582 / 13,299 registered investment advisers + 4,280 exempt reporting advisers) = $7,995 per adviser.

[1267] 514,797 hours estimated – 363,082 hours currently approved = 151,715 hour increase in aggregate annual hourly burden.

[1268] $140,569,582 monetized hourly burden – $92,404,369 = $48,135,213 increase in aggregate annual monetized hourly burden.

primarily to the larger registered investment adviser and exempt reporting adviser population since the most recent approval, adjustments for inflation, and the amendments to Form ADV to add Part 3.

b. Revised Estimated External Costs for Form ADV

The currently approved total annual collection of information burden estimate for Form ADV anticipates that there will be external costs, including (i) a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Part 2 of Form ADV, and (ii) the cost for investment advisers to private funds to report the fair value of their private fund assets.[1269] The currently approved annual cost burden for Form ADV is $13,683,500, $3,600,000 of which is attributable to external costs incurred by new advisers to prepare Form ADV Part 2, and $10,083,500 of which is attributable to obtaining the fair value of certain private fund assets.[1270] We do not expect any change in the annual external costs relating to new advisers preparing Form ADV Part 2. Due to the slightly higher number of registered advisers with private funds, however, the aggregate cost of obtaining the fair value of private fund assets is likely to be higher. We estimate that 6% of registered advisers have at least one private fund client that may not be audited. Based on IARD system data as of December 31, 2018, 4,806 registered advisers advise private funds. We therefore estimate that approximately

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[1269] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR 60452. We do not anticipate that the amendments we are adopting to add Form ADV Part 3 will affect those per adviser cost burden estimates for outside legal and compliance consulting fees. The estimated external costs of outside legal and compliance consulting services for the relationship summary are in addition to the estimated hour burden discussed above.

[1270] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR at 60452-53. The $10,083,500 is based on 4,469 registered advisers reporting private fund activity as of May 16, 2016.

288 registered advisers may incur costs of $37,625 each on an annual basis, for an aggregate annual total cost of $10,836,000.[1271]

In summary, taking into account (i) a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Part 2 of Form ADV, (ii) the cost for investment advisers to private funds to report the fair value of their private fund assets, and (iii) the incremental external legal or compliance costs for the preparation of the relationship summary, we estimate the annual aggregate external cost burden of the Form ADV information collection will be $21,767,370, or $1,637 per registered adviser.[1272] This represents an $8,083,870 increase from the current external costs estimate for the information collection.[1273]

B. Rule 204-2 under the Advisers Act

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act must make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2 sets forth the requirements for maintaining and preserving specified books and records.

[1271] 6% x 4,806 = 288 advisers needing to obtain the fair value of certain private fund assets. 288 advisers x $37,625 = $10,836,000.

[1272] $3,600,000 for preparation of Form ADV Part 2 + $10,836,000 for registered investment advisers to fair value their private fund assets + $7,331,370 (*see supra* footnote 1242) to prepare relationship summary = $21,767,370 in total external costs for Form ADV. $21,767,370 / 13,299 total registered advisers as of December 31, 2018 = $1,637 per registered adviser.

[1273] $21,767,370 - $13,683,500 = $8,083,870.

The amendments to rule 204-2 will require registered advisers to retain copies of each relationship summary. Investment advisers will also be required to maintain each amendment to the relationship summary as well as to make and preserve a record of dates that each relationship summary and each amendment was delivered to any client or to any prospective client who subsequently becomes a client. These records will be required to be maintained in the same manner, and for the same period of time, as other books and records required to be maintained for the Form ADV Part 2A brochure under the Advisers Act rule 204-2(a)(14)(i), to allow regulators to access the relationship summary during an examination.[1274]

As discussed above in Section II.E several commenters suggested that our estimated burdens for the relationship summary recordkeeping obligations were too low.[1275] Some commenters argued that keeping records of when a relationship summary was given to prospective retail clients would be unnecessarily burdensome or not feasible, and was not adequately considered in the Commission's burden estimates.[1276] One of these commenters said

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[1274] Specifically, investment advisers will be required to maintain and preserve records of the relationship summary in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. *See* Advisers Act rule 204-2(e)(1).

[1275] *See, e.g.,* CCMC Letter; SIFMA Letter. *See also* NSCP Letter (estimating 80–500 hours to prepare, deliver, and file the relationship summary, including recordkeeping policies and procedures).

[1276] *See, e.g.*, CCMC Letter; SIFMA Letter; Committee of Annuity Insurers Letter; Edward Jones Letter. A few others stated that creating recordkeeping policies and procedures relating to how professionals respond to "key questions" would be burdensome and extremely difficult. *See, e.g.,* LPL Financial Letter. Although the final instructions require "conversation starter" questions that are similar to the proposed "key questions," we are not increasing the burden as urged by commenters. As discussed in Section V.A.2.a. above, we increased the burden estimates for the initial preparation of the relationship summary, acknowledging, among other things, that certain advisers that provide automated investment advisory services will incur additional burdens to develop written answers to the conversation starters and make those available on their websites with a hyperlink to the appropriate page in the relationship summary for these documents (*i.e.*, robo-advisers). However, we do not expect these advisers to incur additional

that it would be difficult for firms to integrate pre-relationship delivery dates into their operational systems and procedures, and that there is no way to track when a disclosure is accessed on a website.[1277]

Based on our experience with similar requirements for Form ADV Part 2A brochures, we disagree with commenters that retaining records of when a relationship summary was given to prospective retail clients would be significantly more burdensome for investment advisers than our proposed estimate of 0.2 hours. While we recognize that this recordkeeping requirement will impose some additional burden on investment advisers that must prepare and deliver relationship summaries, advisers are already required to keep similar records for the delivery of the Form ADV Part 2A brochures and the currently approved burden for that requirement is 1.5 hours. Accordingly, based on our experience, advisers already maintain this information with respect to their brochures and should be able to update their systems to also include the relationship summary. We also do not expect that investment advisers will incur additional external costs to make and keep these records because we believe that advisers will create and retain them in a manner similar to their current recordkeeping practices for the Form ADV Part 2A brochure.

This collection of information is found at 17 CFR 275.204-2 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. Requiring maintenance of these disclosures as part of the firm's books and records will facilitate

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recordkeeping burdens under amendments to rule 204-2 because we are not establishing new or separate recordkeeping obligations related to the conversation starters or the answers provided by firms in response to the conversation starters. *See supra* footnotes 814 - 816.

1277 *See* SIFMA Letter.

the Commission's ability to inspect for and enforce compliance with firms' obligations with respect to the relationship summary. The information generally is kept confidential.[1278]

The likely respondents to this collection of information are all of the approximately 13,299 advisers currently registered with the Commission. We estimate that based on updated IARD data as of December 31, 2018, 8,235 existing advisers will be subject to the amended provisions of rule 204-2 to preserve the relationship summary as a result of the adopted amendments.

1. Changes in Burden Estimates and New Burden Estimates

The currently approved annual aggregate burden for rule 204-2 is 2,199,791 hours, with a total annual aggregate monetized cost burden of approximately $130,316,112, based on an estimate of 12,024 registered advisers, or 183 hours per registered adviser.[1279] We estimate that the requirements to make and keep copies of each relationship summary under the amendments to rule 204-2 will result in an increase in the collection of information burden estimate by 0.2 hours[1280] for each of the estimated 8,235 registered advisers with relationship summary obligations, resulting in a total of 183.2 hours per adviser. This will yield an annual estimated aggregate burden of 1,508,652 hours under amended rule 204-2 for all registered advisers with

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[1278] *See* section 210(b) of the Advisers Act.

[1279] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR at 60454–55.

[1280] In the Paperwork Reduction Act analysis for amendments to Form ADV adopted in 2016, we estimated that 1.5 hours would be required for each adviser to make and keep records relating to (i) the calculation of performance the adviser distributes to any person and (ii) all written communications received or sent relating to the adviser's performance. Because the burden of preparing the relationship summary is already included in the collection of information estimates for Form ADV, we estimate that recordkeeping burden for the relationship summary will be considerably less than 1.5 hours and estimate that 0.2 hours is appropriate.

relationship summary obligations,[1281] for a monetized cost of $95,588,191, or $11,607 per adviser.[1282] In addition, the 5,064 advisers not subject to the amendments will continue to be subject to an unchanged burden of 183 hours under rule 204-2, or a total aggregate annual hour burden of 926,712,[1283] for a monetized cost of $58,716,472, or $11,595 per adviser.[1284] The increase in the collection of information burden estimate by 0.2 hours as a result of the amendments to rule 204-2 will therefore result in an annual monetized cost of $12 per adviser.[1285] In summary, taking into account the estimated annual burden of registered advisers that will be required to maintain records of the relationship summary, as well as the estimated annual burden of registered advisers that do not have relationship summary obligations and whose information collection burden is unchanged, the revised annual aggregate burden for all

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1281 8,235 registered investment advisers required to prepare relationship summary x 183.2 hours = 1,508,652 hours.

1282 As with our estimates relating to the previous amendments to Advisers Act rule 204-2 (*see* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR at 60454-55), we expect that performance of this function will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the SIFMA Office Salaries in the Securities Industry Report, modified to account for an 1,800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these position are $70 and $62, respectively. (17% x 1,508,652 hours x $70) + (83% x 1,508,652 hours x $62) = $95,588,191. $95,588,191 / 8,235 advisers = $11,607 per adviser.

1283 5,064 registered investment advisers not required to prepare the relationship summary x 183 hours = 926,712.

1284 As with our estimates relating to the previous amendments to Advisers Act rule 204-2 (*see* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209, at 81 FR at 60454–55, we expect that performance of this function will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the SIFMA Office Salaries Report suggest that costs for these positions are $70 and $62, respectively. (17% x 926,712 hours x $70) + (83% x 926,712 hours x $62) = $58,716,473. $58,716,473 / 5,064 = $11,595 per adviser.

1285 $11607 aggregate burden per adviser subject to relationship summary - $11,595 aggregate burden per adviser not subject to the relationship summary = $12.

respondents to rule 204-2, under the amendments, is estimated to be 2,435,364 total hours,[1286] for a monetized cost of $154,304,663.[1287]

2. Revised Annual Burden Estimates

As noted above, the approved annual aggregate burden for rule 204-2 is currently 2,199,791 hours based on an estimate of 12,024 registered advisers, or 183 hours per registered adviser.[1288] The revised annual aggregate hourly burden for rule 204-2 will be 2,435,364[1289] hours, represented by a monetized cost of $154,304,664,[1290] based on an estimate of 8,235 registered advisers with the relationship summary obligation and 5,064 registered advisers without, as noted above. This represents an increase of 235,573[1291] annual aggregate hours in the hour burden and an annual increase of $23,988,552 from the currently approved total aggregate monetized cost for rule 204-2.[1292] These increases are attributable to a larger registered investment adviser population since the most recent approval and adjustments for inflation, as well as the rule 204-2 amendments relating to the relationship summary as discussed in this release.

1286 8,235 registered investment advisers required to prepare relationship summary x 183.2 hours = 1,508,652 hours. 5,064 registered investment advisers not required to prepare the relationship summary x 183 hours = 926,712 hours. 1,508,652 hours + 26,712 hours = 2,435,364 hours.

1287 $95,588,191 + $58,716,473 = $154,304,664.

1288 2,199,791 hours / 12,024 registered advisers = 183 hours per adviser.

1289 *See supra* footnote 1286.

1290 *See supra* footnote 1287.

1291 2,435,364 hours – 2,199,791 hours = 235,573 hours.

1292 $154,304,664 – $130,316,112 = $23,988,552.

C. Rule 204-5 under the Advisers Act

New rule 204-5 will require an investment adviser to deliver an electronic or paper version of the relationship summary to each retail investor before or at the time the adviser enters into an investment advisory contract with the retail investor. The adviser also will make a one-time initial delivery of the relationship summary to all existing clients within a specified time period after the effective date of the rule. Also with respect to existing clients, the adviser will deliver the most recent relationship summary before or at the time of (i) opening any new account that is different from the retail investor's existing account(s); (ii) recommending that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommending or providing a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in the existing account.[1293] The adviser will be required to post a current version of its relationship summary prominently on its public website (if it has one), and will be required to communicate any changes in an amended relationship summary to retail investors who are existing clients within 60 days, instead of 30 days as proposed, after the amendments are required to be made and without charge.[1294] The investment adviser also must deliver a current relationship summary to each retail investor within 30 days upon request. In a change from the

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[1293] We are adopting these requirements instead of the proposed requirements that advisers deliver the relationship summary to existing retail investor clients before or at the time of opening a new account that is different from the retail investor's existing account or changes are made to the retail investor's existing account(s) that would "materially change" the nature or scope of the firm's relationship with the retail investor. *See* Proposing Release, *supra* footnote 5 at Section II.C.2.

[1294] The communication can be made by delivering the relationship summary or by communicating the information through another disclosure that is delivered to the retail investor.

proposal, an adviser must make a copy of the relationship summary available upon request without charge, and where a relationship summary is delivered in paper format, the adviser may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information.[1295] The adviser must also include a telephone number where retail investors can request up-to-date information and a copy of the relationship summary.[1296]

As discussed further below, we received comments that our estimated burdens for delivery of the relationship summary were too low. Some of these comments focused on the administrative and operational burdens related to monitoring for changes that would "materially change" the nature and scope of the relationship and thereby require delivery to existing clients and customers.[1297] One commenter also argued that imposing different delivery requirements for the Form ADV, Part 2 brochure and the relationship summary would create substantial administrative burdens specifically for investment advisers.[1298] Other comments focused on the recordkeeping burdens related to the requirement to deliver the relationship summary to a new or prospective retail investor.[1299] As discussed further below, we made changes to the proposal to require more specific triggers for initial delivery and additional delivery to existing customers in

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[1295] Additionally, we are adopting the instruction that if a relationship summary is delivered in paper format as part of a package of documents, the firm must ensure that the relationship summary is the first among any documents that are delivered at that time, substantially as proposed. *See supra* footnote 701.

[1296] This differs from the proposal, which required only firms that do not have a public website to include a toll-free number that retail investors may call to request documents. *See supra* footnote 609.

[1297] *See, e.g.*, Cambridge Letter; SIFMA Letter; LPL Financial Letter.

[1298] Pickard Djinis and Pisarri Letter.

[1299] *See supra* footnotes 803 - 808.

order to replace the requirements in response to comments. We discuss below the specific separate delivery requirements and modifications.

New rule 204-5 contains a collection of information requirement. The collection of information is necessary to provide advisory clients, prospective clients and the Commission with information about the investment adviser and its business, conflicts of interest, and personnel. Clients will use the information contained in the relationship summary to determine whether to hire or retain an investment adviser and what type of accounts and services are appropriate for their needs. The Commission will use the information to determine eligibility for registration with us and to manage our regulatory and examination programs. This collection of information will be found at 17 CFR 275.204-5 and will be mandatory. Responses will not be kept confidential.

1. Respondents: Investment Advisers

The likely respondents to this information collection will be the approximately 8,235 investment advisers registered with the Commission that will be required to deliver a relationship summary per new rule 204-5. We also note that these figures include the 318 registered broker-dealers that are dually registered as investment advisers.[1300]

2. Initial and Annual Burdens

a. Posting of the Relationship Summary to Website

Under new rule 204-5, advisers will be required to post a current version of their relationship summary prominently on their public website (if they have one). In the Proposing

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[1300] *See supra* footnote 863 and accompanying text.

Release, we estimated that each adviser will incur 0.5 hours to prepare the posted relationship summary, such as to ensure proper electronic formatting and to post the disclosure to the adviser's website, if the adviser has one.[1301] Although we did not receive any comments regarding burdens associated with posting of the relationship summary to a public website, we are increasing our estimate of the time from 0.5 to 1.5 hours based on the staff's experience.[1302] We do not anticipate that investment advisers will incur additional external costs to post the relationship summary to the adviser's website because advisers without a public website will not be required to establish or maintain one, and advisers with a public website have already incurred external costs to create and maintain their websites. Additionally, external costs for the preparation of the relationship summary are already included for the collection of information estimates for Form ADV, in Section A.2.b, above.

Based on IARD system data, 91.6% of investment advisers with individual clients report having at least one public website.[1303] Therefore, we estimate that 91.6% of the 8,235 existing and 656 newly registered investment advisers with relationship summary obligations will incur a

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1301 Proposing Release, *supra* footnote, 5 at section V.C.2.a.

1302 *See e.g.*, Optional Internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 29158 (Jun. 22, 2018)] (estimating that funds that already post shareholder reports on their websites will require a half hour burden per fund to comply with the annual compliance and posting requirements of rule 30e-3, and funds that do not already post shareholder reports to their websites will require one and half hours to post the required documents online). Posting of the relationship summary under rule 204-5 pertains to one document, which is similar to the shareholder report posting to which rule 30e-3 applies.

1303 We estimated in the Proposing Release that 91.1 of investment advisers with individual clients report at least one public website, based on IARD system data as of December 31, 2017. *See* Proposing Release, *supra* footnote 5 at Section V.C.1.

total of 12,216 aggregate burden hours to post relationship summaries to their websites,[1304] with a monetized cost of $757,407.[1305] As with the initial preparation of the relationship summary, we amortize the estimated initial burden associated with posting the relationship summary over a three-year period.[1306] Therefore, the total annual aggregate hourly burden related to the initial posting of the relationship summary is estimated to be 4,072 hours, with a monetized cost of $252,469.[1307] We did not receive comments regarding burdens associated with posting of the relationship summary to a public website.

b. Delivery to Existing Clients

(1) One-Time Initial Delivery to Existing Clients

The burden for this new rule is based on each adviser with retail investors having, on average, an estimated 3,985 clients who are retail investors.[1308] Although advisers may either deliver the relationship summary separately, in a "bulk delivery" to clients, or as part of the delivery of information that advisers already provide, such as the annual Form ADV update, account statements or other periodic reports, we base our estimates here on a "bulk delivery" to

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[1304] 1.5 hours to prepare and post the relationship summary x 91.6% x (8,235 existing advisers + 656 newly-registered advisers with relationship summary obligations) = 12,216 hours.

[1305] Based on data from the SIFMA Office Salaries Report, we expect that requirement for investment advisers to post their relationship summaries to their websites will most likely be performed by a general clerk at an estimated cost of $62 per hour. 1.5 hours per adviser x $62 = $93 in monetized costs per adviser. $93 per adviser x 91.6% x (8,235 existing advisers + 656 newly registered advisers) = $757,407 total aggregate monetized cost.

[1306] *See* 2016 Form ADV Paperwork Reduction Analysis, *supra* footnote 1209.

[1307] 12,216 hours / 3 years = 4,072 hours annually. $757,407/ 3 years = $252,469 in annualized monetized costs.

[1308] This estimate is based on IARD system data as of December 31, 2018.

existing clients. This is similar to the approach we took in estimating the delivery costs for amendments to rule 204-3 under the Advisers Act, which requires investment advisers to deliver their Form ADV Part 2A brochures and brochure supplements to their clients.[1309] As with the estimates for rule 204-3, we estimate that advisers will require approximately 0.02 hours to deliver the relationship summary to each client.[1310] We did not receive comments on the burdens specific to delivering the relationship summary to existing clients under new Rule 204-5. We estimate the total burden hours for 8,235 advisers for initial delivery of the relationship summary to existing clients to be 79.7 hours per adviser, or 708,613 total aggregate hours, for the first year after the rule is in effect,[1311] with a monetized cost of $4,941[1312] per adviser or $43,930,431 in aggregate.[1313] Amortized over three years, the total annual hourly burden is estimated to be 26.57 hours per adviser, or 236,204 annual hours in aggregate,[1314] with annual monetized costs

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1309 *See* Brochure Adopting Release, *supra* footnote 576, at 75 FR at 49259.

1310 This is the same estimate we made in the Form ADV Part 2 proposal and for which we received no comment. Brochure Adopting Release, *supra* footnote 576, at 75 FR at 49259 The burden for preparing relationship summaries is already incorporated into the burden estimate for Form ADV discussed above.

1311 (0.02 hours per client x 3,985 retail clients per adviser) = 79.7 hours per adviser. 79.7 hours per adviser x (8,235 existing advisers + 656 newly registered advisers) = 708,613 total aggregate hours.

1312 Based on data from the SIFMA Office Salaries Report, we expect that initial delivery requirement to existing clients of rule 204-5 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 79.7 hours per adviser x $62 = $4,941 in monetized costs per adviser. We estimate that advisers will not incur any incremental postage costs because we estimate that they will make such deliveries with another mailing the adviser was already delivering to clients, such as interim or annual updates to the Form ADV, or will deliver the relationship summary electronically.

1313 $4,941 in monetized costs per adviser x (8,235 existing advisers + 656 newly registered advisers) = $43,930,431 in total aggregate costs.

1314 79.7 initial hours per adviser / 3 = 26.57 total annual hours per adviser. 708,613 initial aggregate hours / 3 = 236,204 total annual aggregate hours.

of $1,647 per adviser, or $14,643,477 in aggregate.[1315] We do not expect that investment advisers will incur external costs for the initial delivery of the relationship summary to existing clients because we estimate that advisers will make such deliveries along with another required delivery, such as an interim or annual update to the Form ADV Part 2A.

(2) Additional Delivery to Existing Clients

As discussed in Section II.C.3.c above, the proposed instructions would have required investment advisers to deliver the relationship summary to existing retail investor clients before or at the time firms open a new account that is different from the retail investor's existing account or changes are made to the retail investor's existing account(s) that would "materially change" the nature or scope of the firm's relationship with the retail investor. In response to comments seeking additional clarity on when the "materially change" requirement would apply, and expressing concerns that there will be additional supervisory, administrative, and operational processes required, and burdens imposed, we replaced the "materially change" requirement with more concrete delivery triggers that firms could more easily implement based on their existing systems and processes.[1316]

Investment advisers will be required to deliver the relationship summary to existing clients before or at the time they open a new account that is different from the retail investor's existing account(s), as proposed. In addition, in a change from the proposal, delivery will be required before or at the time the adviser (i) recommends that the retail investor roll over assets

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[1315] $4,941 in monetized costs per adviser / 3 = $1,647 annualized monetized cost per adviser. $43,930,431 initial aggregate monetized cost / 3 = $14,643,477 in total annual aggregate monetized cost.

[1316] *See supra* footnotes 758 – 763 and accompanying text.

from a retirement account into a new or existing account or investment, or (ii) recommends or provides a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in the existing account. We are adopting these two triggers instead of the proposed requirement to deliver the relationship summary before or at the time changes are made to the existing account that would "materially change" the nature and scope of the relationship to address commenters' requests for additional guidance or examples of what would constitute a "material change."[1317] Commenters also described administrative and operational burdens arising from this requirement and argued that our estimated burdens were too low.[1318] One commenter asserted that firms would be required to build entirely new operational and supervisory processes to identify asset movements that could trigger a delivery requirement.[1319] Another commenter noted the challenges of designing a system that distinguishes non-ordinary course events from routine account changes.[1320]

As discussed above, we replaced the "materially change" requirement with more specific triggers to be clearer about when a relationship summary must be delivered.[1321] While these specific triggers will still impose operational and supervisory burdens on firms, we believe that they are more easily identified and monitored, such that firms will not incur significant burdens

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[1317] *See* Prudential Letter; TIAA Letter; Cambridge Letter; SIFMA Letter; LPL Financial Letter; Institute for Portfolio Alternatives Letter.

[1318] *See, e.g.*, SIFMA Letter; LPL Financial Letter.

[1319] *See* SIFMA Letter.

[1320] *See* LPL Letter.

[1321] These more specific triggers are intended to address circumstances that the proposed "materially change" sought to address. *See supra* footnote 761 and accompanying text.

as described by commenters to implement entirely new supervisory, administrative, and operational processes needed to monitor events that cause a material change. However, recognizing that some additional processes will be necessary to implement these delivery triggers, we are increasing our burden estimate from 0.02 to 0.04 hours. We now estimate that each adviser will incur 16 hours per year to deliver the relationship summary in these types of situations, and that delivery under these circumstances will take place among 10% of an adviser's retail investors annually.[1322] We will therefore estimate a total annual aggregate hours of 142,256,[1323] with a monetized cost of $992 per adviser[1324] and $8,818,872 in aggregate.[1325]

(3) Posting of Amended Relationship Summaries to Websites and Communicating Changes to Amended Relationship Summaries, Including by Delivery

Investment advisers will be required to amend their relationship summaries within 30 days when any of the information becomes materially inaccurate. Investment advisers also will be required to communicate any changes in an amended relationship summary to existing clients who are retail investors within 60 days, instead of 30 days as proposed, after the updates are required to be made and without charge. We do not expect this change to increase the PRA

[1322] 10% of 3,985 retail clients per adviser x .04 hours to deliver the relationship summary = 16 hours per adviser.

[1323] 16 hours x (8,235 existing advisers + 656 new advisers) = 142,256 total aggregate hours.

[1324] Based on data from the SIFMA Office Salaries Report, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 16 hours per adviser x $62 = $992 per adviser. We estimate that advisers will not incur any incremental postage costs in the delivery of the relationship summary to existing clients for changes in accounts, because we estimate that advisers will make such deliveries with another mailing the adviser was already delivering to clients, such as new account agreements and other documentation normally required in such circumstances.

[1325] $992 in monetized costs per adviser x (8,235 existing advisers + 656 newly registered advisers) = $8,819,872 in total aggregate costs.

estimates.[1326] The communication can be made by delivering the relationship summary or through another disclosure that is delivered to the retail investor. This requirement is a change from the proposed requirement but is substantively similar.[1327] Commenters did not comment on the estimated burden. We have determined not to change the burden relative to the proposal.

Based on the historical frequency of amendments made on Form ADV Parts 1 and 2, we estimate that on average, each adviser preparing a relationship summary will likely amend the disclosure an average of 1.71 times per year.[1328] We are not changing the 0.5 hours estimates to post the amendments to a public website, consistent with our estimates at proposal. Using the same percentage of investment advisers reporting public websites, 91.6% of 8,235 advisers will incur a total annual burden of 0.86 hours per adviser, or 6,487 hours in aggregate,[1329] to post the amended relationship summaries to their website. This translates into an annual monetized cost

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[1326] As discussed in Section V.A.2.c., we have increased the burden estimates for preparing amendments to the relationship summary, acknowledging, among other things, that firms will incur additional burdens to prepare and file amendments as a result of the instructions that firms preparing amendments highlight the most recent changes, and that additional disclosure showing the revised text be attached as an exhibit to the unmarked relationship summary.

[1327] The proposed instructions would have required firms to communicate updated information by delivering the amended relationship summary or by communicating the information another way. The revised instruction will eliminate the wording "another way" and will clarify that the communication can be made through another disclosure that is delivered to the retail investor. *See supra* footnote 767.

[1328] We estimated in the Proposing Release that each adviser preparing a relationship summary will likely amend the disclosure an average 1.81 times based on IARD system data as of December 31, 2017. See Proposing Release, supra footnote 5 at section V.C.2.b.iii. We are updating the average number to 1.71 times per year based on IARD system data as of December 31, 2018.

[1329] 0.5 hours to post the amendment x 1.71 amendments annually = 0.86 hours per adviser annually to post amendments to the website. 0.86 x 8,235 existing advisers amending the relationship summary x 91.6% of advisers with public websites = 6,487 aggregate annual hours to post amendments of the relationship summary.

of $53.32 per adviser, or $402,207 in the aggregate for existing registered advisers with relationship summary obligations.[1330]

For this requirement, we estimate that 50% of advisers will choose to deliver the relationship summary to communicate the updated information, and that the delivery will be made along with other disclosures already required to be delivered. We did not receive comments on this estimate. We believe that it is likely that the other 50% of advisers will incorporate all of the updated information in their Form ADV Part 2, like the summary of material changes or other disclosures, which they are already obligated to deliver in order to avoid having to deliver two documents. We estimate a burden of 561,162 hours,[1331] or 136.29 hours per adviser,[1332] at a monetized cost of $34,792,044 in aggregate,[1333] or $8,450 per

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[1330] Based on data from the SIFMA Office Salaries Report, we expect that the posting requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 0.86 hours per adviser x $62 = $53.32 per adviser. $53.32 per adviser x 91.6% x 8,235 existing advisers = $402,207 in annual monetized costs.

[1331] 8,235 advisers amending the relationship summary x 3,985 retail clients per adviser x 50% delivering the amended relationship summary to communicate updated information x 0.02 hours per delivery x 1.71 amendments annually = 561,162 hours to deliver amended relationship summaries.

[1332] 3,985 retail clients per adviser x 0.02 hours per delivery x 1.71 amendments annually = 136.29 hours per adviser.

[1333] Based on data from the SIFMA Office Salaries Report, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 561,162 hours x $62 = $34,792,044. We estimate that advisers will not incur any incremental postage costs to deliver the relationship summary for communicating updated information by delivering the relationship summary, because we estimate that advisers will make the delivery along with other documents already required to be delivered, such as an interim or annual update to Form ADV, or will deliver the relationship summary electronically.

adviser,[1334] for the 50% of advisers that choose to deliver amended relationship summaries in order to communicate updated information.[1335]

In a change from the proposal,[1336] we are also adopting two requirements not included in the proposal. First, all firms will be required to make available a copy of the relationship summary upon request without charge. Second, in a relationship summary that is delivered in paper format, firms may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information.[1337] We believe that these new requirements will increase the burden relative to the proposal for some firms that do not currently fulfill these types of disclosure requests, including, for example, additional costs associated with tracking delivery preferences related to making copies of the relationship summary available upon request, and printing and mailing costs for copies that are delivered in paper. We estimate that the 8,235 advisers with relationship summary obligations, on average, will require 0.5 hours each annually to comply with this requirement. Therefore, we estimate that the 8,235 advisers will incur a total of 4,118 aggregate burden hours to make copies of the

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1334 Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 136.29 hours per adviser x $62 per hour = $8,450 per adviser.

1335 For the other 50% of advisers that may choose to communicate updated information in another disclosure, we estimate no added burden because these advisers will be communicating the information in other disclosures they are already delivering like the Form ADV Part 2 brochure or summary of material changes.

1336 *See supra* footnotes 699 - 701 and accompanying text.

1337 We are adopting the instruction that if a relationship summary is delivered in paper format as part of a package of documents, it should be the first among any documents that are delivered at the same time, as proposed. *See supra* footnote 701.

relationship summary available upon request,[1338] with a monetized cost per adviser of $31, or $255,285 in aggregate monetized cost.[1339] We acknowledge that the burden may be more or less than 0.5 hours for some advisers, but we believe that, on average, 0.5 hours is an appropriate estimate for calculating an aggregate burden for the industry for this collection of information.

We do not expect investment advisers to incur external costs in delivering amended relationship summaries or communicating the information in another way because we estimate that they will make this delivery with, or as part of, other disclosures required to be delivered, such as an interim or annual update to Form ADV. We did not receive comments on this assumption in the proposal.

c. Delivery to New Clients or Prospective New Clients

Data from the IARD system indicate that of the 13,299 advisers registered with the Commission, 8,235 have retail investors, and on average, each has 3,985 clients who are retail investors.[1340] As proposed, we estimate that the client base for investment advisers will grow by approximately 4.5% annually.[1341] Based on our experience with Form ADV Part 2, we estimate the annual hour burden for initial delivery of a relationship summary will be the same by paper

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1338 0.5 hours to make paper copies of the relationship summary available upon request x 8,235 advisers with relationship summary obligations = 4,118 hours.

1339 Based on data from the SIFMA Office Salaries Report, we expect that the requirement for advisers to make paper copies of the relationship summary available upon request will most likely be performed by a general clerk at an estimated cost of $62 per hour. 0.5 hours per adviser x $62 = $31 in monetized costs per adviser. $31 per adviser x 8,235 advisers with relationship summary obligations = $255,285 total aggregate monetized cost.

1340 This average is based on advisers' responses to Item 5 of Part 1A of Form ADV as of December 31, 2018.

1341 In the Proposing Release, we determined this estimate based on IARD system data. *See* Proposing Release, *supra* footnote 5 at section V.C.c. The number of retail clients reported by RIAs changed by 6.7% between December 2015 and 2016, and by 2.3% between December 2016 and 2017. (6.7% + 2.3%) / 2 = 4.5% average annual rate of change over the past two years. We did not receive comments on this estimate.

or electronic format, at 0.02 hours for each relationship summary,[1342] or 3.6 annual hours per adviser.[1343] Therefore, we estimate that the aggregate annual hour burden for initial delivery of the relationship summary to new clients will be 29,646 hours,[1344] at a monetized cost of $1,838,052, or $223 per adviser.[1345]

As in the Proposing Release, we continue to estimate that investment advisers will not incur external costs to deliver the relationship summary to new or prospective clients because they will make the delivery along with other documentation normally provided in such circumstances, such as Form ADV Part 2, or will deliver the relationship summary electronically. We did not receive comments regarding the burdens for delivering the relationship summary to prospective clients that eventually become clients.

[1342] This is the same as the estimate for the burden to deliver the brochure required by Form ADV Part 2. *See* Brochure Adopting Release, *supra* footnote 576.

[1343] 3,985 clients per adviser with retail clients x 4.5% = 179 new clients per adviser. 179 new clients per adviser x 0.02 hours per delivery = 3.6 hours per adviser for delivery of a relationship summary to new or prospective new clients.

[1344] 3.6 hours per adviser for delivery obligation to new or prospective clients x 8,235 advisers = 29,646 hours.

[1345] Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that delivery requirements of rule 204-5 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 29,646 hours x $62 = $1,838,052. We estimate that advisers will not incur any incremental postage costs to deliver the relationship summary to new or prospective clients because we estimate that advisers will make the delivery along with other documentation normally provided in such circumstances, such as Form ADV Part 2. $1,838,052 / 8,235 investment advisers = $223 per adviser.

d. Total New Initial and Annual Burdens

All together, we estimate the total collection of information burden for new rule 204-5 to be 983,945 annual aggregate hours per year,[1346] or 120 hours per respondent,[1347] for a total annual aggregate monetized cost of $61,003,406,[1348] or $7,408[1349] per adviser.

D. Form CRS and Rule 17a-14 under the Exchange Act

New rule 17a-14 under the Exchange Act [17 CFR 240.17a-14] and Form CRS [17 CFR 249.640] will require a broker-dealer that offers services to retail investors to prepare and file with the Commission, post to the broker-dealer's website (if it has one), and deliver to retail investors a relationship summary, as discussed in greater detail in Section II above. Broker-dealers will deliver the relationship summary to both existing customers and new or prospective customers who are retail investors. In a change from the proposal, broker-dealers will file the relationship summary through Web CRD® instead of EDGAR. We are also requiring that all

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[1346] 4,072 annual hours for posting initial relationship summaries to adviser websites + 236,204 annual hours for initial delivery to existing clients + 142,256 hours for delivery to existing clients based on material changes to accounts or scope of relationship + 6,487 annual hours to post amended relationship summary to website + 561,162 hours for delivery to existing clients to communicate updated information in amended relationship summaries + 29,646 hours for delivery to new or prospective clients + 4,118 hours to make paper copies of the relationship summary available upon demand = 983,945 annual total hours for investment advisers to post and deliver the relationship summary under proposed rule 204-5.

[1347] 983,945 hours (initial and other deliveries) / 8,235 advisers = 120 hours per adviser.

[1348] $252,469 for posting initial relationship summaries to adviser websites + $14,643,477 for initial delivery to existing clients + $8,819,872 for delivery to existing clients based on material changes to accounts or scope of relationship + $402,207 to post amended relationship summary to website + $34,792,044 for delivery to existing clients to communicate updated information in amended relationship summaries + $1,838,052 for delivery to new or prospective clients + $255,285 for making paper copies of the relationship summary available upon demand = $61,003,406 in total annual aggregate monetized cost for investment advisers to post and deliver the relationship summary under proposed rule 204-5.

[1349] $61,003,406 / 8,235 advisers = $7,408 per adviser.

relationship summaries be filed with machine-readable headings, in a change from the proposal, as well as in a text-searchable format as proposed.

New rule 17a-14 under the Exchange Act [17 CFR 240.17a-14] and Form CRS [17 CFR 249.640] contain a collection of information requirement. We will use the information to manage our regulatory and examination programs. Clients can use the information required in the relationship summary to determine whether to hire or retain a broker-dealer, as well as what types of accounts and services are appropriate for their needs. The collection of information is necessary to provide broker-dealer customers, prospective customers, and the Commission with information about the broker-dealer and its business, conflicts of interest and personnel. This collection of information will be found at 17 CFR 249.640 and will be mandatory. Responses will not be kept confidential.

As discussed in Sections I and II of this release, we received comments that addressed whether the relationship summary is necessary for broker-dealers, and whether we could further minimize the burden of the proposed collections of information. One commenter specifically addressed the accuracy of our burden estimates for the proposed collections of information, suggesting that our estimates were too low because compliance professionals estimated it would take 80-500 hours to prepare, deliver, and file the relationship summary, depending on the firm's size and business model.[1350] Others commented more broadly that the implementation costs of

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[1350] *See* NSCP Letter.

the relationship summary would be higher than we estimated in the Proposing Release.[1351] We have considered these comments and are increasing our PRA burden estimates from 15 hours to 40 hours for broker-dealers to prepare and file the relationship summary. We also modified several substantive requirements to mitigate some of these estimated increased costs relative to the proposal.

1. Respondents: Broker-Dealers

The respondents to this information collection will be the broker-dealers registered with the Commission that will be required to prepare, file, and deliver a relationship summary in accordance with new rule 17a-14 under the Exchange Act [17 CFR 240.17a-14]. As of December 31, 2018, there were 2,766 broker-dealers registered with the Commission that reported sales to retail customer investors,[1352] and therefore likely will be required to prepare and deliver the relationship summary.[1353] We also note that these include 318 broker-dealers that are dually registered as investment advisers.[1354] We did not receive comments related to the methodology used for estimating the number of broker-dealers that will be subject to these

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1351 Some commenters argued that the cost to implement Form CRS and Regulation Best Interest would be high. *See, e.g.*, Raymond James Letter; CCMC Letter (investor polling results); SIFMA Letter.

1352 *See supra* footnote 867 and accompanying text. Retail sales activity is identified from Form BR (*see supra* footnote 861, which categorizes retail activity broadly (by marking the "sales" box) or narrowly (by marking the "retail" or "institutional" boxes as types of sales activity). We use the broad definition of sales as we believe that many firms will just mark "sales" if they have both retail and institutional activity. However, this may capture some broker-dealers that do not have retail activity, although we are unable to estimate that frequency.

1353 For purposes of Form CRS, a "retail investor" will be defined as: a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.

1354 *See supra* footnote 863 and accompanying text.

requirements. We are maintaining the methodology we used in the Proposing Release and are updating our estimates to reflect the number of broker-dealers since the last burden estimate.

Some of the burden for dual registrants to prepare and deliver the relationship summary and post it to a website is already accounted for in the estimated burdens for investment advisers under the amendments to Form ADV and new rule 204-5, discussed in Sections V.A.2.a and V. C.2 above. However, dually registered broker-dealers will incur burdens related to their business as an investment adviser that standalone broker-dealers will not incur, such as the requirement to file the relationship summary using both IARD and Web CRD®, and to deliver to both investment advisory clients and brokerage customers, to the extent those groups of retail investors do not overlap. In addition, dual registrants may provide different services, charge different fees, and have different conflicts on the advisory and broker-dealer sides such that the burden of preparing the relationship summary on the broker-dealer side may not be substantially reflected in the burden for preparing the relationship summary on the advisory side. Therefore, although treating dually registered broker-dealers in this way may be over-inclusive, we base our burden estimates for rule 17a-14 and the relationship summary on 2,766 broker-dealers with relationship summary obligations, including those dually registered as broker-dealers. [1355]

[1355] The burden estimates for dual registrants to prepare and file the relationship summary is accounted for in the burden estimates for Form ADV and under Exchange Act rule 17a-14. For example, a dual registrant that prepares an initial relationship summary that covers both its advisory business and broker-dealer business has an estimated burden of 60 hours amortized (20 hours to prepare and file relationship summary related to the advisory business + 40 hours to prepare and file relationship summary related to the broker-dealer business).

2. Initial and Annual Burdens

a. Initial Preparation, Filing, and Posting of Relationship Summary

As discussed above in Section II, firms will be required to prepare and file a relationship summary summarizing specific aspects of their brokerage services that they offer to retail investors. Unlike investment advisers, which already prepare Form ADV Part 2A brochures and have information readily available to prepare the relationship summary, broker-dealers will be required for the first time to prepare a disclosure that contains all the information required by the relationship summary.

In the Proposing Release, we estimated that the initial first year burden for preparing and filing the relationship summary for broker-dealers would be 15 hours per registered broker-dealer and an additional 0.5 hours to prepare the relationship summary for posting on its website, if it has one. Several commenters said that our estimated burdens were too low.[1356] One commenter specifically argued that preparing, delivering, and filing the relationship summary would take from 80 to 500 hours, based on input from compliance professionals, and noted there would be additional costs that are hard to quantify, including human relations and information

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[1356] *See, e.g.,* NSCP Letter; *see also* CCMC Letter (costs to implement the proposal were underestimated and greater than 40% of firms surveyed anticipate having to spend a moderate or substantial amount to implement Regulation Best Interest and Form CRS); Raymond James Letter (noting the significant implementation costs of Regulation Best Interest and Form CRS for the industry); SIFMA Letter (stating that implementation costs of Regulation Best Interest and Form CRS would be significant).

technology programming.[1357] Commenters also said the relationship summary would result in additional compliance burdens, including training.[1358]

We are revising our estimate of the time that it would take each broker-dealer to prepare and file the relationship summary in the first year from 15 to 40 hours in light of these comments and the changes we are making to the proposed relationship summary. For example, in the Proposing Release, we estimated that it would take firms a shorter amount of time to prepare the relationship summary than a more narrative disclosure due to the standardized nature and prescribed language of the relationship summary. As discussed above, the final instructions require less prescribed wording relative to the proposal and require broker-dealers to draft their own summaries for most of the sections. In addition and in a change from the proposal, we now are requiring that all relationship summaries be filed with machine-readable headings, as well as text-searchable format as proposed. We acknowledge that these changes will increase cost burdens relative to the proposal because broker-dealers have to develop their own wording and design, as well as implement machine-readable headings to comply with these requirements.

The relationship summary will also require more layered disclosures relative to the proposal and will encourage the use of electronic formatting and graphical, text, online features to facilitate access to other disclosures that provide additional detail. Although broker-dealers are currently required to disclose certain information about their services and accounts to their

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1357 *See* NSCP Letter.

1358 *See* NSCP Letter (stating that a minimum of two hours of firm level training or two hours of training per independent registered representative or adviser will be required prior to Form CRS implementation).

retail investors,[1359] broker-dealers are not currently required to disclose in one place all of the information required by the relationship summary or to file a narrative disclosure document with the Commission comparable to investment advisers' Form ADV Part 2A. Broker-dealers will bear the cost of drafting a new relationship summary and cross-referencing or hyperlinking to additional information. The higher estimated burden estimate also reflects our acknowledgement that it will take firms longer to draft certain disclosures than we estimated in the Proposing Release, such as answers to "conversation starters" that broker-dealers providing services only online without a particular individual with whom a retail investor can discuss these questions must include on their website. We believe these factors and the changes we made to the proposal will increase the burden to prepare a relationship summary relative to the proposal.

We are also changing the filing system for broker-dealers as compared to the proposal. Broker-dealers will file Form CRS through Web CRD® instead of EDGAR as proposed, but we believe that this change will reduce the estimated burden for filing with the Commission, relative to the proposal. Broker-dealers already submit registration filings on Web CRD® so they will not incur additional costs to access the system.[1360]

We are estimating the same hourly burden for standalone broker-dealers and broker-dealers that are dually registered as investment advisers because we are counting dually registered firms in the burden calculation for the Advisers Act rule that requires the relationship

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[1359] *See, e.g.*, Exchange Act rule 10b-10 (requiring a broker-dealer effecting transactions in securities to provide written notice to the customer of certain information specific to the transaction at or before completion of the transaction, including the capacity in which the broker-dealer is acting (*i.e.*, agent or principal) and any third-party remuneration it has received or will receive).

[1360] This reduction in the filing burden is offset by the increased burden to prepare the relationship summary, resulting in a higher total burden.

summary for investment advisers.[1361] We recognize that the burden for some broker-dealers will exceed our estimate and the burden for others will be less because broker-dealers vary in the size and complexity of their business models, but we do not believe that the range could be as high as suggested by some commenters.[1362] Unlike investment advisers, which already prepare Form ADV Part 2A brochures and have information readily available to prepare the relationship summary, broker-dealers will be required for the first time to prepare disclosure that contains all the information required by the relationship summary.

We recognize that the burden on some broker-dealers might be significant, especially in the initial preparation and filing of the relationship summary and thus will require additional burdens than what we estimated in the Proposing Release. Accordingly, we are increasing the estimate from 15 to 40 hours in the first year for a broker-dealer's initial preparation and filing of the relationship summary, which is higher than the estimated burden for investment advisers.[1363] We estimate that the total burden for broker-dealers to prepare and file the relationship summary will be 110,640 hours,[1364] for a monetized value of $30,204,720.[1365] The initial burden will be

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1361 *See supra* footnote 1220.

1362 *See* NSCP Letter (estimating that the time required to prepare, deliver, and file Form CRS would be anywhere from 80 to 500 hours).

1363 *See infra* footnote 1366. Amortizing the 40 hour burden imposed by the relationship summary over a three-year period will result in an average annual burden of 13.33 hours per year for each of the 2,766 broker-dealers with relationship summary obligations.

1364 2,766 x 40.0 hours / 3 = 36,880 total hours.

1365 We expect that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. (0.5 x 110,640 hours x $237) + (0.5 x 110,640 hours x $309) = $30,204,720.

amortized over three years to arrive at an annual burden for broker-dealers to prepare and file the relationship summary. Therefore, the total annual aggregate hour burden for registered broker-dealers to prepare and file the relationship summary will be 36,880 hours, or 13.33 hours per broker-dealer,[1366] for an annual monetized cost of $10,068,240, or $3,640 per broker-dealer.[1367]

As proposed, broker-dealers will be required to post a current version of their relationship summary prominently on their public website (if they have one). In the Proposing Release, we estimated that each broker-dealer will incur 0.5 hours to prepare the posted relationship summary, such as to ensure proper electronic formatting and to post a current version of the relationship summary on the broker-dealer's website, if it has one. Although we did not receive any comments regarding burdens associated with posting of the relationship summary to a public website, we are increasing our estimate of the time from 0.5 to 1.5 hours based upon the staff's experience.[1368] We believe that the amount of time needed to prepare the relationship summary for posting, including ensuring proper formatting and posting it on the website, will not vary significantly from the time needed by investment advisers. We do not anticipate that broker-dealers will incur additional external costs to post the relationship summary to the broker-dealer's website because broker-dealers without a public website will not be required to establish or maintain one, and broker-dealers with a public website have already incurred external costs to

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[1366] 110,640 hours for preparing and filing / 3 years = 36,880 total aggregate annual hour burden to prepare and file relationship summary. 36,880 hours / 2,766 broker-dealers with retail accounts = 13.33 hours annually per broker-dealer.

[1367] $30,204,720 total initial aggregate monetized cost for preparation and filing / 3 = $10,068,240 total annual monetized cost for preparation and filing the relationship summary. $10,068,240 / 2,766 broker-dealers subject to relationship summary obligations = $3,640 per broker-dealer.

[1368] *See supra* footnote 1302.

create and maintain their websites. As with investment advisers, we estimate that each broker-dealer will incur 1.5 hours to prepare the relationship summary for posting to its website. We estimate that the initial burden of posting the relationship summary to their websites, if they have one, will be 4,149 hours,[1369] for a monetized value of $257,238.[1370] The initial burden will be amortized over three years to arrive at an annual burden for broker-dealers to post the relationship summary to a public website. Therefore, the total annual aggregate hour burden for broker-dealers to post the relationship summary will be 1,383 hours, or 0.5 hours per broker-dealer,[1371] for an annual monetized cost of $87,746, or $31 per broker-dealer.[1372]

To arrive at an annual burden for preparing, filing, and posting the relationship summary, as for investment advisers, the initial burden will be amortized over a three-year period for broker-dealers. Therefore, the total annual aggregate hour burden for registered broker-dealers to prepare, file, and post a relationship summary to their website, if they have one, will be 38,263

[1369] 1.5 hours x 2,766 broker-dealers = 4,149 hours to prepare and post relationship summary to the website.

[1370] Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that performance of this function will most likely be performed by a general clerk at an estimated cost of $62 per hour. 4,149 hours x $62 = $257,238 total aggregate monetized cost.

[1371] 4,149 hours for posting to website / 3 years = 1,383 total aggregate annual burden to prepare and file relationship summary. 1,383 hours / 2,766 broker-dealers with retail account = 0.5 hours annually per broker-dealer.

[1372] $257,238 total initial aggregate monetized cost for posting to website / 3 = $85,746 total annual monetized cost for posting the relationship summary. $87,746 / 2,766 broker-dealers with retail accounts = $31 per broker-dealer.

hours, or 13.83 hours per broker-dealer,[1373] for an annual monetized cost of $10,153,986, or $3,671 per broker-dealer.[1374]

b. Estimated External Costs for Initial Preparation of Relationship Summary

Under new rule 17a-14, broker-dealers will be required to prepare and file a relationship summary, as well as post it to their website if they have one. We do not anticipate external costs to broker-dealers in the form of website set-up, maintenance, or licensing fees because they will not be required to establish a website for the sole purpose of posting their relationship summary if they do not already have a website. We do anticipate that most broker-dealers will incur a one-time initial cost for outside legal and consulting fees in connection with the initial preparation of the relationship summary.

We estimated in the Proposing Release that an external service provider would spend 3 hours helping a broker-dealer prepare an initial relationship summary. While we received no specific comments on our estimate regarding external costs in the Proposing Release, one commenter suggested that there would be additional implementation costs such as legal advice, but that these costs are difficult to quantify.[1375] Based on the concerns expressed by this commenter and the changes we are making to the relationship summary, for example, requiring

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1373 110,640 hours for preparing and filing + 4,149 hours for posting = 114,789 hours. 114,789 / 3 years = 38,263 total aggregate annual hour burden to prepare and file relationship summary. 38,263 hours / 2,766 broker-dealers with retail accounts = 13.83 hours annually per broker-dealer.

1374 $30,204,720 total initial aggregate monetized cost for preparation and filing + $257,238 for posting to the website / 3 = $10,153,986 total annual monetized cost for preparation, filing and posting the relationship summary. $10,153,968 / 2,766 broker-dealers subject to relationship summary obligations = $3,671 per broker-dealer.

1375 *See* NSCP Letter.

less prescribed wording, we are increasing the estimate relative to the proposal from 3 to 5 hours. While we recognize that different firms may require different amounts of external assistance in preparing the relationship summary, we believe that this is an appropriate average number for estimating an aggregate amount for the industry purposes of the PRA analysis, particularly given our experience with the burdens for Form ADV.[1376]

Although broker-dealers that will be subject to the relationship summary requirement may vary widely in terms of the size, complexity, and nature of their business, we believe that the strict page limits will make it unlikely that the amount of time, and thus cost, required for outside legal and compliance review will vary substantially among those broker-dealers who elect to obtain outside assistance.

Most of the information required in the relationship summary is readily available to broker-dealers because the information required pertains largely to the broker-dealer's own business practices, and thus the information is likely more readily available to the broker-dealer than to an external legal or compliance consultant. However, because broker-dealers are drafting a narrative disclosure for the first time, we anticipate that 50% of broker-dealers will seek the help of outside legal services and 50% of broker-dealers will seek the help of compliance consulting services in connection with the initial preparation of the relationship summary. We estimate that the initial per broker-dealer cost for legal services related to the preparation of the relationship summary will be $2,485.[1377] We estimate that the initial per broker-dealer cost for

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[1376] *See supra* footnote 1221.

[1377] External legal fees are in addition to the projected hour per broker-dealer burden discussed above. Data from the SIFMA Management and Professional Earnings Report suggest that outside legal services cost

compliance consulting services related to the preparation of the relationship summary will be $3,705.[1378] Accordingly, we estimate that 1,383 broker-dealers will use outside legal services, for a total initial aggregate cost burden of $3,436,755,[1379] and 1,383 broker-dealers will use outside compliance consulting services, for a total initial aggregate cost burden of $5,124,015,[1380] resulting in a total initial aggregate cost burden among all respondents of $8,560,770, or $3,095 per broker-dealer, for outside legal and compliance consulting fees related to preparation of the relationship summary.[1381] Annually, this represents $2,853,590, or $1,032 per broker-dealer, when amortized over a three-year period.[1382]

c. Amendments to the Relationship Summary and Filing and Posting of Amendments

As with our estimates above for investment advisers, we do not expect broker-dealers to amend their relationship summaries frequently. In the Proposing Release, we estimated that broker-dealers required to prepare and file a relationship summary would require 0.5 hours to

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approximately $497 per hour. $497 per hour for legal services x 5 hours per broker-dealer = $2,485. The hourly cost estimate of $497 is adjusted for inflation and based on our consultation with broker-dealers and law firms who regularly assist them in compliance matters.

[1378] External compliance consulting fees are in addition to the projected hour per broker-dealer burden discussed above. Data from the SIFMA Management and Professional Earnings Report suggest that outside management consulting services cost approximately $741 per hour. $741 per hour for outside consulting services x 5 hours per broker-dealer = $3,705.

[1379] 50% x 2,766 SEC registered broker-dealers = 1,383 broker-dealers. $2,485 for legal services x 1,383 broker-dealers = $3,436,755.

[1380] 50% x 2,766 SEC registered broker-dealers = 1,383 broker-dealers. $3,705 for compliance consulting services x 1,383 broker-dealers = $5,124,015.

[1381] $3,436,755 + $5,124,015 = $8,560,770. $8,560,770 / 2,766 broker-dealers = $3,095 per broker-dealer.

[1382] $8,560,770 initial aggregate monetized cost / 3 years = $2,853,590 annually. $3,095 initial monetized cost per broker-dealer / 3 years = $1,032.

amend and file the updated relationship summary, and 0.5 hours to post it to their website. We did not receive comments regarding hour burdens associated with preparing and filing amendments to the relationship summary. As discussed in section II.C.4 above, in a change from the proposal, we are adding a requirement that broker-dealers delivering updated relationship summaries to customers also highlight the most recent changes by, for example, marking the revised text or including a summary of material changes. To account for this change, we are increasing the annual burden to 1 hour per year for preparing and filing amendments to the relationship summary. We are not changing the proposed 0.5 hours estimate to post the amendments to a public website.

Based on staff experience, we believe that many broker-dealers will update their relationship summary at a minimum once a year, after conducting an annual supervisory review, for example.[1383] We also estimate that on average, each broker-dealer preparing a relationship summary may amend the disclosure once more during the year, due to emerging issues. Therefore, we estimate that broker-dealers will update their relationship summary, on average, twice a year. Thus, we estimate that broker-dealers will incur a total annual aggregate hourly burden of 5,532 hours per year to prepare and file amendments per year, and 2,766 hours per

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[1383] FINRA rules set an annual supervisory review as a minimum threshold for broker-dealers, for example in FINRA Rules 3110 (requiring an annual review of the businesses in which the broker-dealer engages), 3120 (requiring an annual report detailing a broker-dealer's system of supervisory controls, including compliance efforts in the areas of antifraud and sales practices); and 3130 (requiring each broker-dealer's CEO or equivalent officer to certify annually to the reasonable design of the policies and procedures for compliance with relevant regulatory requirements).

year to post to their websites an estimated total of 5,532 amendments per year.[1384] We therefore estimate that for making and filing amendments to their relationship summaries, broker-dealers will incur an annual aggregate monetized cost of $1,510,236, or approximately $546 per broker-dealer to prepare and file amendments,[1385] and an annual aggregate monetized cost of $171,492, or approximately $62 per broker-dealer to post the amendments.[1386] In total, the aggregate annual monetized cost for broker-dealers to make, file, and post amendments will be $1,681,728, or approximately $608 per broker dealer.[1387]

We do not expect ongoing external legal or compliance consulting costs for the relationship summary.[1388] Although broker-dealers will be required to amend the relationship summary within 30 days whenever any information becomes materially inaccurate, we expect that the amendments will require relatively minimal wording changes, given the relationship summary's page limitation and summary nature. We believe that broker-dealers will be more knowledgeable about the information to include in the amendments than outside legal or

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1384 2,766 broker-dealers amending relationship summaries x 2 amendments per year = 5,532 amendments per year. 5,532 amendments x 1 hour to amend and file = 5,532 hours. 2,766 broker-dealers x (0.5 hours to post amendments to website x 2 amendments a year) = 2,766 hours.

1385 5,532 total aggregate initial hour burden for amending relationship summaries. We believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA Management and Professional Earnings Report suggest that costs for these positions are $237 and $309 per hour, respectively. (5,532 hours x 50% x $237 + 5,532 hours x 50% x $309 = $1,510,236. $1,510,236 / 2,677 investment advisers = $546 per investment broker-dealer.

1386 Based on data from the SIFMA Office Salaries Report, we expect that the posting will most likely be performed by a general clerk at an estimated cost of $62 per hour. 2,766 aggregate hours to post amendment x $62 = $171,492. $171,492 / 2,766 broker-dealers = $62 in annual monetized costs.

1387 $1,510,236 to prepare and file amendment + $171,492 to post the amendments = $1,681,728. $1,681,728 / 2,766 = $608.

1388 *But see* NNCP Letter.

compliance consultants and will be able to make these revisions in-house. Therefore, we do not expect that broker-dealers will need to incur ongoing external costs for the preparation and review of relationship summary amendments.

d. Delivery of the Relationship Summary

Rule 17a-14 under the Exchange Act will require a broker-dealer to deliver the relationship summary, with respect to a retail investor that is a new or prospective customer, before or at the at the earliest of: (i) a recommendation of an account type, a securities transaction or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor. Broker-dealers also will make a one-time, initial delivery of the relationship summary to all existing customers within a specified time period after the effective date of the rule. Also with respect to existing customers, broker-dealers will deliver the most recent relationship summary before or at the time of (i) opening a new account that is different from the retail investor's existing account(s); or (ii) recommending that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommending or providing a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in the existing account.

As discussed above in Section II.C.3.a, broker-dealers will be required to post a current version of the relationship summary prominently on their public websites (if they have one), and will be required to communicate any changes in an amended relationship summary to retail investors who are existing clients or customers within 60 days, instead of 30 days as proposed,

after the amendments are required to be made and without charge.[1389] Broker-dealers also must deliver a current relationship summary to each retail investor within 30 days upon request. In a change from the proposal, a broker-dealer must make available a copy of the relationship summary upon request without charge, and where a relationship summary is delivered in paper format, the broker-dealer may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information.[1390] The broker-dealer must also include a telephone number where retail investors can request up-to-date information and request a copy of the relationship summary.[1391]

As discussed further below, we received comments that our estimated burdens for delivery of the relationship summary were too low.[1392] Some of these comments were focused on the delivery burdens related to the requirement to deliver a relationship summary to existing retail investors when changes are made to the existing account that would "materially change" the nature and scope of the relationship.[1393] Other comments focused on the recordkeeping burdens related to the requirement to deliver the relationship summary to a new or prospective

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1389 The communication can be made by delivering the relationship summary or by communicating the information through another disclosure that is delivered to the retail investor.

1390 Additionally, we are adopting the instruction that if a relationship summary is delivered in paper format as part of a package of documents, the firm must ensure that the relationship summary is the first among any documents that are delivered at that time, substantially as proposed. *See supra footnotes* 678 -679.

1391 This differs from the proposal, which required only firms that do not have a public website to include a toll-free number that retail investors may call to request documents. *See supra* footnote 609.

1392 *See, e.g.*, SIFMA Letter.

1393 *See, e.g.*, Cambridge Letter; SIFMA Letter; LPL Financial Letter.

retail investor.[1394] As discussed further below, we made changes to the proposal to require more specific triggers for initial delivery and additional delivery to existing customers in order to replace the requirements in response to comments. We discuss below the specific separate delivery requirements and modifications.

(1) One-Time Initial Delivery to Existing Customers

We estimate the burden for broker-dealers to make a one-time initial delivery of the relationship summary to existing customers based on an estimate of the number of accounts held by these broker-dealers. Based on FOCUS data, we estimate that the 2,766 broker-dealers that report retail activity have approximately 139 million customer accounts, and that approximately 73.5%, or 102.165 million, of those accounts belong to retail customers.[1395] We estimate that, under the adopted rule, broker-dealers will send their relationship summary along with other required disclosures, such as periodic account statements, in order to comply with initial delivery requirements for the relationship summary.

As with investment advisers, we estimate that a broker-dealer will require no more than 0.02 hours to deliver the relationship summary to each existing retail investor under rule 17a-14. We did not receive comments on the burdens specific to delivering the relationship summary to existing clients. We will therefore estimate broker-dealers to incur an aggregate initial burden of

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1394 *See infra* footnote 1427.

1395 *See supra* footnotes 857 - 865 and accompanying text. 2,766 broker-dealers (including dually registered firms) report 139 million customer accounts. Approximately 73.5% of registered broker-dealers report retail customer activity; *see supra* footnote 861. Therefore, 73.5% x 139 million accounts = 102.165 million accounts. This number likely overstates the number of deliveries to be made due to the double-counting of deliveries to be made by dual registrants to a certain extent, and the fact that one customer may own more than one account.

2,043,300 hours, or approximately 739 hours per broker-dealer for the first year after the rule is in effect.[1396] We expect the aggregate monetized cost for broker-dealers to make a one-time initial delivery of relationship summaries to existing customers to be $126,684,600.[1397] Amortized over three years, the total annual hourly burden is estimated to be 681,100 hours, or approximately 246 hours per broker-dealer,[1398] with annual monetized costs of $42,228,200 and $15,267, respectively.[1399] We do not expect that broker-dealers will incur external costs for the initial delivery of the relationship summary to existing clients because we estimate that they will make such deliveries along with another required delivery, such as periodic account statements.

(2) Additional Delivery to Existing Customers

As discussed in Section II.C.3.c above, broker-dealers will be required to deliver the relationship summary to existing customers when opening a new account that is different from the retail investor's existing account(s), as proposed. In addition, in a change from the proposal, delivery will be required before or at the time the broker-dealer (i) recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment,

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[1396] (0.02 hours per customer account x 102.165 million customer accounts) = 2,043,300 hours. The burden for preparing updated relationship summaries is already incorporated into the burden estimate for Form CRS discussed above. 2,043,300 hours / 2,766 broker-dealers = approximately 739 hours per broker-dealer.

[1397] Based on data from SIFMA's Office Salaries Report, we expect that initial delivery requirement to existing clients of rule 17a-14 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 2,043,300 hours x $62 = $126,684,600. We estimate that broker-dealers will not incur any incremental postage costs because we estimate that they will make such deliveries with another mailing the broker-dealer was already delivering to clients, such as periodic account statements.

[1398] 2,043,300 initial aggregate hours / 3 = 681,100 total annual aggregate hours. 739 initial hours per broker-dealer / 3 = 246 total annual hours per broker-dealer.

[1399] $126,684,600 initial aggregate monetized cost / 3 = $42,228,200 annual aggregate monetized cost. $42,228,200 / 2,766 broker-dealers = $15,267 annual monetized cost per broker-dealer.

or (ii) recommends or provides a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in the existing account. We are adopting these two triggers instead of the proposed requirement to deliver the relationship summary before or at the time changes are made to the existing account that would "materially change" the nature and scope of the relationship to address commenters' requests for additional guidance or examples of what would constitute a "material change."[1400] Commenters also described administrative and operational burdens arising from this requirement and argued that our estimated burdens were too low.[1401] One commenter asserted that firms would be required to build entirely new operational and supervisory processes to identify asset movements that could trigger a delivery requirement.[1402] Another noted the challenges of designing a system that distinguishes non-ordinary course events from routine account changes.[1403]

As discussed above, we replaced the "materially change" requirement with more specific triggers to be clearer about when a relationship summary must be delivered.[1404] While these specific triggers will still impose operational and supervisory burdens on broker-dealers, we believe that they are more easily identified and monitored, such that firms will not incur

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1400 *See supra* footnotes 758–763 and accompanying text.

1401 *See, e.g.*, LPL Financial Letter (stating that proposed re-delivery triggering events would not be easily identifiable and would present operational challenges and compliance costs).

1402 *See* SIFMA Letter.

1403 *See* LPL Financial Letter.

1404 *See supra* footnote 761 and accompanying text.

significant burdens as described by commenters to implement entirely new supervisory, administrative, and operational processes needed to monitor events that cause a material change. However, recognizing that some additional processes will be necessary to implement these delivery triggers, we are increasing our burden estimate from 0.02 to 0.04 hours. We now estimate that each broker-dealer will incur 149 hours per year to deliver the relationship summary in these types of situations, and that delivery under these circumstances will take place among 10% of broker-dealer's retail investors annually. We will therefore estimate broker-dealers to incur a total annual aggregate burden of 408,660 hours, or 148 hours per broker-dealer,[1405] at an annual aggregate monetized cost of $25,336,920, or approximately $9,160 per broker-dealer.[1406]

(3) Communicating Changes to Amended Relationship Summaries, Including by Delivery

As discussed above, broker-dealers will be required to amend their relationship summaries within 30 days when any of the information becomes materially inaccurate. They must also communicate any changes in any new version of the relationship summary to retail investors who are existing customers within 60 days, instead of 30 days as proposed, after the

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[1405] 10% of 102.165 million customers x 0.04 hours = 408,660 hours. 408,660 hours / 2,766 broker-dealers = 148 hours per broker-dealer.

[1406] Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that delivery requirements of rule 17a-14 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 408,660 hours x $62 = $25,336,920. $25,336,920 / 2,766 broker-dealers = $9,160 per broker-dealer. We estimate that broker-dealers will not incur any incremental postage costs in these deliveries of the relationship summary to existing customers, because we estimate that broker-dealers will make such deliveries with another mailing the broker-dealer was already delivering to clients, such as periodic account statements, or new account agreements and other similar documentation.

updates are required to be made and without charge. We do not expect this change to increase the PRA estimates.[1407] The communication can be made by delivering the relationship summary or by communicating the information through another disclosure to the retail investor. This requirement is a change from the proposed requirement but is substantively similar, and commenters did not comment on the estimated burden.[1408] We have determined not to change the burden relative to the proposal.

Consistent with our discussion on broker-dealers' amendments to the relationship summary we are assuming that the broker-dealers with relationship summaries will amend them twice each year. We also estimate that 50% will choose to deliver the relationship summary to communicate the updated information. We did not receive comments on this estimate. As with investment advisers, we believe that it is likely that the other 50% of broker-dealers will incorporate all of the updated information in other disclosures, which they are already obligated to deliver in order to avoid having to deliver two documents. We estimate that broker-dealers will require 0.02 hours to make a delivery to each customer.[1409] Therefore, the estimated burden

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[1407] As discussed in Section V.D.2.c., we have increased the burden estimates for preparing amendments to the relationship summary, acknowledging, among other things, that firms will incur additional burdens to prepare and file amendments as a result of the instructions that firms preparing amendments highlight the most recent changes, and that additional disclosure showing the revised text be attached as an exhibit to the unmarked relationship summary.

[1408] The proposed instructions would have required firms to communicate updated information by delivering the amended relationship summary or by communicating the information another way. The revised instruction will eliminate the wording "another way" and will clarify that the communication can be made through another disclosure that is delivered to the retail investor. *See supra* footnotes 775 - 778 and accompanying text.

[1409] For the other 50% of broker-dealers that may choose to communicate updated information in another disclosure, we estimate no added burden because these broker-dealers are communicating the information in other disclosures they are already delivering.

for those broker-dealers choosing to deliver an amended relationship summary to meet this communication requirement will be approximately 2,043,300 hours, or 739 hours per broker-dealer,[1410] translating into a monetized cost of $126,684,600 in aggregate, or $45,801 per broker-dealer.[1411]

In a change from the proposal, we are also adopting two requirements not included in the proposal. First, all firms will be required to make available a copy of the relationship summary upon request without charge. Second, in a relationship summary that is delivered in paper format, firms may link to additional information by including URL addresses, QR codes, or other means of facilitating access to such information. We believe that these new requirements will increase the burden relative to the proposal for some broker-dealers that do not currently fulfill these types of disclosure requests, including, for example, additional costs associated with tracking customer delivery preferences related to making copies of the relationship summary available upon request, and printing and mailing costs for copies delivered in paper. We estimate that the 2,766 broker-dealers with relationship summary obligations, on average, will require 0.5 hours each annually to comply with this requirement. Therefore, we estimate that the 2,766 broker-dealers with relationship summary obligations will incur a total of 1,383 aggregate

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[1410] 2 amendments per year x 102.165 million customer accounts x 50% delivering the amended relationship summary to communicate updated information x 0.02 hours per delivery = 2,043,300 hours to deliver amended relationship summaries. 2,043,300 hours / 2,766 broker-dealers = 739 hours per broker-dealer.

[1411] Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that delivery requirements of rule 17a-14 will most likely be performed by a general clerk at an estimated cost of $62 per hour. 2,043,300 hours x $62 = $126,684,600. $126,684,600 / 2,766 broker-dealers = $45,801 per broker-dealer. We estimate that broker-dealers will not incur any incremental postage costs to deliver these relationship summaries, because we estimate that advisers will make the delivery along with other documentation they normally would provide, such as account opening documents.

burden hours to make copies of the relationship summary available upon request,[1412] with a monetized cost per adviser of $31, or $85,746 in aggregate monetized cost.[1413] We acknowledge that the burden may be more or less than 0.5 hours for some broker-dealers, but we believe that, on average, 0.5 hours is an appropriate estimate for calculating an aggregate burden for the industry for this collection of information.

We do not expect broker-dealers to incur external costs in delivering amended relationship summaries or communicating the information in another way because we estimate that they will make these deliveries with, or as part of other disclosures required to be delivered. We did not receive comments on this assumption in the proposal.

e. Delivery to New Customers or Prospective New Customers

To estimate the delivery burden for broker-dealers' new or prospective new customers, as discussed above, we estimate that the 2,766 standalone broker-dealers with retail activity have approximately 102.165 million retail customer accounts.[1414] We did not receive comments on the burdens specific to delivering the relationship summary to new and prospective retail investors under rule 17a-14. Based on FOCUS data over the past five years, we estimate that broker-dealers grow their customer base and enter into new agreements with, on average, 11%

[1412] 0.5 hours to make paper copies of the relationship summary available upon request x 2,677 broker-dealers with relationship summary obligations = 1,383 hours.

[1413] Based on data from the SIFMA Office Salaries Report, we expect that the requirement for broker-dealers to make paper copies of the relationship summary available upon request will most likely be performed by a general clerk at an estimated cost of $62 per hour. 0.5 hours per broker-dealer x $62 = $31 in monetized costs per broker-dealer. $31 per broker-dealer x 2,766 broker-dealers with relationship summary obligations = $85,746 total aggregate monetized cost.

[1414] *See supra* footnotes 857-865 and accompanying text.

more new retail investors each year.[1415] We estimate the hour burden for initial delivery of a relationship summary will be the same by paper or electronic format, at 0.02 hours for each relationship summary, as we have estimated above. Therefore, the aggregate annual hour burden for initial delivery of the relationship summary by broker-dealers to new or prospective new customers will be 224,763 hours, or 81.3 hours per broker-dealer,[1416] at a monetized cost of $13,935,306 at an aggregate level, or $5,038 per broker-dealer.[1417]

f. Total New Initial and Annual Burdens

As discussed above, we estimate the total annual collection of information burden for new rule 17a-14 in connection with obligations relating to the relationship summary, including (i) initial preparation, filing, and posting to a website; (ii) amendments to the relationship summary for material updates and related filing and website posting burdens; (iii) one-time initial delivery to existing customers; (iv) additional delivery to existing customers; (v) delivery of amended relationship summaries; (vi) delivery to new and prospective customers; and (vii) making copies available upon request. Given these requirements, we estimate the total annual aggregate hourly burden to be approximately 3,408,533 hours per year, or 1,232 hours on a per

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[1415] This represents the average annual rate of growth from 2014-2018 in the number of accounts for all broker-dealers reporting retail activity.

[1416] 102.165 million customer accounts x 11% increase = 11,238,150 new customers. 11,238,150 new customers x 0.02 hours per delivery = 224,763 total annual aggregate hours. 224,763 / 2,766 broker-dealers = 81.3 hours per broker-dealer for delivery to new customers.

[1417] Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, we expect that these functions will most likely be performed by a general clerk at an estimated cost of $62 per hour. 224,763 hours x $62 = $13,935,306. $13,935,306 / 2,766 broker-dealers = $5,038 per broker-dealer for delivery to new customers. We estimate that broker-dealers will not incur any incremental postage costs to deliver the relationship summary to new or prospective clients because we estimate that broker-dealers will make the delivery along with other documentation, such as periodic account statements.

broker-dealer basis.[1418] This translates into an aggregate annual monetized cost of $219,110,726, or $79,216 per broker-dealer per year.[1419] In addition, we estimate that broker-dealers will incur external legal and compliance costs in the initial preparation of the relationship summary of approximately $8,560,770 in aggregate, or $3,095 per broker-dealer, translating into $2,853,590 annually, or $1,032 per broker-dealer, when amortized over a three year period.[1420]

E. Recordkeeping Obligations under Exchange Act Rule 17a-3[1421]

The final requirement to make a record indicating the date that a relationship summary was provided to each retail investor, including any relationship summary provided before such retail investor opens an account, will contain a collection of information that will be found at 17 CFR 240.17a-3(a)(24) and will be mandatory. The Commission staff will use this collection of information in its examination and oversight program, and the information generally is kept

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[1418] 36,880 hours per year for initial preparation and filing of relationship summary + 4,149 hours for posting to website + 8,298 hours per year for amendments, filing, and posting of amendments + 681,100 hours for one-time initial delivery to existing customers + 408,660 hours for delivery to existing customers making material changes to their accounts + 2,043,300 hours for delivery of amendments + 224,763 hours for delivery to new customers + 1,383 hours to make paper copies available upon demand = 3,408,533 total annual aggregate hours. 3,408,533 hours / 2,766 broker-dealers = 1,232 hours per broker-dealer.

[1419] $10,068,240 per year for initial preparation, filing, and posting of relationship summary + $257,238 per year for posting to website + $514,476 per year for amendments, filing, and posting of amendments + $42,228,200 for one-time initial delivery to existing customers (amortized over three years) + $25,336,920 for delivery to existing customers making material changes to their accounts + $126,684,600 for delivery of amendments + $13,935,306 for delivery to new customers + $85,746 per year to make paper copies of the relationship summary available upon demand = $219,110,726 in total annual aggregate monetized cost. $219,110,726 / 2,766 broker-dealers = $79,216 per broker-dealer.

[1420] $3,436,755 total external legal costs + $5,124,015 total external compliance cost = $8,560,770 total external legal and compliance costs. $8,560,770 total external legal and compliance costs / 2,766 broker-dealers = $3,095 per broker-dealer. $8,560,770 total external legal and compliance costs / 3 = $2,853,590 annually. $3,095 / 3 = $1,032 per year.

[1421] In a concurrent release, we are adopting additional burden adjustments to Exchange Act rules 17a-3 and 17a-4. *See* Regulation Best Interest Release, *supra* footnote 47.

confidential.[1422] The likely respondents to this collection of information requirement are the approximately 2,766 broker-dealers currently registered with the Commission that offer services to retail investors, as defined above.[1423]

Exchange Act section 17(a)(1) requires registered broker-dealers to make and keep for prescribed periods such records as the Commission deems "necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of" the Exchange Act."[1424] Exchange Act rules 17a-3 and 17a-4 specify minimum requirements with respect to the records that broker-dealers must make, and how long those records and other documents must be maintained, respectively.

The amendments to Exchange Act rule 17a-3 will require SEC-registered broker-dealers to make a record indicating the date that a relationship summary was provided to each retail investor and to each prospective retail investor who subsequently becomes a retail investor. We are adopting these amendments as proposed. In the Proposing Release, we estimated that the adoption of new paragraph (a)(24) of rule 17a-3 would result in an incremental burden increase of 0.1 hours annually for each of the estimated 2,766 SEC-registered broker-dealers that will be

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[1422] *See* section 24(b) of the Exchange Act.

[1423] *See supra* footnotes 857-865 and accompanying text.

[1424] *See* section 17(a) of the Exchange Act.

required to record the dates that the initial relationship summary and each new version thereof, is provided to an existing or prospective retail investor.[1425]

As discussed above in Section II.E, several commenters suggested that our estimated burdens for the relationship summary recordkeeping obligations were too low.[1426] Some commenters argued that keeping records of when a relationship summary was given to prospective retail clients would be unnecessarily burdensome or not feasible, and was not adequately considered in the Commission's burden estimates.[1427] One of these commenters said that it would be difficult for firms to integrate pre-relationship delivery dates into their operational systems and procedures, and that there is no way to track when a disclosure is accessed on a website.[1428]

[1425] We applied the same 0.2 hour estimate as with investment advisers, but divided equally between creating a record of the relationship summary and its deliveries and the maintenance of those records. As discussed above, we are increasing our estimates.

[1426] *See, e.g.,* CCMC Letter; SIFMA Letter; *see also* NSCP Letter (estimating 80-500 hours to prepare, deliver, and file Form CRS, including recordkeeping policies and procedures).

[1427] *See, e.g.*, CCMC Letter; SIFMA Letter; Committee of Annuity Insurers Letter; Edward Jones Letter. A few others stated that creating recordkeeping policies and procedures relating to how professionals respond to "key questions" would be burdensome and extremely difficult. *See, e.g.*, LPL Financial Letter. Although the final instructions require "conversation starter" questions that are similar to the proposed "key questions," we are not increasing the burden as urged by commenters. As discussed in Section V.D.2.a. above, we increased the burden estimates for the initial preparation of the relationship summary, acknowledging, among other things, that certain broker-dealers that provide services only online will incur additional burdens to develop written answers to the conversation starters and make those available on their websites with a hyperlink to the appropriate page in the relationship summary for these documents. However, we do not expect these broker-dealers to incur additional recordkeeping burdens under amendments to Exchange Act rule 17a-3 because we are not establishing new or separate recordkeeping obligations related to the conversation starters or the answers provided by firms in response to the conversation starters. *See supra* footnotes 814 - 816.

[1428] *See* SIFMA Letter.

After consideration of comments, and because broker-dealers do not currently maintain similar records like the relationship summary, we are revising our estimate of the time that it would take each broker-dealer to create the records required by new paragraph (a)(24) of rule 17a-3 as adopted from 0.1 hours to 0.5 hours. The incremental hour burden for broker-dealers to create the records required by new paragraph (a)(24) of rule 17a-3 as adopted will therefore be 1,383 hours,[1429] for a monetized cost of $87,627 in aggregate, or $32 per broker-dealer.[1430] We also do not expect that broker-dealers will incur external costs for the requirement to make records because we believe that broker-dealers will make such records in a manner similar to their current recordkeeping practices, including those that apply to communications and correspondence with retail investors.

F. Record Retention Obligations under Exchange Act Rule 17a-4

Exchange Act section 17(a)(1) requires registered broker-dealers to make and keep for prescribed periods such records as the Commission deems "necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of" the Exchange Act."[1431] Exchange Act rule 17a-4 specifies minimum requirements with respect to how long records created under Exchange Act rule 17a-3 and other documents must be kept. We

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[1429] 2,766 broker-dealers x 0.5 hours annually = 1,383 annual hours for recordkeeping.

[1430] As with our estimates relating to the proposed amendments to Advisers Act rule 204-2 (*see, e.g.*, *supra* footnote 1284 and accompanying text), we expect that performance of this function will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the SIFMA Office Salaries Report suggest that costs for these positions are $70 and $62, respectively. (17% x 1,383 hours x $70) + (83% x 1,383 hours x $62) = $87,627. $87,627/ 2,766 broker-dealers = $32 per broker-dealer.

[1431] *See* section 17(a) of the Exchange Act.

are adopting amendments to rule 17a-4 as proposed that will require broker-dealers to retain copies of each version of the relationship summary provided to current or prospective retail investors, and to preserve the record of dates that each version of the relationship summary was delivered to any existing retail investor or to any new or prospective retail investor customer, pursuant to the new requirements under new paragraph (a)(24) under rule 17a-3, as adopted, discussed above. These records as well as a copy of each version of a firm's relationship summary will be required to be maintained in an easily accessible place for at least six years after such record or relationship summary is created. This collection of information will be found at 17 CFR 240.17a-4 and will be mandatory. The Commission staff will use the collection of information in its examination and oversight program. Requiring maintenance of these disclosures as part of the broker-dealer's books and records will facilitate the Commission's ability to inspect for and enforce compliance with firms' obligations with respect to the relationship summary. The information generally is kept confidential.[1432]

The likely respondents to this collection of information requirement are the approximately 2,766 broker-dealers that report retail activity, as described above. We did not receive comments related to burdens associated with record retention obligations for broker-dealers. We do not expect that broker-dealers will incur external costs for the requirement to maintain and preserve a copy of each version of the relationship summary as well as the records required to be made pursuant to new paragraph (a)(24) of Exchange Act rule 17a-3 because

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[1432] *See* section 24(b) of the Exchange Act.

broker-dealers are already required to maintain and retain similar records related to communication with retail investors.

1. Changes in Burden Estimates and New Burden Estimates

The approved annual aggregate burden for rule 17a-4 is currently 1,042,866 hours, with a total annual aggregate monetized cost burden of approximately $67.8 million, based on an estimate of 4,104 broker-dealers and 150 broker-dealers maintaining an internal broker-dealer system.[1433] The currently approved annual reporting and recordkeeping cost estimate to respondents is $20,520,000.[1434] We estimate that the adopted amendments will result in an increase in the collection of information burden estimate by 0.10 hour[1435] for each of the estimated 2,766 currently registered broker-dealers that report retail sales activity and will have relationship summary obligations.[1436] The incremental hour burden for broker-dealers will

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[1433] (4,104 broker-dealers x 254 hours per broker-dealer) + (150 broker-dealers maintaining internal broker-dealer systems x 3 hours) = (1,042,416 hours + 450 hours) = 1,042,866 hours each year. The monetized cost was based on these functions being performed by a compliance clerk earning an average of $65 per hour, resulting in a total internal cost of compliance of (1,042,416 x $65) + (450 x $65) = $67,786. *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a-4* (Oct. 19, 2016), *available at* https://www.reginfo.gov/public/do/DownloadDocument?objectID=68823501 (defining an internal broker-dealer system as "any facility that provides a mechanism for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, but excludes a national securities exchange, an exchange exempt from registration based on limited volume, and an alternative trading system.").

[1434] 4,104 broker-dealers x $5,000 annual recordkeeping cost per broker-dealer = $20,520,000.

[1435] In the Proposing Release, we applied the same 0.2 hour estimate as with investment advisers, but divided that burden equally between the rule 17a-3 requirement to create a record of the dates the relationship summary was delivered to current or prospective customers and the rule 17a-4 requirement to maintain those records as well as copies of each version of the relationship summary. As discussed above, we are increasing the burden estimates for the recordkeeping requirement from 0.1 hours to 0.5 hours in light of certain comments, however, we believe, on balance, that 0.1 hour estimate for the record retention requirement is a reasonable estimate for purposes of the PRA analysis.

[1436] *See supra* footnotes 857-865.

therefore be 277 hours,[1437] for a monetized cost of $19,390 in aggregate, or $7 per broker-dealer.[1438] This will yield an annual estimated aggregate burden of 702,841 hours for all broker-dealers with relationship summary obligations to comply with paragraph (e)(10) of Exchange Act rule 17a-4, as amended,[1439] for a monetized cost of approximately $49,198,870.[1440] In addition, the 998 broker-dealers not subject to the amendments[1441] will continue to be subject to an unchanged burden of 254 hours per broker-dealer, or 253,492 hours for these broker-dealers.[1442] In addition, those maintaining an internal broker-dealer system will continue to be subject to an unchanged burden of 450 hours annually, under paragraph (e)(10) of Exchange Act rule 17a-4, as amended. In summary, taking into account the estimated annual burden of broker-dealers that will be required to maintain records of the relationship summary, as well the estimated annual burden of broker-dealers that do not have relationship summary obligations and whose information collection burden is unchanged, the revised annual aggregate burden for all broker-dealer respondents to the recordkeeping requirements under rule 17a-4 is estimated to be

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1437 2,766 broker-dealers x 0.1 hours annually = 277 annual hours for record retention.

1438 Consistent with our prior paperwork reduction analyses for rule 17a-4, we expect that performance of this function will most likely be performed by compliance clerks. Data from the SIFMA Office Salaries Report suggest that costs for these positions are $70 per hour. 277 hours x $70 = $19,390. $19,390/ 2,766 broker-dealers = $7 per broker-dealer.

1439 2,766 broker-dealers required to prepare relationship summary x (254 hours + 0.1 hour) = 702,841 hours.

1440 Consistent with our prior paperwork reduction analyses for rule 17a-4, we expect that performance of this function will most likely be performed by compliance clerks. Data from the SIFMA Office Salaries Report suggest that costs for these positions are $70 per hour. 702,841 hours x $70 = $49,198,870.

1441 *See supra* footnotes 858-863 and accompanying text.

1442 998 broker-dealers x 254 hours = 253,492 hours for broker-dealers not preparing a relationship summary.

956,783 total annual aggregate hours,[1443] for a monetized cost of approximately $66,974,810 million.[1444]

2. Revised Annual Burden Estimates

As noted above, the approved annual aggregate burden for rule 17a-4 is currently 1,042,866 hours, with a total annual aggregate monetized cost burden of approximately $67.8 million, based on an estimate of 4,104 broker-dealers and 150 broker-dealers maintaining an internal broker-dealer system. The revised annual aggregate hourly burden for rule 17a-4 will be 956,783[1445] hours, represented by a monetized cost of approximately $66,974,810 million,[1446] based on an estimate of 2,766 broker-dealers with the relationship summary obligation and 998 broker-dealers without, as noted above. This represents a decrease of 85,633[1447] annual aggregate hours in the hour burden and an annual decrease of approximately $811,480 from the currently approved total aggregate monetized cost for rule 17a-4.[1448] These changes are attributable to the amendments to rule 17a-4 relating to the relationship summary as discussed in this release and the decline in the number of registered broker-dealer respondents. The revised annual reporting and recordkeeping cost to respondents is estimated at approximately

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[1443] 702,841 + 253,492 + 450 = 956,783 total aggregate hours.

[1444] Consistent with our prior paperwork reduction analyses for rule 17a-4, we expect that performance of this function will most likely be performed by compliance clerks. Data from the SIFMA Office Salaries Report suggest that costs for these positions are $70 per hour. 956,783 hours x $70 = $66,974,810.

[1445] *See supra* footnote 1443.

[1446] *See supra* footnote 1444.

[1447] 1,042,416 hours – 956,783 hours = 85,633 hours.

[1448] $67,786,290 – $66,974,810 = $811,480.

$18,820,000, or a reduction of $1,700,000 million from the currently approved annual reporting and recordkeeping cost burden of $20,520,000.[1449]

VI. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") in accordance with section 4(a) of the Regulatory Flexibility Act.[1450] It relates to: (i) new rule 204-5 under the Advisers Act and amendment to Form ADV (17 CFR 279.1), to add a new Part 3: Form CRS (relationship summary); (ii) amendments to rule 203-1 under the Advisers Act; (iii) amendments to rule 204-1 under the Advisers Act; (iv) amendments to rule 204-2 under the Advisers Act; (v) new rule 17a-14 under the Exchange Act and new Form CRS (17 CFR 249.640) (relationship summary); and (vi) amendments to rules 17a-3 and 17a-4 under the Exchange Act.[1451] We prepared an Initial Regulatory Flexibility Analysis ("IRFA") in the Proposing Release.[1452]

A. Need for and Objectives of the Amendments

Broker-dealers, investment advisers, and dually registered firms all provide important services for retail investors. As discussed above in Sections I and IV, research continues to show

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[1449] 3,764 registered broker-dealers as of December 31, 2018 x $5,000 per broker-dealer in record maintenance costs = $18,820,000. $20,520,000 – $18,820,000 = $1,700,000.

[1450] 5 U.S.C. 604(a).

[1451] The Commission is also amending 17 CFR 200.800 to display the control number assigned to information collection requirements for "Form CRS and rule 17a-14 under the Exchange Act" by OMB pursuant to the PRA. Because the Commission is not publishing the amendments to 17 CFR 200.800 in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. (*See* 5 U.S.C. 601(2) (for purposes of the Regulatory Flexibility Act, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking).)

[1452] *See* Proposing Release, *supra* footnote 5.

that retail investors are confused about services, fees, conflicts of interest, and the required standard of conduct for particular firms as well as the differences between broker-dealers and investment advisers. Lack of knowledge about important aspects of the market for financial advice, such as the services, fees, conflicts of interest, and the required standard of conduct for particular firms may harm retail investors by deterring them from seeking brokerage or investment advisory services even if they could potentially benefit from them, or by increasing the risk of a mismatch between the investors' preferences and expectations and the actual brokerage or advisory services they receive. Therefore, it is important to reduce retail investor confusion in the marketplace for brokerage and investment advisory services and to assist retail investors with the process of deciding whether to (i) establish an investment advisory or brokerage relationship, (ii) engage a particular firm or financial professional, or (iii) terminate or switch a relationship or specific service. Moreover, it is important to ensure that retail investors receive the information they need to clearly understand the relationships and services a firm offers, as well as the fees, costs, conflicts, standard of conduct, and disciplinary history of firms and financial professionals they are considering, and where to find additional information, to ameliorate this potential harm.

As discussed above in Section I above, the Commission considered ways to address retail investor confusion and engaged in broad outreach to investors and other market participants to solicit feedback on the proposal, including comment letters, a "feedback form," investor roundtables, and RAND investor testing.

After carefully considering the comments we received, we are adopting disclosure requirements that are designed to ameliorate the potential harm of retail investor confusion and to assist retail investors with the process of deciding whether to (i) establish an investment

advisory or brokerage relationship, (ii) engage a particular firm or financial professional, or (iii) terminate or switch a relationship or specific service.

As discussed in Section II above, we are adopting new rules and rule amendments to require broker-dealers and investment advisers to deliver a relationship summary to retail investors. The relationship summary will be short with narrative information presented in a prescribed order with the following sections: (i) introduction; (ii) relationships and services; (iii) fees, costs, conflicts, and standard of conduct; (iv) disciplinary history; and (v) where to find additional information. As discussed in Section II.C.3.c above, the relationship summary will be in addition to, and not in lieu of, current disclosure and reporting requirements for broker-dealers and investment advisers.

To promote effective communication, firms will be required to write their relationship summary in plain English and they are encouraged to use charts, graphs, tables, and other graphics or text features to respond to the required disclosures. We are limiting the length of the relationship summary to keep the disclosures focused.[1453] The purpose of the relationship summary is to summarize information about a particular broker-dealer or investment adviser in a format that allows for comparability among firms, encourages retail investors to ask questions, and highlights additional sources of information.

[1453] Specifically, the relationship summary for standalone broker-dealers and standalone investment advisers must not exceed two pages in paper format (or equivalent in electronic format). Dual registrants will have the flexibility to decide whether to prepare separate or combined relationship summaries. For dual registrants that prepare combined relationship summaries, they must not exceed four pages in paper format (or equivalent in electronic format).

As discussed in Section II above, we are adopting filing, delivery, and updating requirements for the relationship summary. We also are adopting amendments to the recordkeeping requirements under the Advisers Act rule 204-2 and Exchange Act rules 17a-3 and 17a-4 to address the new relationship summary.[1454]

All of these requirements are discussed in detail in Section II above. The costs and burdens of these requirements on small advisers and small broker-dealers are discussed below as well as above in our Economic Analysis and Paperwork Reduction Act Analysis, which discuss the costs and burdens on all investment advisers and broker-dealers.[1455]

B. Significant Issues Raised by Public Comments

The Commission is sensitive to the burdens that the new rules and rule amendments may have on small entities. In the Proposing Release, we requested comment on matters discussed in the IRFA. In particular, we sought comments on the number of small entities subject to the new relationship summary, and the new rules and rule amendments as well as the potential impacts on small entities. We sought comments on whether the proposal could have an effect on small entities that had not been considered. We also requested that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

The Commission did not receive comments specifically addressing the IRFA. However, as discussed in the Economic Analysis and Paperwork Reduction Act Analysis above, we

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1454 17 CFR 275.204-2; 17 CFR 240.17a-3; 17 CFR 240.17a-4.

1455 *See supra* Sections IV and V.

received comments regarding the potential costs and burdens of the proposal on investment advisers and broker-dealers, including those that are small entities.[1456]

With regard to comment letters addressing small firms in particular, the Commission received comment letters concerning the impact of ongoing delivery requirements on small firms.[1457] As discussed in Sections II.C.3.c and II.C.4, firms must comply with ongoing delivery requirements to (i) particular retail investors under certain circumstances[1458] and (ii) all retail investors who are existing clients or customers when a relationship summary is updated. The commenters appeared to be discussing both types of ongoing delivery requirements. Specifically, a commenter stated that to comply with ongoing delivery requirements, firms would need to implement a process that would include additional costs for delivery, especially for small firms who are more likely to conduct such delivery in hard copy.[1459] Another commenter stated that the existing Form ADV brochure delivery requirements and the ongoing delivery requirements of the relationship summary would impose unjustifiable administrative burdens on advisers, the majority of whom the commenter considers to be small businesses.[1460] The commenter defined the term "small business" as an investment adviser who has ten or fewer non-clerical

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1456 *See supra* Sections IV.D.2 and V.

1457 *See* NSCP Letter; Pickard Djinis and Pisarri Letter.

1458 As discussed in Section II.C.3.c, firms must deliver the most recent relationship summary to a retail investor who is an existing client or customer upon certain triggers. Also, firms must deliver the relationship summary to a retail investor within 30 days upon the retail investor's request.

1459 *See* NSCP Letter.

1460 *See* Pickard Djinis and Pisarri Letter.

employees.[1461] As discussed in Section VI.C.1 below, the definition of small entities for purposes of the Advisers Act and the Regulatory Flexibility Act concerns assets under management and total assets, not the number of employees.[1462] Therefore, we are unable to assess whether the businesses the commenter is discussing fall under the definition of small entity for purposes of the Advisers Act and the Regulatory Flexibility Act.[1463] As discussed in Section VI.C.1 below, the new requirements will not affect most investment advisers that are small entities because they are generally registered with one or more state securities authorities and not with the Commission.

We agree that the ongoing delivery requirements will impose added costs, as discussed above in the Economic Analysis and Paperwork Reduction Act Analysis,[1464] but the costs may not necessarily be higher for small firms. To the extent that small firms are more likely to have fewer retail investors than larger firms, the ongoing delivery requirements should impose lower variable costs on small firms than on larger firms. Therefore, the ongoing delivery requirements should impose lower variable costs on small firms, who have fewer retail investors, than on larger firms who have more retail investors. Also, firms have the flexibility to communicate any changes in the relationship summary by either delivering the relationship summary or by communicating the information through another disclosure that is delivered to the retail investor,

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1461 *Id.*

1462 *See* 17 CFR 275.0-7.

1463 *Id.*

1464 *See supra* Sections IV and V.

which should mitigate the costs to all firms, including small firms.[1465] The additional hours per investment adviser and broker-dealer, the monetized cost per investment adviser and broker-dealer, and the incremental external legal and compliance cost for investment advisers and broker-dealers, attributable to ongoing delivery requirements are estimated above in the Paperwork Reduction Analysis.[1466] To the extent that the ongoing delivery requirements impose added costs to small investment advisers, we disagree that existing Form ADV brochure delivery requirements and the ongoing delivery requirements of the relationship summary would impose administrative burdens on small investment advisers that are unjustifiable. As discussed in Section II.C.3.c above, the relationship summary and the existing Form ADV brochure serve different purposes. The relationship summary is designed to provide a high-level overview to retail investors while the Form ADV brochure is designed to present more detailed disclosures.

The Commission is not adopting different ongoing delivery requirements for small entities. For the reasons discussed in Section VI.E below, establishing different compliance or reporting requirements for small investment advisers and small broker-dealers will be inappropriate under these circumstances. Moreover, retail investors considering and receiving services should receive current information from all firms, not just larger firms, to help them make a decision about continuing to receive services and to let them know when there have been changes to this information. They should also understand their available options during certain

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[1465] *See supra* Sections II.C.4 and IV.D.2.

[1466] *See supra* Sections V.C.2 and V.D.2.

decision points when firms are required to deliver another relationship summary.[1467] Additionally, it is important and beneficial for retail investors to receive a relationship summary within 30 days upon request to ensure that retail investors receive the relationship summary as needed. As a result, we believe that the benefits to retail investors justify the potential cost of ongoing delivery.

C. Small Entities Subject to the Rule and Rule Amendments

The amendments will affect many, but not all, broker-dealers and investment advisers registered with the Commission, including some small entities.

1. Investment Advisers

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[1468] As discussed in Section V.A.1 above, the Commission estimates that based on IARD data as of December 31,

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[1467] As discussed in Section II.C.3.c, firms must deliver the most recent relationship summary to a retail investor who is an existing client or customer before or at the time the firm: (i) opens a new account that is different from the retail investor's existing account(s); (ii) recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommends or provides a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

[1468] *See* 17 CFR 275.0-7.

2018, approximately 8,235 investment advisers will be subject to new rule 204-5 under the Advisers Act, Form CRS (required by new Part 3 of Form ADV) (the relationship summary), the amendments to rules 203-1, 204-1, and rule 204-2 under the Advisers Act.[1469] Our new rules and amendments will not affect most investment advisers that are small entities ("small advisers") because they are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators.[1470] Based on IARD data, we estimate that as of December 31, 2018, approximately 561 SEC-registered advisers are small entities under the Regulatory Flexibility Act.[1471] Of these, 183 have individual high net worth and individual non-high net worth clients, and will therefore be subject to the new requirements under the Advisers Act.[1472]

1469 *See supra* footnote 1204 and accompanying text.

1470 15 U.S.C. 80b-3a.

1471 Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

1472 Based on SEC-registered investment adviser responses to Items 5.D.(a)(1), 5.D.(a)(3), 5.D.(b)(1), 5.D.(b)(2), 5.F. and 12 of Form ADV. These responses indicate that the investment adviser has clients that are high net worth individuals and/or individuals (other than high net worth individuals), or that the investment adviser has regulatory assets under management attributable to clients that are high net worth individuals and/or individuals (other than high net worth individuals), and that the investment adviser is a small entity. Of these small advisers, two are dually registered as a broker-dealer and an investment adviser and may offer services to retail investors as both a broker-dealer and an investment adviser (*e.g.*, "dual registrants" for purposes of the relationship summary). *See supra* footnote 63. As discussed in Section II.C.2, dual registrants must file the relationship summary using both IARD and Web CRD®. In this FRFA, dual registrants are counted in both the total number of small advisers and small broker-dealers that would be subject to the new requirements. We believe that counting these firms twice is appropriate because of their additional burdens of complying with the rules with respect to both their advisory and brokerage businesses.

2. Broker-Dealers

For purposes of Commission rulemaking in connection with the Regulatory Flexibility Act, a broker-dealer will be deemed a small entity if it: (i) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to rule 17a-5(d) under the Exchange Act,[1473] or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[1474]

As discussed in Section V.D.1 above, the Commission estimates that as of December 31, 2018, approximately 2,766 broker-dealers will be subject to the new Form CRS (relationship summary) requirements and new Exchange Act rule 17a-14, as well as amendments to Exchange Act rules 17a-3 and 17a-4.[1475] Further, based on FOCUS Report data, the Commission estimates that as of December 31, 2018, approximately 985 broker-dealers may be deemed small entities under the Regulatory Flexibility Act. Of these, approximately 756 have retail business, and will be subject to the new requirements.[1476]

[1473] 17 CFR 240.17a-5(d).

[1474] *See* 17 CFR 240.0-10(c).

[1475] *See supra* footnote 1352 and accompanying text.

[1476] *See supra* footnote 1352 (discussing how we identify retail sales activity from Form BR).

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The new requirements impose certain reporting and compliance requirements on certain investment advisers and broker-dealers, including those that are small entities, requiring them to create and update relationship summaries, and comply with certain filing, delivery, and recordkeeping requirements. The new requirements are summarized in this FRFA (Section VI.A above). All of these requirements are also discussed in detail, in Section II above, and these requirements as well as the costs and burdens on investment advisers and broker-dealers, including those that are small entities, are discussed above in Sections IV and V (the Economic Analysis and Paperwork Reduction Act Analysis) and below.

1. Initial Preparation and Filing of the Relationship Summary

Requiring each firm that offers services to retail investors to prepare and file a relationship summary will impose additional costs on may firms, including some small advisers and small broker-dealers. Investment advisers must file their relationship summary as Form ADV Part 3 (Form CRS) electronically through IARD. Broker-dealers must file their relationship summary as Form CRS electronically through Web CRD®. All relationship summaries must be filed using text-searchable format with machine-readable headings.

Investment Advisers. Our Paperwork Reduction Analysis and Economic Analysis discuss the costs and burdens of preparing and filing the relationship summary for investment advisers, including small advisers.[1477] In addition, as discussed in our Paperwork Reduction Analysis, above, we anticipate that some advisers may incur a one-time initial cost for external legal and

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[1477] *See supra* Sections V.A and IV.D.2.

compliance consulting fees in connection with the initial preparation of the relationship summary.[1478] Generally, all advisers, including small advisers that advise retail investors are currently required to prepare and distribute Part 2A of Form ADV (the firm brochure). Because advisers already provide disclosures about their services, fees, costs, conflicts, and disciplinary history in their firm brochures,[1479] they will be able to use some of this information to respond to the disclosure requirements of the relationship summary. They will, however, have to draft a completely new disclosure to comply with the new format of the relationship summary. As discussed above, approximately 183 small advisers currently registered with us will be subject to the new requirements.[1480] As discussed above in our Paperwork Reduction Act Analysis, the new initial preparation and filing requirements will impose an annual burden of approximately 6.67 annual hours per adviser, or 1,221 annual hours in aggregate for small advisers.[1481] We therefore expect the annual monetized costs to small advisers associated with these amendments to be $1,965 per adviser, or $359,595 in aggregate for small advisers.[1482] We expect the

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1478 *See supra* Section V.A.

1479 *See supra* footnote 904.

1480 *See supra* Section VI.C.1.

1481 *See supra* Section V.A.2. As discussed in the Paperwork Reduction Act Analysis, we expect each investment adviser to spend approximately 20 hours preparing and filing the relationship summary, which as amortized over three years is approximately 6.67 hours. 6.67 hours per adviser for preparing and filing the relationship summary x 183 small advisers = approximately 1,221 hours in aggregate for small advisers.

1482 *See supra* Sections V.A.2. Monetized cost of $1,965 per adviser for the initial preparation and filing of the relationship summary x 183 small advisers = $359,595 monetized cost in aggregate for small advisers. As discussed in the Paperwork Reduction Act Analysis, we believe that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager.

incremental external legal and compliance cost for small advisers to be estimated at $825 per adviser, or $150,975 in aggregate for small advisers.[1483]

Broker-Dealers. Our Paperwork Reduction Analysis and Economic Analysis discuss the costs and burdens of preparing and filing the relationship summary for broker-dealers, including small broker-dealers.[1484] In addition, as discussed in our Paperwork Reduction Analysis, above, we anticipate that some broker-dealers may incur a one-time initial cost for external legal and compliance consulting fees in connection with the initial preparation of the relationship summary.[1485] As discussed in Sections IV.D.2 and V.D.2, broker-dealers are not currently required to deliver to their retail investors a comprehensive written document comparable to investment advisers' Form ADV Part 2A. Therefore, broker-dealers may incur comparatively greater compliance costs than investment advisers. As discussed above, approximately 756 small broker-dealers will be subject to the new requirements.[1486] As discussed above in our Paperwork Reduction Act Analysis, the new initial preparation and filing requirements will impose an annual burden of approximately 13.33 annual hours per broker-dealer, or 10,077 annual hours in aggregate for small broker-dealers.[1487] We therefore expect the annual

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1483 *See supra* Section V.A.2.b. $825 in external legal and compliance costs per adviser x 183 small advisers = $150,975 in aggregate for small advisers.

1484 *See supra* Sections V.D and IV.D.2.

1485 *See supra* Section V.D.

1486 *See supra* Section VI.C.2.

1487 *See supra* Section V.D.2. As discussed in the Paperwork Reduction Act Analysis, we expect each broker-dealer to spend approximately 40 hours preparing and filing the relationship summary, which as amortized over three years is approximately 13.33 hours. 13.33 hours per broker-dealer for preparing and filing the

monetized costs to small broker-dealers associated with these amendments to be $3,640 per broker-dealer, or $2,751,840 in aggregate for small broker-dealers.[1488] We expect the incremental external legal and compliance cost for small broker-dealers to be estimated at $1,032 per broker-dealer, or $780,192 in aggregate for small broker-dealers.[1489]

Costs Generally. The costs associated with preparing the new relationship summaries will be limited for investment advisers and broker-dealers, including small entities, for several reasons. First, the disclosure document is concise, no more than two pages for a standalone investment adviser and standalone broker-dealer and four pages for a dual registrant in length or equivalent limit if in electronic format. Second, although the relationship summary will require more narrative responses, the disclosure will still involve some degree of standardization across firms, requiring firms to use standardized headings in a prescribed order. Third, firms will be prohibited from including disclosures in the relationship summary other than the disclosure that is required or permitted by the Instructions and applicable items.

The compliance costs could, however, be different across firms with relatively smaller or larger numbers of retail investors as customers or clients. For example, as discussed in Section IV.D.2 above, to the extent that developing the relationship summary entails a fixed cost, firms

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relationship summary x 756 small broker-dealers = approximately 10,077 hours in aggregate for small broker-dealers.

1488 *See supra* Section V.D.2. Monetized cost of $3,640 per broker-dealer for the initial preparation and filing of the relationship summary x 756 small broker-dealers = $2,751,840 monetized cost in aggregate for small broker-dealers. As discussed in the Paperwork Reduction Act Analysis, we believe that the performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager.

1489 *See supra* Section V.D.2.b. 756 small broker-dealers x $1,032 in external legal and compliance costs on average per broker-dealer = $780,192.

with fewer retail investors as customers or clients may be at disadvantage relative to firms with more retail investors as customers or clients because the former would amortize these costs over a smaller retail investor base. Therefore, to the extent that small firms are more likely to have fewer retail investors than larger firms, small firms may be at a disadvantage relative to larger firms. On the other hand, smaller firms are likely to have fewer types of fees, costs, and conflicts to report compared to larger firms, potentially making it less burdensome for them to summarize the required information.

As discussed in Section IV.D.2 above, small advisers and small broker-dealers may disproportionately incur costs associated with electronic and graphical formatting, particularly if they do not have an existing web presence. However, because the final instructions encourage, but do not require electronic and graphical formatting, firms would only bear these costs if they expected these features to provide benefits that justify these costs. Similarly, small advisers and small broker dealers may disproportionally incur costs associated with the requirement to file their relationship summaries with machine-readable headings and text-searchable format. However, costs for firms, including small entities, could be minimal to the extent they implement structured headings in PDF formatted documents by creating a bookmark for each of the headings.[1490]

[1490] *See supra* Section II.C.2.

2. Delivery and Updating Requirements Related to the Relationship Summary

As discussed in Section II.C above, firms must follow certain delivery and updating requirements. Investment advisers must deliver a relationship summary to each retail investor before or at the time the firm enters into an investment advisory contract with the retail investor, even if the agreement is oral. Broker-dealers must deliver a relationship summary to each retail investor, before or at the earliest of: (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor. Dual registrants must deliver the relationship summary at the earlier of the delivery requirements for the investment adviser or broker-dealer.

As discussed in Section II.C above, firms must update, file amendments to, and re-deliver the relationship summary under certain circumstances. Specifically, firms must update the relationship summary and file it within 30 days whenever any information in the relationship summary becomes materially inaccurate. The filing must include an exhibit highlighting changes. Firms must communicate any changes in the updated relationship summary to retail investors who are existing clients or customers within 60 days after the updates are required to be made and without charge.[1491] Additionally, firms must deliver the relationship summary to a

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[1491] Firms can make the communication by delivering the amended relationship summary or by communicating the information through another disclosure that is delivered to the retail investor.

retail investor within 30 days upon the retail investor's request and re-deliver the relationship summary to existing clients and customers under certain circumstances.[1492]

As discussed in Sections II.C above, we are adopting requirements concerning electronic posting and manner of delivery. Firms must post the current version of the relationship summary prominently on their public website, if they have one. Firms must include a telephone number where retail investors can request up-to-date information and request a copy of the relationship summary. Firms must make a copy of the relationship summary available upon request without charge. If the relationship summary is delivered electronically, it must be presented prominently in the electronic medium. If the relationship summary is delivered in paper format as part of a package of documents, firms must ensure that the relationship summary is the first among any documents that are delivered at that time. The additional hours per adviser and broker-dealer, the monetized cost per adviser and broker-dealer, and the incremental external legal and compliance cost for small entity investment advisers and broker-dealers, attributable to these requirements are estimated above in the Paperwork Reduction Analysis.[1493]

3. Recordkeeping Requirements Related to the Relationship Summary

As discussed in Section II.E above, we are adopting amendments to the recordkeeping requirements under Advisers Act rule 204-2 and Exchange Act rules 17a-3 and 17a-4 to address

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[1492] Specifically, firms must deliver the most recent relationship summary to a retail investor who is an existing client or customer before or at the time the firm: (i) opens a new account that is different from the retail investor's existing account(s); (ii) recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommends or provides a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

[1493] *See supra* Section V.

the new relationship summary.[1494] The amendments to Advisers Act rule 204-2 will require investment advisers who are registered or required to be registered to make and keep true, accurate and current, a copy of each relationship summary and each amendment or revision to the relationship summary, as well as a record of the dates that each relationship summary, and each amendment or revision thereto, was given to any client or to any prospective client who subsequently becomes a client. Investment advisers must maintain and preserve their respective records in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.[1495] The amendments to Exchange Act rule 17a-3 will require broker-dealers to make and keep current a record of the date that each relationship summary was provided to each retail investor, including any relationship summary that was provided before such retail investor opens an account. The amendments to Exchange Act rule 17a-4 will require broker-dealers to maintain and preserve in an easily accessible place all record dates described above as well as a copy of each relationship summary until at least six years after such record or relationship summary is created.

These amendments are designed to update recordkeeping rules in light of the new relationship summary, and, for investment advisers, they mirror the current recordkeeping requirements for the Form ADV brochure and brochure supplement.[1496] As discussed in Section

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1494 17 CFR 275.204-2; 17 CFR 240.17a-3; 17 CFR 240.17a-4.

1495 *See* 17 CFR 275.204-2(e)(1).

1496 *See* 17 CFR 275.204-2(a)(14)(i) and 17 CFR 275.204-2(e)(1).

II.E above, the recordkeeping requirements will facilitate the Commission's ability to inspect for and enforce compliance with the relationship summary requirements and also may facilitate firms' ability to monitor for compliance with delivery requirements.

As discussed in the Paperwork Reduction Act Analysis in Section V.B above, the amendments to Advisers Act rule 204-2 will impose an annual burden of approximately 0.2 annual hours per adviser, or 37 annual hours in aggregate for small advisers.[1497] We therefore expect the annual monetized costs to small advisers associated with these amendments to be $12 per adviser,[1498] or $2,196 in aggregate for small advisers.[1499] We do not expect investment advisers to incur any external costs with respect to the amendments to Advisers Act rule 204-2.[1500]

As discussed in the Paperwork Reduction Act Analysis in Sections V.E and V.F, the amendments to Exchange Act rules 17a-3 and 17a-4 will impose an annual burden of approximately 0.6 annual hours per broker-dealer, or 454 annual hours in the aggregate for small broker-dealers.[1501] We therefore expect the annual monetized cost to small broker-dealers

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1497 0.2 hours x 183 small advisers = 37 hours, when rounded up to the nearest hour.

1498 As discussed in, the Paperwork Reduction Analysis, we believe the performance of this function will most likely be allocated between compliance clerks and general clerks, with compliance clerks performing 17% of the function and general clerks performing 83% of the function. *See supra* Section V.B.

1499 $12 per adviser x 183 small advisers = approximately $2,196 in aggregate for small advisers.

1500 *See supra* Section V.B.

1501 As discussed in Section V.E, amendments to Exchange Act rule 17a-3 will impose a burden of approximately 0.5 annual hours per broker-dealer. As discussed in Section V.F, amendments to Exchange Act rule 17a-4 will impose a burden of approximately 0.1 annual hours per broker-dealer. Therefore, together, amendments to Exchange Act rules 17a-3 and 17a-4 will impose a burden of approximately 0.6 hours annually. 0.6 hours x 756 small broker-dealers = approximately 454 annual hours in aggregate for small broker-dealers.

associated with these amendments to be $39 per broker-dealer,[1502] or $29,484 in aggregate for small broker-dealers.[1503] We do not expect broker-dealers to incur any external costs with respect to the amendments to Exchange Act rules 17a-3 and 17a-4.[1504]

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. We considered the following alternatives for small entities in relation to the new requirements: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the new requirements, or any part thereof, for such small entities.[1505]

1502 $32 per broker dealer for amendments to Exchange Act rule 17a-3 + $7 per broker-dealer for amendments to Exchange Act rule 17a-4 = $39 per broker-dealer. As discussed in the Paperwork Reduction Act Analysis, we believe that the performance of the functions associated with the amendments to Exchange Act rule 17a-3 will most likely be allocated between compliance clerks and general clerks. Also as discussed in the Paperwork Reduction Act Analysis, we believe that the performance of the functions associated with the amendments to Exchange Act rule 17a-4 will be performed by compliance clerks. *See supra* Sections V.E and V.F.

1503 $32 per broker dealer for amendments to Exchange Act rule 17a-3 + $7 per broker-dealer for amendments to Exchange Act rule 17a-4 = $39 per broker-dealer. $39 x 756 small broker-dealers = $29,484. *See supra* Sections V.E and V.F.

1504 *See supra* Sections V.E and V.F.

1505 As discussed in the Economic Analysis in Section IV.D.4, the Commission considered the following alternatives as they affect all firms, including small entities: (i) requiring a new, separate disclosure versus amending existing disclosure requirements; (ii) alternatives concerning the form and format of the relationship summary; (iii) alternatives concerning the disclosures concerning the summary of fees, costs, conflicts, and standard of conduct; (iv) alternatives concerning filing and delivery; and (v) alternatives to compliance deadlines, including transition provisions.

Regarding the first alternative, the Commission believes that establishing different compliance or reporting requirements for small advisers and small broker-dealers will be inappropriate under these circumstances. We considered adopting tiered compliance dates so that smaller investment advisers and smaller broker-dealers would have had more time to comply. This would have been an alternative to the proposal, which did not include such tiered compliance. However, as adopted, instead of providing more time to smaller investment advisers and smaller broker-dealers only, we are extending the compliance dates for all firms. As discussed in Section II.D above, we believe the final compliance dates provide adequate notice and opportunity for all firms to comply with the new requirements.

Because the protections of the Advisers Act and Exchange Act are intended to apply equally to retail investor clients and customers of both large and small firms, it will be inconsistent with the purposes of the Advisers Act and the Exchange Act to specify differences for small entities under the new requirements. As discussed above, we believe that the new requirements will result in multiple benefits to all retail investors, including alerting retail investors to certain information to consider when deciding whether to (i) establish an investment advisory or brokerage relationship, (ii) engage a particular firm or financial professional, or (iii) terminate or switch a relationship or specific service.[1506] In addition, the content of the relationship summary will facilitate comparisons across firms.[1507] We believe that these benefits should apply to retail investors that engage smaller firms as well as retail investors that engage

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[1506] *See supra* Sections IV and VI.A.

[1507] *See supra* Sections I and IV.

larger firms. To establish different disclosure requirements for small entities will diminish this investor protection for clients and customers of small entities.

As discussed above in Section II.C above, we are requiring that investment advisers and broker-dealers file their relationship summaries with the Commission.[1508] As discussed in Section II.C.2, there are several reasons we are requiring the relationship summaries to be filed with the Commission. First, the public will benefit by being able to use a central location to find any firm's relationship summary,[1509] which may facilitate simpler comparisons across firms. Second, some firms may not maintain a website, and therefore their relationship summaries will not otherwise be accessible to the public. Third, by having firms file the relationship summaries with the Commission, Commission staff can more easily monitor the filings for compliance. These benefits of filing are important for retail investors who are clients and customers of both large and small firms. Furthermore, almost all advisers, including small advisers, have Internet access and use the Internet for various purposes so using the Internet to file electronically should not increase costs for those advisers.[1510] All relationship summaries must be filed using a text-searchable format with machine-readable headings. There are several reasons we are requiring

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[1508] Investment advisers must file their relationship summaries with the Commission electronically through IARD in the same manner as they currently file Form ADV Parts 1 and 2. Broker-dealers must file their relationship summaries with the Commission electronically through Web CRD®. Dual registrants must file the relationship summary using both IARD and Web CRD®.

[1509] The filed relationship summaries will be accessible through the Commission's investor education website Investor.gov. *See supra* footnote 661 and accompanying text.

[1510] Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000)], at n.304 and accompanying text. However, an adviser that is a small business may be eligible for a continuing hardship exemption for Form ADV filings, which includes the relationship summary, if it can demonstrate that filing electronically would impose an undue hardship. *See* General Instruction 17 to Form ADV.

firms to file their relationship summaries with machine-readable headings and text-searchable format, including that this formatting will facilitate the aggregation and comparison of responses to specific items across different relationship summaries and is consistent with the Commission's ongoing efforts to modernize our forms by taking advantage of technological advances, both in the manner in which information is reported to the Commission and how it is provided to investors and other users, as discussed above.[1511] These benefits are important for filings by all firms and would be significantly reduced by allowing different requirements for small entities. Costs for firms, including small entities, could be minimal to the extent they implement structured headings in PDF formatted documents by creating a bookmark for each of the headings.[1512]

The requirement for investment advisers and broker-dealers to post their relationship summary on their public websites, if they have a public website, in a location and format that is easily accessible for retail investors, already incorporates the flexibility to permit different compliance and reporting requirements for small entities, if applicable. To the extent that broker-dealers and investment advisers that are small entities are less likely to have public websites and do not have them, they will not be required to post the relationship summary on their websites.[1513] In other ways, as well, the requirements incorporate flexibility for small broker-dealers and small advisers to comply with the requirements. For instance, we are

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[1511] *See supra* Section II.C.2.

[1512] *See supra* Section II.C.2.

[1513] Firms must provide a telephone number in their relationship summary that retail investors can call to obtain up-to-date information and request a copy of the relationship summary. *See supra* Section II.B.5.

requiring firms to communicate the information in an updated relationship summary to retail investors who are existing clients or customers within 60 days after the updates are required to be made and without charge.[1514] Firms can communicate this information by delivering the amended relationship summary or by communicating the information through another disclosure that is delivered to the retail investor. This requirement provides firms the ability to disclose changes without requiring them to duplicate disclosures and incur additional costs.

We believe it will be inappropriate to establish different recordkeeping requirements for small entities, because the recordkeeping requirements will facilitate the Commission's ability to inspect for and enforce compliance with firms' obligations with respect to the relationship summary, which is important for retail investor clients and customers of both large and small firms. Also, the Commission is not adopting different ongoing delivery requirements for small entities for the reasons discussed in Section VI.B above.

Regarding the second alternative, we clarified and simplified certain requirements for all entities, as an alternative to the proposal.[1515] However, we believe the final requirements are clear and that further clarification, consolidation, or simplification of the compliance and

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1514 *See supra* Section II.C.4.

1515 *See supra* Sections I and II. For example, we have clarified re-delivery requirements by replacing the proposed standard of "materially change the nature and scope of the relationship" with two more specific and easily identifiable triggers that we believe would not implicate the same operational or supervisory burdens described by commenters to meet the proposed requirement. As another example, in a change from the proposal, we eliminated the proposed requirement that standalone broker-dealers and standalone investment advisers include a separate section using prescribed wording that generally describes how the services of investment advisers and broker-dealers, respectively, differ from the firm's services. Instead, we adopted a simpler approach so firms will be required to simply state that free and simple tools are available to research firms and financial professionals at Investor.gov/CRS, which also provides educational materials about broker-dealers, investment advisers, and investing.

reporting requirements separately for small entities is not necessary. For the same reasons discussed above in this section concerning the first alternative, we believe that further clarifying, consolidating, or simplifying the requirements only for small entities will be inappropriate under these circumstances.

Regarding the third alternative, we considered using performance rather than design standards. Performance standards would allow for increased flexibility in the methods firms can use to achieve the objectives of the requirements. Design standards would specify the behavior or manner of compliance that regulated entities must adopt. We revised the combination of performance and design standards of the requirements, as an alternative to the proposal.[1516] The Commission believes that the final relationship summary and the related new rules and amendments appropriately use a combination of performance and design standards for all firms, including those that are small entities.

The Commission is adopting certain performance standards as an alternative to design standards so firms will have some flexibility in how they complete the relationship summary. Instead of requiring extensive prescribed language, as proposed, prescribed wording will be limited and, instead, firms will complete most of the relationship summary using their own words.[1517] Although this increases costs to firms, including small firms, as discussed above,[1518]

[1516] *See supra* Sections I and II. For example, in the final requirements we require less prescribed wording, and provide more flexibility in certain formatting and filing requirements. *See supra* Sections II.A.1 (discussing limited prescribed wording) and II.A.5 (discussing more flexible formatting and filing requirements for dual registrants).

[1517] *See supra* Section II.A.1.

[1518] *See supra* Sections V.A and V.D.

firms will now have the flexibility to create disclosures that are more accurately tailored to their business, and therefore more understandable and relevant to retail investors.[1519] In addition, we are encouraging, but not requiring, firms to use charts, graphs, tables, and other graphics or text features to respond to the required disclosures.[1520] In an alternative to the proposal, which required dual registrants to file a single relationship summary, dual registrants will have the flexibility to decide whether to prepare separate or combined relationship summaries.[1521] In another alternative to the proposal, which required firms to provide a toll-free telephone number under certain circumstances, we are not requiring the telephone number to be toll-free.[1522] As discussed in Section II.B.5 above, firms must include a telephone number where retail investors can request up-to-date information and request a copy of the relationship summary. Although we are adopting a requirement to provide a telephone number, we are not requiring the telephone number to be toll-free. If firms, including small firms, do not already have a toll-free telephone number, they will not be required to obtain one to comply with the requirements of the relationship summary. Firms will have the flexibility to decide whether the telephone number they provide in their relationship summary will be toll-free.

In conjunction with the performance standards, the Commission is adopting certain design standards. For example, with respect to delivery requirements, as discussed in Section II.C.3.c above, in an alternative to the proposal, we replaced a performance standard with a

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[1519] *See supra* Section II.A.1.

[1520] *See supra* Section II.A.3.

[1521] *See supra* Section II.A.5.

[1522] *See supra* Section II.B.5.

design standard to clarify requirements and reduce operational and supervisory burdens. Specifically, we proposed a performance standard that would have required a firm to deliver a relationship summary to an existing client or customer when changes are made to the existing account that would "materially change the nature and scope of the relationship." This requirement would have required analysis about facts and circumstances and commenters expressed concern that it would impose operational and supervisory burdens. In response, we replaced the standard of "materially change the nature and scope of the relationship" with two, more specific and easily identifiable, triggers that we believe would not implicate the same operational or supervisory burdens described by commenters to meet the proposed requirement. Therefore, the final requirements set forth specific triggers that require re-delivery of the relationship summary in situations that the proposed "material changes" language sought to address, but are presented as a design standard rather than a performance standard and, as a result, are designed to ease burdens for all firms, including small entities.

The relationship summary includes design standards to more easily allow for comparability among firms. These requirements specify the headings and sequence of the topics; prohibit disclosure other than the disclosure that is required or permitted; limit the length of the relationship summary; and require limited prescribed language in certain sections. The Commission considered alternative performance standards such as unlimited page numbers and not prohibiting disclosure other than the disclosure that is required or permitted. However, as discussed in Section II.A.1 above, we believe that retail investors will benefit from receiving a relationship summary that contains high-level information, with the ability to access more detailed information. We also believe that the relationship summary should present information that is responsive and relevant to the topics covered by the final instructions. We believe that

allowing only the mandatory or permissible information will promote consistency of information presented to investors, and allow investors to focus on relevant information that is helpful in deciding among firms. We believe that the design standards that we are adopting will provide comparative information in a user-friendly format that helps retail investors with informed decision making.

We believe that this approach of using both performance and design standards balances the need to provide firms flexibility in making the presentation of information consistent with their particular business model while ensuring that all retail investors receive certain information in a manner that promotes comparability.

Regarding the fourth alternative, we believe that, similar to the first alternative, it would be inconsistent with the purposes of the Advisers Act and the Exchange Act to exempt small advisers and broker-dealers from the new requirements, or any part thereof. Because the protections of the Advisers Act and Exchange Act are intended to apply equally to retail investors that are clients and customers of both large and small firms, it would be inconsistent with the purposes of the Advisers Act and Exchange Act to specify differences for small entities under the final requirements. As discussed above, we believe that the new requirements will result in multiple benefits to all retail investors, including alerting retail investors to certain information to consider when deciding whether to (i) establish an investment advisory or brokerage relationship, (ii) engage a particular firm or financial professional, or (iii) terminate or switch a relationship or specific service.[1523] In addition, the content of the relationship summary

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[1523] *See supra* Sections IV and VI.A.

will facilitate comparisons across firms.[1524] We believe that providing this information at the prescribed timeframes is appropriate and in the public interest and will improve investor protection by helping retail investors to make a more informed choice among the types of firms and services available to them. Because we view investor confusion about brokerage and advisory services as an issue for many retail investors who are clients and customers of advisers and broker-dealers, it will be inconsistent with the purpose of the relationship summary to specify different requirements for small entities.[1525]

VII. STATUTORY AUTHORITY

The Commission is adopting amendments to rule 203-1 under the Advisers Act pursuant to authority set forth in sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)].

The Commission is adopting amendments to rule 204-1 under the Advisers Act pursuant to authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1) and 80b-4].

The Commission is adopting new rule 204-5 under the Advisers Act pursuant to authority set forth in sections 204, 206A, 206(4), 211(a), and 211(h) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-4, 80b-6a, 80b-6(4), 80b-11(a), 80b-11(h)], and section 913(f) of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

1524 *See supra* Sections I and IV.

1525 *See supra* Sections I and IV (discussing investor confusion).

The Commission is adopting amendments to rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-37(a)], and sections 203(c)(1), 204, 206A, 211(a) and 211(h), and of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1), 80b-4, 80b-6a, 80b-11(a) and 80b-11(h)], and section 913(f) of Title IX of the Dodd-Frank Act.

The Commission is adopting amendments to rule 204-2 under the Advisers Act pursuant to authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b-4 and 80b-11].

The Commission is adopting new rule 17a-14 under the Exchange Act, Form CRS, and amendments to rules 17a-3 and 17a-4 under the Exchange Act pursuant to the authority set forth in the Exchange Act sections 3, 10, 15, 15(c)(6), 15(*l*), 17, 23 and 36 thereof 15 U.S.C. 78c, 78j, 78o, 78o(c)(6), 78o(*l*), 78q, 78w and 78mm, and section 913(f) of Title IX of the Dodd-Frank Act.

The Commission is adopting amendments to rule 800 under the Organization; Conduct and Ethics; and Information and Requests pursuant to the authority set forth in PRA sections 3506 and 3507 [44 U.S.C. 3506, 3507].

TEXT OF THE RULE AND FORM

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Organization and functions (Government agencies).

List of Subjects in 17 CFR Parts 240 and 249

Brokers, Reporting and recordkeeping requirements, Sales practice and disclosure requirements, Securities.

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N – Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

1. The authority citation for part 200 subpart N continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

2. Section 200.800 in paragraph (b) is amended by adding an entry in numerical order by part and section number for "Form CRS" to read as follows:

§200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Information collection requirement	**17 CFR part or section where identified and described**	**Current OMB control No.**
	* * * * *	
Form CRS	249.640	3235-0766
	* * * * *	

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

The general authority citation for part 240 continues to read as follows and sectional authority for 240.17a-14 is added to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l,* 78m, 78n, 78n-1, 78*o,* 78*o*-4, 78*o*-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78*ll,* 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

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Section 240.17a-14 is also issued under Pub. L. 111-203, sec. 913, 124 Stat. 1376 (2010).

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2. Section 240.17a-3 is amended by adding paragraph (a)(24) to read as follows:

§240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(24) A record of the date that each Form CRS was provided to each retail investor, including any Form CRS provided before such retail investor opens an account.

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3. Section 240.17a-4 is amended by adding paragraph (e)(10) to read as follows:

§240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

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(e) * * *

(10) All records required pursuant to §240.17a-3(a)(24), as well as a copy of each Form CRS, until at least six years after such record or Form CRS is created.

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4. Section 240.17a-14 is added to read as follows:

§240.17a-14 Form CRS, for preparation, filing and delivery of Form CRS.

(a) *Scope of Section.* This section shall apply to every broker or dealer registered with the Commission pursuant to section 15 of the Act that offers services to a retail investor.

(b) *Form CRS.* You must:

(1) Prepare Form CRS 17 CFR 249.640, by following the instructions in the form.

(2) File your current Form CRS electronically with the Commission through the Central Registration Depository ("Web CRD®") operated by the Financial Industry Regulatory Authority, Inc., and thereafter, file an amended Form CRS in accordance with the instructions in Form CRS.

(3) Amend your Form CRS as required by the instructions in the form.

(c) *Delivery of Form CRS.* You must:

(1) Deliver to each retail investor your current Form CRS before or at the earliest of:

(i) A recommendation of an account type, a securities transaction; or an investment strategy involving securities;

(ii) Placing an order for the retail investor; or

(iii) The opening of a brokerage account for the retail investor.

(2) Deliver to each retail investor who is an existing customer your current Form CRS before or at the time you:

(i) Open a new account that is different from the retail investor's existing account(s);

(ii) Recommend that the retail investor roll over assets from a retirement account into a new or existing account or investment; or

(iii) Recommend or provide a new brokerage service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

(3) Post the current Form CRS prominently on your public Website, if you have one, in a location and format that is easily accessible for retail investors.

(4) Communicate any changes made to Form CRS to each retail investor who is an existing customer within 60 days after the amendments are required to be made and without charge. The communication can be made by delivering the amended Form CRS or by communicating the information through another disclosure that is delivered to the retail investor.

(5) Deliver a current Form CRS to each retail investor within 30 days upon request.

(d) *Other disclosure obligations*. Delivering a Form CRS in compliance with this section does not relieve you of any other disclosure obligations arising under the federal securities laws and regulations or other laws or regulations (including the rules of a self-regulatory organization).

(e) *Definitions*. For purposes of this section:

(1) *Current Form CRS* means the most recent version of the Form CRS.

(2) *Retail investor* means a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.

(f) *Transition rule.* (1) If you are registered with the Commission prior to June 30, 2020, pursuant to Section 15 of the Act, you must file your initial Form CRS with the Commission in

accordance with section (b)(2) of this section, beginning on May 1, 2020 and by no later than June 30, 2020.

(2) On or after June 30, 2020, if you file an application for registration with the Commission or have an application for registration pending with the Commission as a broker or dealer pursuant to Section 15 of the Act, you must begin to comply with this section by the date on which your registration application becomes effective pursuant to Section 15 of the Act, including by filing your Form CRS in accordance with paragraph (b)(2) of this section.

(3) Within 30 days after the date by which you are first required by paragraph (f) of this section to electronically file your initial Form CRS with the Commission, you must deliver to each of your existing customers who is a retail investor your current Form CRS.

(4) As of the date by which you are first required to electronically file your Form CRS with the Commission pursuant to this section, you must begin using your Form CRS as required to comply with paragraph (c) of this rule.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form CRS, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 is amended by revising the general authority and adding sectional authority for 249.640 to read as follows:

Authority: 15 U.S.C. 78a *et seq*. and 7201 *et seq*.; 12 U.S.C. 5461 *et seq*.; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313, (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.640 is also issued under Pub. L. 111-203, sec. 913, 124 Stat. 1376 (2010).

* * * * *

6. Section 249.640 is added to read as follows:

§249.640 Form CRS, Relationship Summary for Brokers and Dealers Providing Services to Retail Investors, pursuant to §240.17a-14 of this chapter.

This form shall be prepared and filed by brokers and dealers registered with the Securities and Exchange Commission pursuant to Section 15 of the Act that offer services to a retail investor pursuant to §240.17a-14 of this chapter.

PART 275 – RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The general authority citation for part 275 continues to read as follows and sectional authorities for 275.204-5 and 275.211h-1 are added to read as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

* * * * *

Section 275.204-5 is also issued under sec. 913, Pub. L. 111-203, sec. 124 Stat. 1827-28 (2010).

Section 275.211h-1 is also issued under sec. 913, Pub. L. 111-203, sec. 124 Stat. 1827-28 (2010).

* * * * *

8. Amend §275.203-1 by revising paragraph (a) to read as follows:

§275.203-1 Application for investment adviser registration.

(a) *Form ADV.* (1) To apply for registration with the Commission as an investment adviser, you must complete Form ADV (17 CFR 279.1) by following the instructions in the form

and you must file Part 1A of Form ADV, the firm brochure(s) required by Part 2A of Form ADV and Form CRS required by Part 3 of Form ADV electronically with the Investment Adviser Registration Depository (IARD) unless you have received a hardship exemption under §275.203-3. You are not required to file with the Commission the brochure supplements required by Part 2B of Form ADV.

(2)(i) On or after June 30, 2020, the Commission will not accept any initial application for registration as an investment adviser that does not include a Form CRS that satisfies the requirements of Part 3 of Form ADV.

(ii) Beginning on May 1, 2020, any initial application for registration as an investment adviser filed prior to June 30, 2020, must include a Form CRS that satisfies the requirements of Part 3 of Form ADV by no later than June 30, 2020.

NOTE TO PARAGRAPH (a)(1): Information on how to file with the IARD is available on the Commission's website at *http://www.sec.gov/iard.* If you are not required to deliver a brochure or Form CRS to any clients, you are not required to prepare or file a brochure or Form CRS, as applicable, with the Commission. If you are not required to deliver a brochure supplement to any clients for any particular supervised person, you are not required to prepare a brochure supplement for that supervised person.

* * * * *

9. Amend §275.204-1 by revising paragraphs (a) and (b), adding paragraph (e), and redesignating and revising the note following paragraph (b) to read as follows:

§275.204-1 Amendments to Form ADV.

(a) *When amendment is required.* You must amend your Form ADV (17 CFR 279.1):

(1) Parts 1 and 2:

(i) At least annually, within 90 days of the end of your fiscal year; and

(ii) More frequently, if required by the instructions to Form ADV.

(2) Part 3 at the frequency required by the instructions to Form ADV.

(b) *Electronic filing of amendments.* (1) Subject to paragraph (c) of this rule, you must file all amendments to Part 1A, Part 2A, and Part 3 of Form ADV electronically with the IARD, unless you have received a continuing hardship exemption under §275.203-3. You are not required to file with the Commission amendments to brochure supplements required by Part 2B of Form ADV.

(2) If you have received a continuing hardship exemption under §275.203-3, you must, when you are required to amend your Form ADV, file a completed Part 1A, Part 2A and Part 3 of Form ADV on paper with the SEC by mailing it to FINRA.

* * * * *

(e) *Transition to Filing Form CRS.* If you are registered with the Commission or have an application for registration pending with the Commission prior to June 30, 2020, you must amend your Form ADV by electronically filing with IARD your initial Form CRS that satisfies the requirements of Part 3 of Form ADV (as amended effective June 30, 2019) beginning on May 1, 2020 and by no later than June 30, 2020.

NOTE TO PARAGRAPHS (a), (b) AND (e): Information on how to file with the IARD is available on our Web site at *http://www.sec.gov/iard.* For the annual updating amendment: Summaries of material changes that are not included in the adviser's brochure must be filed with the Commission as an exhibit to Part 2A in the same electronic file; and if you are not required to prepare a brochure, a summary of material changes, an annual updating amendment to your

brochure, or Form CRS you are not required to file them with the Commission. See the instructions for Part 2A and Part 3 of Form ADV.

* * * * *

10. Section 275.204-2 is amended by revising paragraph (a)(14)(i) as follows:

§275.204-2 Books and records to be maintained by investment advisers.

(a) * * *

(14)(i) A copy of each brochure, brochure supplement and Form CRS, and each amendment or revision to the brochure, brochure supplement and Form CRS, that satisfies the requirements of Part 2 or Part 3 of Form ADV, as applicable [17 CFR 279.1]; any summary of material changes that satisfies the requirements of Part 2 of Form ADV but is not contained in the brochure; and a record of the dates that each brochure, brochure supplement and Form CRS, each amendment or revision thereto, and each summary of material changes not contained in a brochure given to any client or to any prospective client who subsequently becomes a client.

* * * * *

11. Section 275.204-5 is added to read as follows:

§275.204-5 Delivery of Form CRS.

(a) *General requirements.* If you are registered under the Act as an investment adviser, you must deliver Form CRS, required by Part 3 of Form ADV [17 CFR 279.1], to each retail investor.

(b) *Delivery requirements.* You (or a supervised person acting on your behalf) must:

(1) Deliver to each retail investor your current Form CRS before or at the time you enter into an investment advisory contract with that retail investor.

(2) Deliver to each retail investor who is an existing client your current Form CRS before or at the time you:

(i) Open a new account that is different from the retail investor's existing account(s);

(ii) Recommend that the retail investor roll over assets from a retirement account into a new or existing account or investment; or

(iii) Recommend or provide a new investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

(3) Post the current Form CRS prominently on your website, if you have one, in a location and format that is easily accessible for retail investors.

(4) Communicate any changes made to Form CRS to each retail investor who is an existing client within 60 days after the amendments are required to be made and without charge. The communication can be made by delivering the amended Form CRS or by communicating the information through another disclosure that is delivered to the retail investor.

(5) Deliver a current Form CRS to each retail investor within 30 days upon request.

(c) *Other disclosure obligations.* Delivering Form CRS in compliance with this section does not relieve you of any other disclosure obligations you have to your retail investors under any federal or state laws or regulations.

(d) *Definitions.* For purposes of this section:

(1) *Current Form CRS* means the most recent version of the Form CRS.

(2) *Retail investor* means a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.

(3) *Supervised person* means any of your officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on your behalf.

(e) *Transition rule*. (1) Within 30 days after the date by which you are first required by §275.204-1(b)(3) to electronically file your Form CRS with the Commission, you must deliver to each of your existing clients who is a retail investor your current Form CRS as required by Part 3 of Form ADV.

(2) As of the date by which you are first required to electronically file your Form CRS with the Commission, you must begin using your Form CRS as required by Part 3 of Form ADV to comply with the requirements of paragraph (b) of this section.

PART 279 – FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

12. The authority citation for part 279 is revised to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq*., Pub. L. 111-203, 124 Stat. 1376.

13. Form ADV [referenced in §279.1] is amended by:

a. In the instructions to the form, revising the section entitled "Form ADV: General Instructions." The revised version of Form ADV: General Instructions is attached as Appendix A;

b. In the instructions to the form, adding the section entitled "Form ADV, Part 3: Instructions to Form CRS." The new version of Form ADV, Part 3: Instructions to Form CRS is attached as Appendix B.

Dated: June 5, 2019

By the Commission.

Vanessa A. Countryman

Acting Secretary

Note: The appendices will not appear in the Code of Federal Regulations.

APPENDICES