required by paragraph (a)(2)(iii) of this section, the broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.

(b) Definitions. Unless otherwise provided, all terms used in this rule shall have the same meaning as in the Securities Exchange Act of 1934. In addition, the following definitions shall apply for purposes of this section:

(1) Retail customer means a natural person, or the legal representative of such natural person, who:

(i) 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

(ii) Uses the recommendation primarily for personal, family, or household purposes.

(2) Retail customer investment profile includes, but is not limited to, the retail customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail customer may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.

(3) Conflict of interest means an interest that might incline a broker, dealer, or a natural person who is an associated person of a broker or dealer —consciously or unconsciously—to make a recommendation that is not disinterested.

*3. Amend § 240.17a–3 by adding reserved paragraphs (a)(24) through (34) and paragraph (a)(35) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * * *(24)–(34) [Reserved].

(35) For each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided:

(i) A record of all information collected from and provided to the retail customer pursuant to § 240.157–1, as well as the identity of each natural person who is an associated person, if any, responsible for the account.

(ii) For purposes of this paragraph (a)(35), the neglect, refusal, or inability of the retail customer to provide or update information described in paragraph (a)(35)(i) of this section shall excuse the broker, dealer, or associated person from obtaining that required information.

4. Amend § 240.17a–4 by revising paragraph (e)(5) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

(e) * * * *(5) All account record information required pursuant to § 240.17a–3(a)(17) and all records required pursuant to § 240.17a–3(a)(35), in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.

By the Commission.

Dated: June 5, 2019.

Vanessa Countryman,
Acting Secretary.

[FR Doc. 2019–12164 Filed 7–11–19; 8:45 am]

BILLING CODE 8011–01–P

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: The types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and 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 September 10, 2019.

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

FOR FURTHER INFORMATION CONTACT: Gena Lai, James McGinnis, Elizabeth Miller, Siirmal R. Mukerjee, Olawale Oriola, Alexis Palascak, Benjamin Tecnire, Roberta Ufford, Jennifer Porter (Branch Chief), Investment Adviser Regulation Office at (202) 551–6787 or IARules@sec.gov; Benjamin Kalish and Parisa Haghshenas (Branch Chief), Chief Counsel’s Office at (202) 551–6825 or IMOCO@sec.gov; Division of Investment Management; Alicia Goldin, Emily Westerberg Russell, Lourdes Gonzalez (Assistant Chief Counsel), Office of Chief Counsel, Division of Trading and Markets, at (202) 551–5550 or tradingandmarkets@sec.gov, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.


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 Exchange Act, we are referring to 15 U.S.C. 78a, at which the Exchange Act is codified, and when we

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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. 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 or financial professional and whether to establish, or to continue to maintain, an investment advisory or brokerage relationship. Firms will deliver to retail investors a customer or client 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. 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

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

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 and Restrictions on the use of Certain Names or Titles; Investment Advisers Act Release No. 4888, Exchange Act Release No. 83063 (Apr. 16, 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 9.0 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

Continued
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.141 The investor roundtables were held in 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.15 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 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

Additionally, some commenters submitted reports of surveys and 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

proposed definition for “dual registrant” substantially as proposed. We are adding language in the definition 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.

8 Several of those comment letters are available in the comment file at https://www.sec.gov/comments/s7-08-18/s70818.htm.

9 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-committee-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 sets 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 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.

10 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 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 are forms named defined in the Feedback Forms Comment Summary.


www.sec.gov/comments/s7-08-18/s70818.htm#transcripts.


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 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 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 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

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 an SRO-mandated format 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 (54 responded to questions on the SEC Form). Id. 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/s70618-4344155-173259.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 Planning Board of Standards, Inc. [Dec. 5, 2018], available at https://www.sec.gov/comments/s7-07-18/s70618-4729050-176777.pdf (“Kleimann II”) (results of testing alternate designs of the proposed dual-registrant relationship summary submitted by qualitative interviewees). 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); 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 RAND 2018, supra footnote 13. 22 RAND 2018, supra footnote 13 (a majority of respondents rated both of the relationships and services section and fees section and costs sections of the relationship summary as one of two sections that are “most informative”). 23 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; 90% of respondents understood that both Brokerage relationship summary and the types of information that would be provided could be useful, 24 In the RAND 2018 qualitative interviews, it was observed that participants could learn new information from the proposed relationship summary. Similarly, other surveys and studies that assessed investor comprehension observed that investors learned important information by reviewing the relationship summary. 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

23 RAND 2018, supra footnote 13 (a majority of respondents rated both of the relationships and services section and fees section and costs sections of the relationship summary as one of two sections that are “most informative”). 24 RAND 2018, supra footnote 13 (a majority of respondents rated both of the relationships and services section and fees section and costs sections of the relationship summary as one of two sections that are “most informative”). 25 RAND 2018, supra footnote 13 (concluding from qualitative interviews that demonstrated evidence of learning new information from the relationship summary even though interview discussions revealed areas of confusion). 26 See Kleimann I, supra footnote 19 (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” that companies that “some” investment firms have a conflict of interest because they benefit financially from recommending certain investments when viewing the standalone adviser relationship summary constructed based on the instructions set forth in the proposal”). 27 See Feedback Forms Comment Summary, supra footnote 11 (summarizing feedback on 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.”
positively and indicated that they found the relationship summary to be useful. 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. 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. Many other commenters supported the concept of a short disclosure document for retail investors that would serve as part of a layered disclosure regime, and agreed that the relationship summary would facilitate conversations between retail investors and their financial professionals in a beneficial way.

28 See e.g., Houston Roundtable, at 19 ("I think your idea of having . . . a short four page . . . is really helpful."); at 27 (positively responding 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 "very helpful"); Atlanta Roundtable, at 28 (stating that the proposed sample relationship summary is "a very good form" and "concisely worded 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 a basis for a conversation with an investment professional; in qualitative interviews, participants said they liked all of the "questions to 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); Letter to Robert 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 Form 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."); Asem Feedback Form ("The Relationship Summary [and not the IAA 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").


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"); Comment Letter of John H. Robinson (Aug. 7, 2018) ("[A]s proposed, CRS is too wordy and technically written for the average investor to understand."); 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 1”)(as proposed, CRS is too wordy and technically written for the average investor to understand.").

misleading disclosures. Various commenters advocated for more flexibility for firms to use their own wording to describe their services more accurately. Many commenters favored the use of a question-and-answer format, 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. 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. Several individuals submitting Feedback Forms also were supportive of links to additional educational information. Although some commenters argued that the relationship summary is duplicative of other disclosures and is unnecessary, 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 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. 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 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.

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 informed conversations with their financial professionals, and empower them to easily find additional information. Although certain prescribed generalizations...
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:  
• 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).  
• 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 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 a 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

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.  
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.
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

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 by investors is supported 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 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 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 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


48 See RAND 2018 Report, supra note 19 (reporting as issues that “matter most” to investors, including (among other topics) “whether broker-dealers, investment advisers, or dual registrants—to use the term “best interest” to describe their applicable standard of conduct.

49 See RAND 2018 Report, supra note 19 (reporting as issues that “matter most” to investors, including (among other topics) “whether broker-dealers, investment advisers, or dual registrants—to use the term “best interest” to describe their applicable standard of conduct.

50 See supra notes 22 to 30 and accompanying text. We note that the Department of Labor did not describe or require usability testing in adopting its own revised rule regarding 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). See supra notes 23 to 24 and accompanying text; see also Schwab Letter (Koski), supra note 23 (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 note 21 (reporting as issues that “matter most” to investors, “explaining fees and costs,” “explaining conflicts of interest” and “explaining own compensation”).

51 See RAND 2018, supra note 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”); Kleiman I, supra footnote 19 (although study authors conceded 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.”)

52 See infra, Section II.B.3.

53 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
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 file their relationship summaries 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 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 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 allow readers to have an overview of the content, see the overall structure of the content, and choose which parts most interest them.); IAC 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 where 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 (70%);” 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 and contain “hyperlinks”); Betterment Letter I (Hotspex), supra footnote 18 (providing suggestions for streamlining and focusing the content requirements and experienced employees where focus is on graphic design and applying design thinking techniques to customer facing products”).

55 Form CRS defines “relationship summary” as “[a] disclosure prepared in accordance with these Instructions that you must provide to retail investors” and also requires 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).

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?)). Table 4 (“Are there topics in the relationship summary that are too technical or that could be improved?”) reflects that Feedback Forms 44% indicated in response to Question 4 (“Is the relationship summary using ‘key design elements that are informed by our experienced employees where 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 (70%);” 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 and contain “hyperlinks”); Betterment Letter I (Hotspex), supra footnote 18 (providing suggestions for streamlining and focusing the content requirements and experienced employees where focus is on graphic design and applying design thinking techniques to customer facing products”).

57 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); IAC Letter I (arguing that more visually dynamic and engaging design would make the relationship summary more effective and likely to be read).

58 See IAC Form CRS Recommendations, 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 services provided, 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).

59 See, e.g., IAA Letter 3.B. and 3.C.(ii) of Form CRS.
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.\textsuperscript{62} Dual registrants\textsuperscript{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,\textsuperscript{64} 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.\textsuperscript{65} 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.\textsuperscript{66}

Several commenters suggested that the relationship summary avoid the use of jargon\textsuperscript{67} (e.g., terms like “asset-based fee” and “load” in the fees section),\textsuperscript{68} and several roundtable participants and participants in the RAND 2018 interviews and another study said that they did not understand certain technical terms.\textsuperscript{69} Roundtable participants and commenters on Feedback Forms asked that the relationship summary include definitions or a glossary.\textsuperscript{70} In addition, the IAC recommended that a document such as the relationship summary use plain English and a concise format.\textsuperscript{71} 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 OMB control number and including certain statements relating to federal information law and requirements, and the SEC’s collection of information.\textsuperscript{72} 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.\textsuperscript{73} The implementation, conflicts of interest, and key questions sections also included some required statements.\textsuperscript{74} 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.”\textsuperscript{75} Broker-dealers also would have stated “The more transactions in your account, the more fees we charge you. We therefore have an incentive to encourage you to engage in transactions.”\textsuperscript{76} 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.\textsuperscript{77} Many commenters requested more flexibility for firms to provide accurate descriptions of their services.\textsuperscript{78} Some

\textsuperscript{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.”).

\textsuperscript{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.

\textsuperscript{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 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 advisory firms are 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.

\textsuperscript{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 . . . ”).

\textsuperscript{66} Several commenters suggested that the relationship summary avoid the use of jargon (e.g., terms like “asset-based fee” and “load” in the fees section), and several roundtable participants and participants in the RAND 2018 interviews and another study said that they did not understand certain technical terms. Roundtable participants and commenters on Feedback Forms asked that the relationship summary include definitions or a glossary. In addition, the IAC recommended that a document such as the relationship summary use plain English and a concise format. 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 OMB control number and including certain statements relating to federal information law and requirements, and the SEC’s collection of information.

\textsuperscript{67} ACF Letter I; AARP Letter; IAA Letter I.

\textsuperscript{68} See, e.g., Miami Roundtable; Houston Roundtable; Philadelphia Roundtable; 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.

\textsuperscript{69} See, e.g., Philadelphia Roundtable, at 64 (particularized questions about the end of the relationship summary); Washington, DC 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 or a glossary). We also are not requiring firms to include a glossary. See supra Section II.A.4 (conversation starters).

\textsuperscript{70} Proposed Items 2.B.1. and 4.B.1. of Form CRS.

\textsuperscript{71} Proposed Item 4.B.5. of Form CRS.

\textsuperscript{72} See Items 3.A. through 3.C. of Form CRS.


\textsuperscript{74}See supra discussion at Sections II.B.3 (fees and costs and standard of conduct) and II.B.6 (proposed items omitted in final instructions).

\textsuperscript{75}See supra discussion at Sections II.B.1 (introduction) and II.B.3 (requirements and other laws or regulations).

\textsuperscript{76}Proposed Items 2.B.1. and 4.B.1. of Form CRS.

\textsuperscript{77}Proposed Item 4.B.5. of Form CRS.

\textsuperscript{78} See supra Section II.A.4 (conversation starters).
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.”

Observations reported in the RAND 2018 qualitative interviews and other surveys and studies also showed that investors had difficulty understanding, were confused by, or misinterpreted some of the prescribed wording. A range of commenters asserted that the proposed prescribed wording could be inaccurate or inapplicable. 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. One commenter expressed concern that some of the prescribed wording could constitute impermissible compelled speech that could raise First Amendment concerns. That same commenter, with others, also opposed providing firms with more flexibility than proposed to implement the relationship summary, arguing that more flexibility could impair comparability.

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 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. 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 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. 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. These elements are organizational (the headings) or intended to prompt a discussion by the investor (the conversation starters). The final instructions also require firms to include prescribed statements describing their required standard of conduct when providing recommendations or advice. 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. 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 their respective legal regimes. 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. As explained further below,

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”).

ASA Letter (“[T]he mix of prescribed and customized language will only create more confusion among retail investors, 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 boiler-plate language thus detracts from a firm’s ability to explain its own services and make it harder for investors to understand those services.”).

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 relationship summary language and obligations needed clarification); 14 suggested clarification or more information about conflicts of interest).

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

Item 3.A.(iii) of Form CRS (requiring firms to disclose owning of a brokerage account and are not conducted in a brokerage account.”).

See CFA Letter I, supra footnote 37.

See AFL-CIO, CFA Letter.

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

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 own services unfavorably to those of their competitors. See infra Section II.B.6.

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

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

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

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

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).

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...”)}
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 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, not misleading,” as modifying the requirements to clarify the scope further in light of commenter concerns. Second, the applicable item not misleading,93 and not omit information that is required to be disclosed or necessary to make the required disclosure not misleading.94

We continue to believe that firms should include only as much information as is necessary to enable a reasonable investor95 to understand the information required by each 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 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 The 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, not misleading,” as modifying the requirements to clarify the scope further in light of commenter concerns. Second, the applicable item not misleading,103 and not omit information that is required to be disclosed or necessary to make the required disclosure not misleading.104

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”); 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 misrepresented information”); Securities and Exchange Commission 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 possesses 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, and it was considered important in enacting the Act to provide a meaningful remedy for those persons who suffered injury by a fraudulent act committed by a known wrongdoer”).

93 Proposed General Instruction 3 to Form CRS. (See also infra footnotes 424–425 and accompanying text.

94 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).

95 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 and the applicable Item not misleading.”).

96 Proposed General Instruction 3 to Form CRS.

97 See, e.g., LPL Financial Letter (raising concerns that the provision raises the risk of liability for material omissions given its page limits and required level of detail); CCMS 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 meaningful information to investors, and is sufficiently accurate to avoid creating liability for a misstatement’’).

98 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 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. We 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.

99 General Instruction 2.A to Form CRS. The instructions remind firms to use only short sentences as proposed, but also short paragraphs. General Instruction 2.A.1 to Form CRS.

100 See infra Section II.A.3.

101 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.

102 This approach is consistent with the approach the Commission has taken with respect to disclosure more broadly. See, e.g., rule 408(a) under...
made, not misleading.\textsuperscript{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 information available.\textsuperscript{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.\textsuperscript{104} In other instances, the instructions encourage firms to reference or link to additional information to supplement their required disclosures.\textsuperscript{105} While this change from the proposal is drawn from other equivalent methods or technologies); (ii) a means of presenting information (whether by hyperlink, website reference or link to additional information).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{111} Instead of using declarative headings as proposed, however, the headings will be in the form of questions. This change responds to feedback from surveys and studies\textsuperscript{112} and commenters,\textsuperscript{113} 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.\textsuperscript{114} 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.\textsuperscript{115} Some commenters did, however, suggest changes to the organization or inclusion of topics, either explicitly in their comments, implicitly in their design of their own mock-ups, or both.\textsuperscript{116} Results of additional information—including comparison information and other key questions on the SEC’s website.\textsuperscript{117} 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/iaa061418-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).

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 (“Questions that a consumer has should be the organizing principle.”); see also CFA Letter I.

See, e.g., Trailhead Consulting Letter (supporting a standardized order of topics to facilitate comparability); Fidelity Letter (“We urge the SEC to consider prescribing content and topics, but not specific language . . . .”). See, e.g., CFA Letter I (suggesting changes to the order of the disclosures or 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
situations, this means that if two pages are required, they must be contained within the four-page limit. As a result, the final instructions provide for page limits to promote brevity, as proposed. The final 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 and investment advisers, a relationship summary in paper format must not exceed two pages, or the equivalent if delivered electronically.124 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.125 Unlike the proposed instructions, the final instructions do not prescribe paper size, font size, and margin width, providing instead that they should be reasonable.126 For example, we believe that 8½″ × 11″ paper size, at least an 11 point font size, and a minimum of 0.75″ margins on all sides, 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 commentators 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.127 Commenters also said that investors are more likely to read a shorter document.128 Several commenters submitted mock-ups that were shorter than four pages.129 Others indicated that the length of Form CRS was acceptable but should not exceed four pages.130 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.131 One commenter said that it would be challenging for dual registrants to summarize all of their offerings within the four-page limit.132 Investor 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.133 In section-by-section questioning, however, the most common response from RAND 2018 survey respondents was to keep the section length as is.134 Similarly, some roundtable participants provided feedback that the proposed length was right at the maximum, “about right,” or “good,”135 whereas others would have preferred a shorter document.136

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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 of 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 and 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.

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 be as short as possible.”).

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.


133 See, e.g., AGL Letter; MassMutual Letter.

134 See Fidelity Letter.


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

137 Washington, DC 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 Continued
40% of commenters on Feedback Forms said that relationship summary was an appropriate length, while about 30% indicated a preference for a shorter document.\textsuperscript{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\textsuperscript{140} standalone firms choose to prepare separate relationship summaries for their brokerage and investment advisory services, each relationship summary should not exceed two pages.\textsuperscript{141} The two-page limit will 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, but expressed concern that four pages would not be enough to allow for a summary of all of their offerings.\textsuperscript{142} We believe that the elimination of certain sections (such as the comparison section)\textsuperscript{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 messaging in preparing the relationship summary for retail investors.\textsuperscript{144} The proposed instructions would have permitted firms to add embedded hyperlinks within the relationship summary in order to supplement required disclosures\textsuperscript{145} and would have required firms to use hyperlinks for any document that is cross-reference in any electronic relationship summary.\textsuperscript{146} The proposed instructions also permitted firms to use various graphics or text features to explain the information but did not reference whether they should be electronic- or paper-based.\textsuperscript{147} Many commenters supported electronic formats, including in connection with layered disclosure.\textsuperscript{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.\textsuperscript{149} Research submitted by commenters and feedback from our investor roundtables indicated that investors preferred a more visually appealing disclosure.\textsuperscript{150} Commenters recommended a more visually-focused and designed experience, and many mock-ups that commenters submitted used graphics and other design features extensively.\textsuperscript{151} In addition, the IAC has recommended exploring the use of layered disclosure in certain contexts.\textsuperscript{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.”\textsuperscript{153} Some commenters also expressed support for the IAC’s recommendation relating to electronic delivery.\textsuperscript{154} Accordingly, we are adopting and adding provisions to the proposed

\textsuperscript{139} See Feedback Forms Comment Summary (summary of responses to Question 6), supra footnote 11.

\textsuperscript{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.

\textsuperscript{141} General Instruction 1.C. to Form CRS (“Dual registrants and affiliated standalone firms that prepare separate relationship summaries are limited to two pages for each relationship summary. . . . If delivered electronically, the relationship summary must not exceed the equivalent of two pages or four pages in paper format, as applicable.”).

\textsuperscript{142} See supra footnotes 133-134 and accompanying text.

\textsuperscript{143} See infra Section II.B.6 (Proposed Items Omitted in Final Instructions).

\textsuperscript{144} Delivery is discussed in Section I.I.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.B.3 to Form CRS.

\textsuperscript{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 the schedules, conflicts disclosures, the firm’s narrative brochure required by Part 2A of Form ADV, or other regulatory disclosures.”).

\textsuperscript{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.”).

\textsuperscript{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.”).

\textsuperscript{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.”).

\textsuperscript{149} See IAC Letter I.

\textsuperscript{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,” whereas Betterment revised the form to “[improve] 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, DC Roundtable, at 26; Atlanta Roundtable, at 35.

\textsuperscript{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 lay people, available at https://www.legaltechdesign.com/communication-design); Betterment Letter I (mock-up); SIFMA Letter; IIA Letter I; Schwab Letter I; see also Kleimann II, supra footnote 19 (describing design assumptions for a redesigned version of the relationship summary).

\textsuperscript{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.”).


\textsuperscript{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”).
instructions to encourage the use of electronic formatting and graphical, text, online features and layered disclosures in preparing their relationship summaries. 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. 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.

- The instructions reference a non-exhaustive list of electronic media, communications, or tools that firms may use in their relationship summary. 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 additional disclosures in preparing their relationship summaries.

- The instructions provide guidance that firms may include instructions on the use and interpretation of interactive graphics or tools, as proposed. We believe that these features can make the relationship summary more engaging, accessible, and effective in communicating to retail investors.

- 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. Expanding the types of technology referenced in the instructions will make them more relevant as new technologies continue to be developed.

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. Some of these commenters suggested that we treat certain hyperlinked information as incorporated by reference. Other commenters recommended that firms should be permitted, but not necessarily required, to incorporate in the relationship summary additional information provided in other documents.

Instruction 3.B. to Form CRS (“In a relationship summary that is posted on your website or otherwise provided electronically, the instructions further encourage online tools that populate information in comparison boxes based on investor selections.”)

- The instructions provide guidance that firms may include instructions on the use and interpretation of interactive graphics or tools, as proposed. We believe that these features can make the relationship summary more engaging, accessible, and effective in communicating to retail investors.

- 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. Expanding the types of technology referenced in the instructions will make them more relevant as new technologies continue to be developed.

- 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. Some of these commenters suggested that we treat certain hyperlinked information as incorporated by reference. Other commenters recommended that firms should be permitted, but not necessarily required, to incorporate in the relationship summary additional information provided in other documents.


Schwab Letter I (with respect to broker-dealers, Form CRS should permit 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’.”).

See Cetera Letter I (suggesting that firms “should be permitted to incorporate other 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”); IR 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 state, federal, state 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.”).
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 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 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 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-answer format throughout the relationship summary. 172 Several commenters suggested that the 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 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

167 See, e.g., General Instruction 3.A. to Form CRS (“You also may include: i) A means of accessing 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 S.A., B., C., and D.) and Regulation Best Interest, as applicable.”).

169 See Proposed Item 8 of Form CRS.

170 See id.

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


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 provider, and did not suggest dropping any of the questions.”

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” that the key questions described their topics clearly); Kleimann I, supra footnote 19 (’’Nearly all participants saw the Key Questions as essential’’); RAND 2018, supra footnote 19 (’’Nearly all participants saw the Key Questions as essential’’). They felt the questions were straightforward 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
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 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

financial professionals; and two others stated more generally that the relationship summary would encourage dialogue. 182

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).

179 See Feedback Forms Comment Summary, supra footnote 1111 (summarizing responses to Question 7); Hogan 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 “[giving 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 to me?”) 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 IIA.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.

183 See General Instruction 4.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 8.6 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.

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 “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

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Continued
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 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 money192 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 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 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, 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. On Feedback Forms, some indicated that they liked the side-by-side or grid presentation. One Feedback Form commenter said the dual-column format was confusing, however. 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. Both industry representatives and commenters representing investors also expressed concern about the proposed formatting requirements for dual registrants’ relationship summaries. 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.

Several commenters suggested letting dual registrants choose whether to prepare one combined relationship summary or two separate ones. Commenters argued that providing information about both brokerage and investment advisory services as proposed would confuse investors. 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 summary of the other type of service. 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.

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.

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

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, but we recognize the potential limits of a tabular format, as illustrated by results from some investor studies and surveys, 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. 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.

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 equivalent prominence to each time to each retail investor, whether or not that retail investor qualifies for those retail services or accounts. 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...
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 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. Depending on the relationship among affiliates and their financial professionals, a single relationship summary or two separate summaries may be more appropriate. 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 common control. The commenter also requested that the Commission clarify that all references to dual registrants are applicable to 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 investment advisers organized under a common control structure as affiliated entities). 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 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. The final instructions also provide that each of the relationship summaries must cross-reference and link to the other. If the affiliated firms are not providing brokerage and investment advisory services through dually licensed financial professionals, they may choose whether or not to require each other to prepare a single relationship summary and whether or not to deliver the affiliate’s relationship summary with equal prominence and at the same time. 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 adviser registered with the SEC, such as insurance, banking, or retirement services, or investment advice pursuant to state registration or licensing.228

222 See 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. (i).a. to Form CRS.227 General Instruction 5.B.(ii).b. to Form CRS. Firms that are not affiliated 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.

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.

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. 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

219 See IAA Letter I; Fidelity Letter.
220 Proposed Item 2.D. of Form CRS.
221 See 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 an independent entity of an 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")

222 See LPL Financial Letter.
223 See Cambridge Letter.
224 See Cambridge Letter.
Firms may include a means of facilitating access (e.g., cross-references or hyperlinks) to additional information about those services. 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. 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. 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. 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 to other services should not obscure or impede understanding of the information that must be disclosed in accordance with the Form CRS instructions.

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.
- 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.

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 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. 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.

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 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.\textsuperscript{237} The proposed relationship summary would have required prescribed wording that differed for standalone investment advisers, standalone broker-dealers, and dual registrants.\textsuperscript{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.\textsuperscript{239}

Second, we eliminated the proposed requirement that standalone investment advisers state that they do not provide brokerage services, and vice versa.\textsuperscript{240} We believe this information is more succinctly conveyed by including the firm’s registration status.\textsuperscript{241} Additionally, commenters pointed out that the choice of financial services providers is not binary—there are more than two types of services offered that could apply.\textsuperscript{242} We agree that the proposed wording could be viewed as unduly constraining 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.\textsuperscript{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.\textsuperscript{244} As discussed below, we are not adopting the Affirmative Disclosures.\textsuperscript{245} In response to our request for comment relating to the Affirmative Disclosures (e.g., FINRA comments), several commenters stated that the proposed rules were duplicative of other disclosure obligations (e.g., Form ADV, Regulation Best Interest, Form CRS)\textsuperscript{246} and that such rules were costly and difficult to implement and supervise.\textsuperscript{247} 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).\textsuperscript{248}

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.\textsuperscript{249} 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.\textsuperscript{250} The conversation starters more directly prompt discussion 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 services and fees require 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.\textsuperscript{251} 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 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:

\begin{itemize}
  \item Review the background of their investment professional;
  \item Educate themselves about investment products, including the risks and unique characteristics of many products;
  \item Perform fee calculations;
  \item Review Investor Alerts and Bulletins;
  \item Find contact information for the Commission; and
\end{itemize}

key questions are now included throughout the relationship summary.\textsuperscript{252}
• 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 described 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 As such, 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


254 See supra footnote 40 and accompanying text.

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 would 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 in 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”); Smith 2 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).

259 See Kleimann I, supra footnote 1 (“None [of the study participants] had a clear idea of the information that would be provided at the Investor.gov site.”); 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; Primersica Letter; SFNMA 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 form as a more engaging approach for retail investors.

262 See, e.g., Proposed Item 2.B of Form CRS (“If you are a broker-dealer, investment advisers, and other professionals, list the relationships and 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 brokerage services that you provide to retail investors.”).

263 See RAND 2018, supra footnote 13 (next to fees and costs, survey participants indicated that 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 (Wochel) supra footnote 17 (85% of survey respondents participated that 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 found that 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 this 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.”).
things. However, some commenters expressed concern that, without more educational content, this approach would not sufficiently inform or would confuse retail investors. One commenter pointed out that the proposed instructions dictated different ways for broker-dealers and investment advisers to describe similar services. 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. 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. Results of the RAND 2018 survey reflected these concerns and showed that almost a quarter of survey respondents (22.2%) described the relationships and services section as “difficult” or “very difficult” to understand. 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.

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 and investment advisory account services, and instead are adopting one set of instructions that generally applies the same requirements to all firms. 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.

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. 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 insurance company. We agree and have replaced references to accounts in this section with references to “services,” “accounts,” or investments you make available to retail investors.

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. A firm also must include any material limitations on those services.

The final instructions require firms to include certain requiring broker-dealers to state whether or not they offer recommendations and investment advisers to state the particular types of advisory services they offer.

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.

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 vehicle.”

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

Item 2.B. of Form CRS.

Item 2.B. of Form CRS.

See, e.g., Item 2.B. of Form CRS (requiring all firms to summarize their principal services but
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).\textsuperscript{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. The final instructions do not, however, require prescribed wording to describe the particular characteristics of these services, as did the proposed instructions.\textsuperscript{281}

Commenters argued that the proposed prescribed wording may not accurately describe the services of every broker-dealer or investment adviser.\textsuperscript{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.\textsuperscript{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.\textsuperscript{284} In response to these concerns, we added the explicit requirement that broker-dealers state that they buy and sell securities, in order to clarify their principal services.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{288} In response to comments, we added a new requirement for firms to disclose whether or not they have account minimums.\textsuperscript{289} Commenters recommended that we include information about account minimums in the relationship summary.\textsuperscript{290} In addition, a number of commenters submitting mock-ups included disclosures on account minimums in their forms.\textsuperscript{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\textsuperscript{292} and are consolidating these requirements with other related ones in the fees, costs, conflicts, and standard of conduct section, as discussed below.\textsuperscript{293} We also are not adopting a proposed requirement to describe any regular communications with retail investors.\textsuperscript{294} Neither the RAND 2018 report nor other surveys and studies suggested that this information was important to investors, as compared to fees. Mock-up submissions 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. 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.\textsuperscript{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.\textsuperscript{296} Investment advisers...
would have stated how frequently they monitor retail investors’ accounts.  

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. 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. One of these 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.

Observations from surveys and studies indicated that investors are interested in or may benefit from clarification of monitoring services. 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 ongoing basis. In qualitative interviews in the RAND 2018 report, participants seemed to distinguish brokerage and investment advisory accounts and assessed the extent of relationship was a better fit for different investors based on assumptions concerning monitoring.

Other surveys and studies also showed that participants varied in their understanding of monitoring and whether they should expect firms to monitor their account. 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.

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.

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.

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 broker-dealers and investment advisers. As 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. 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 and investment adviser firms that accept discretionary services and broker-dealers must explain that the retail investor makes the ultimate decision regarding the purchase or sale of investments.

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.

Letter 1 (Hotpix) 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).

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

See 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
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

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 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 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 offer recommendations.324 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.

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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 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 offer recommendations.324 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 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 adviser
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 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 limitations on investments, expressed concern 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 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 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]equire 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.341

The proposed instructions stated, “If you significantly limit the types of investments available to retail investors in any accounts, include the following . . .” Proposed Items B.4. and 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 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 47.338

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.

size or investment amount, which is a change from the proposal. In response to our request for comments on such possible requirements, commenters recommended that we include this information in the relationship summary. In addition, a number of commenters submitting mock-ups included disclosures on account minimums in their forms.

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.

Furthermore, fee schedules may be tiered based on account balances. 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 Item 4.A and 5 of Part 2A Appendix 1) and Regulation Best Interest, as applicable.

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.

The final instructions require firms to use text features to make this additional information more noticeable and prominent in relation to other discussion text.

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. 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.

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. 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. 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?” 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?” 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.

This revision addresses comments that the concept of “accounts” may not align with all firms’ business models and may cause investor confusion. 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. 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: “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?” 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 financial professional’s

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341 Item 2.C.(iv) of Form CRS.
342 See, e.g., NASA 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., Primera 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).
346 Item 2.C. of Form CRS. See Regulation Best Interest, 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 text from other sections.
349 Item 2.C. of Form CRS.
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 footnote 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.
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.
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. 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, 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. We learned 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. This illustrated the importance of establishing sufficient context and increasing the clarity 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. Another commenter noted that misunderstandings concerning broker-dealers’ duty or intention to monitor accounts can be avoided by proper communications, most importantly at the time the relationship is formed. Mock-ups submitted by commenters generally did not refer to or describe communications between the firm or financial adviser and the investor.

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.

Some suggested that the fee disclosure should be more 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.

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.
feedback at roundtables and through Feedback Forms also showed the importance of fees and cost information to investors. However, the RAND 2018 survey and other surveys and studies also indicated that the proposed relationship summary presentation of fee and cost information could be difficult for investors to understand. 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, and indicated that investors could have difficulty understanding and synthesizing information about the obligations of financial professionals and the impact of conflicts of interest. As discussed more fully below, we considered all of this feedback, as well as comments received, in redesigning the disclosures related to the topics.

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. As noted, we learned from an interview-based study submitted by a commenter that investors could have trouble connecting related information when those sections were not closely located. 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.\textsuperscript{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. 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{379} Some participants also did not appear to synthesize information about fees and costs of interest to be able to apply it.\textsuperscript{380} Other surveys and studies, and comments provided on Feedback Forms, also indicate investors both want additional information about fees and costs and found this information difficult to understand.\textsuperscript{381} Several commenters also said that information on fees and costs was not straightforward and used too much technical jargon.\textsuperscript{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.\textsuperscript{383} The Feedback Form commenters and observations reported in the RAND 2018 report and other surveys and studies reaffirm 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.

\textbf{Description of Principal Fees and Costs.} First, using the heading “What fees will I pay?”\textsuperscript{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.\textsuperscript{385} Broker-dealers must describe their transaction-based fees\textsuperscript{386} and investment advisers must describe their ongoing asset-based fees, fixed fees, wrap fee program fees, or other direct fee arrangements.\textsuperscript{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.\textsuperscript{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.\textsuperscript{389} The proposed instructions also required firms to use technical terms and explain their definitions (e.g., “mark-up” or “mark-
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. Several roundtable participants also said that they did not understand these terms, as did some participants in investor studies and surveys. Other commenters noted that the wording in the proposal was too binary. Another commenter argued that certain prescribed wording was obvious to retail investors and did not add value to the retail investor.

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 to remove from the Instructions the prescribed wording we proposed about fees and costs. Specifically, we are replacing the prescribed wording with a requirement to describe the firm’s principal fees and the conflicts of interest they face. 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”). 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 disclosure more accurate and relevant and further help facilitate retail investors’ comprehension.

In addition, we are not including the proposed prescribed wording with respect to wrap fee programs. 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 the 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.

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.

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.

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

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

The proposal required standalone investment advisers and stand-alone 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.” 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.
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 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. In the RAND 2018 qualitative interviews, some participants were confused by the statement about fees being negotiable and most mock-ups commenters 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 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 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

\(^{405}\) See, e.g., LPL Financial Letter; Betterment Letter 1; RI Letter.

\(^{406}\) See supra footnote 394.

\(^{407}\) See CFA Letter 1.

\(^{408}\) Proposed Items 4.B.3. and 4.C.5 of Form CRS.

\(^{409}\) 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 transactions are sold (e.g., surrender charges for selling variable annuities).

\(^{410}\) 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).

\(^{411}\) Item 3.A.(i).b of Form CRS. This statement is consistent with Part 2A of Form ADV.

\(^{412}\) Item 3.A.(ii) of Form CRS.

\(^{413}\) Item 3.A.(ii) of Form CRS.

\(^{414}\) Item 3.A.(ii) of Form CRS.

\(^{415}\) Item 3.A.(ii) of Form CRS.
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 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. 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). 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. At the same time, investors participating in surveys and studies and investors providing comments on Feedback Forms have indicated that more information would be helpful.

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. For instance, one commenter stated that the relationship summary should reveal all fees and commissions for all purchases. Other commenters, however, believed that a link to the prospectus should sufficiently satisfy disclosure requirements regarding mutual fund fees and expenses. Another urged the Commission to provide a list of examples of transaction-based fees.

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 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.” 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, namely the fact that the service will not be free and that the cost of using the service will exist regardless of investment performance.

Firms must also include specific cross-references to more detailed information about their fees and costs. 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. If the firm is a brokerage-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. The final instructions require firms to use text features to make this additional information more noticeable and prominent in relation to other discussion text.

416 Proposed Items 4.B.4. and 4.C.6. of Form CRS.

417 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 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).

418 See Fidelity Letter; CFA Letter I; see also Anonymous11 Feedback Form (“. . . disclose specific fees for different types of securities”); Cadence Feedback Form (“description of brokers buying one 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, separately [sic] managed accounts, transaction costs, etc.? ’’); Houston Roundtable; Philadelphia Roundtable.

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

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

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

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

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

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

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

426 Item 3.A.(iii) of Form CRS.
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. For example, a firm may decide to include information on a different website.

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 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. In the RAND 2018 survey, a potential hyperlink to information on fees, however, generated the most interest among survey participants. 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. Another commenter, however, suggested requiring a fee schedule that includes typical breakpoints and information on likely and/or maximum fees.

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 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. 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 how much will be invested for me?”

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 from a typical brokerage account? What would make these fees more or less? What services will I receive for those fees?”

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. We also requested comment on what assumptions firms should make in preparing such an example and how the information should be presented.

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.

At some of the roundtables, for example, participants discussed the utility of adding a hypothetical example in the relationship summary to illustrate fees. Commenters on Feedback Forms also asked for more specific information about the impact of fees on their investments, such as example fee calculations or ranges of fees. Commenters supported including a question highlighting fees a retail investor pays, including commenters representing investors and individual investors, also overwhelmingly supported requiring

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\[430\] 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 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.

\[431\] Proposing 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 relative to fees. See also 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.

\[435\] See supra Section II.A.3.

\[436\] Item 3.A.(iv) of Form CRS.

\[437\] Proposing 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, DC 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 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).

\[442\] See, e.g., Lee Feedback Form (“fees should tell me the fees I can expect to pay for investment and what would make it better 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).

\[443\] 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).
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.\textsuperscript{444} Several commentators, 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.\textsuperscript{445} Some argued that anticipated fees are unknown for broker-dealer customers, while others believed that it is too difficult for firms to build out systems for individualized fees.\textsuperscript{446} Other commenters suggested eliminating this particular key question and instead requiring firms to include links to investor education materials prepared by the Commission.\textsuperscript{447} Many commentators were concerned that this key question would impose new disclosure or recordkeeping requirements.\textsuperscript{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.\textsuperscript{449} One individual advocated for more transparent fee information, suggesting the relationship summary provide individualized fees or a specific range of fees.\textsuperscript{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.\textsuperscript{451} Another commenter included a sample mock relationship summary with a numerical example of how the fees might impact a hypothetical account.\textsuperscript{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.\textsuperscript{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 and costs will work (for example, whether they are upfront charges, taken out of the 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.

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.\textsuperscript{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.

\textsuperscript{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 (“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, DC Roundtable.

\textsuperscript{445} See supra footnote 189.

\textsuperscript{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).

\textsuperscript{447} See Prudential Letter.

\textsuperscript{448} See Edward Jones Letter; see also supra Section II.A.4.

\textsuperscript{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).

\textsuperscript{450} See Wahl Letter.

\textsuperscript{451} See AARP Letter.

\textsuperscript{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).

\textsuperscript{453} See supra Section II.A.4.

\textsuperscript{454} See Regulation Best Interest Release, supra footnote 47, at Section II.C.1.a.

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

\textsuperscript{456} Proposing Release, supra footnote 5.

\textsuperscript{457} Item 3.B. of Form CRS. For broker-dealers, the heading will state “What are your legal obligations to me when providing recommendations?”; 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?”.
and the applicable standard of conduct.\footnote{\textit{Id.}}

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.\footnote{\textit{Id.}} 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, 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.\footnote{\textit{Id.}} 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.

\textbf{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”).\footnote{\textit{Id.}} In a change from the proposal, however, the final instructions modify both the content of the standard of conduct disclosure\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}} Results of the RAND 2018 report and other investor studies and surveys indicate that retail investors view this information as helpful.\footnote{\textit{Id.}} Similarly, commenters on Feedback Forms indicated that this information was useful.\footnote{\textit{Id.}} In addition, the IAC recommended that investors would benefit from receiving a uniform, plain-English disclosure documents with topics, such as, to the extent the Commission does not adopt a uniform fiduciary standard, “what is your legal obligation to me?”\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}} 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 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.\footnote{\textit{Id.}} Some commenters argued that this section included legal jargon inaccessible to retail investors.\footnote{\textit{Id.}} 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 or communicate the differences between “fiduciary” and “best interest.”\footnote{\textit{Id.}} 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.\footnote{\textit{Id.}}

Investor feedback through surveys and studies indicated that 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.\footnote{\textit{Id.}}

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 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 wording for 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 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 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 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 heading490 in the conflicts of

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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 (Hotspotx), 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).

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 (Hotspotx), 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 See Proposing Release, supra footnote 5, at n.115 and accompanying text.

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.

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.

489 The final instructions provide that if a required disclosure 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 brokers-dealers that do not provide recommendations subject to Regulation Best Interest. See infra footnote 507 and accompanying text.

489 Item 3.B. of Form CRS; see also supra footnote 457.
Unlike the proposal, 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, comments found the proposal’s standard of conduct disclosure confusing. After considering comments and observations reported in surveys and studies, we recognize that the proposed disclosures were confusing, particularly the prescribed disclosure attempting to explain concepts of full and fair disclosure, mitigation, and informed consent. Accordingly, we are removing this wording to shorten 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 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, to focus the disclosure on the standard of conduct that applies to the provision of recommendations and advice, and to require that portions of the disclosure be presented in bold and italicized font. 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. 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, or dual registrants—to use the term “best interest” to describe their applicable standard of conduct 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. 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), or when acting as an advisor.

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

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 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 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.

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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 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
Comments 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 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.\(^541\)

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.

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 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 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. This layered disclosure will facilitate investors’ ability to review additional information on conflicts while balancing the high-level nature of the relationship summary.

**Constitutional Law 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?”

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. One commenter noted that this key question elicited the same information as provided elsewhere in the relationship summary. 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 required about a firm by the Form ADV, Part 2A brochure and/or Regulation Best Interest.

If a firm is a broker-dealer that does not recommend persons subject to Regulation Best Interest, to the extent it prepares more detailed information about its conflicts, it must include specific references to such 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 conflicts of interest.

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. 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.

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 Regulation Best Interest should be satisfied upon delivery of the relationship summary.

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. 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), 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.

The layered disclosure approach should strike a balance between alerting investors of these conflicts while keeping with the intended purpose of the relationship summary.

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

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536 Item 3.B.(iv) of Form CRS.
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, e.g., CFA Letter I; SIFMA Letter; Prudential Letter.
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).
545 See, e.g., ACLI Letter; Cambridge Letter; Massachusetts Letter; FSI Letter I; Mesirow 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.
a particular firm has fewer conflicts than other firms. 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 2 that requires a firm to include in its relationship summary the heading “How do your financial professionals make money?” A firm will summarize how its financial professionals are compensated (including cash and non-cash compensation) and the conflicts of interest those payments create. 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. In the Proposing Release, we asked that 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.

Several commenters suggested featuring financial professionals’ compensation in the relationship summary, including in a separate section. A number of commenters illustrated the importance of these disclosures by including sections discussing financial professionals’ compensation in their mock-ups. 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. In particular, the commenters’ mock-up disclosures highlighted the benefit of separately summarizing financial professionals’ compensation to help retail investors identify and assess these conflicts of interest that may affect the services they receive. 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.

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. 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. Certain commenters suggested that we remove the requirement that firms disclose whether or not they have disciplinary history. 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.

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. 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. Commenters also generally supported firm-specific disclosure to whether the firm has disciplinary history.

About 70% of commenters on Feedback Forms responded that they would seek terms “legal or disciplinary history” for greater precision.

We 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.

We, e.g., CFA Letter I (“The required disclosure regarding disciplinary events does not give adequate prominence to this issue.”); NASA 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 Disiplinary 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.

We believe this information is important enough to be highlighted under its own separate heading. “Do you have a disciplinary record?”

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549 See AARP Letter; Betterment Letter I.

550 See supra footnote 5, at nn.270–71 and accompanying text.


552 See supra footnote 5, at nn.459–63 and accompanying text.

553 See Proposing Release, supra footnote 5 [requesting comments on whether there are other considerations related to fees and compensation that would 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 CCSC Notes.

555 See, e.g., Jackson Grant Letter; Schwab Letter I.

556 See Regulation Best Interest Release, supra footnote 47, at Section I.C.1.b.

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.

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 financial professionals, 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 (“We 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.”); NASA 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?’”).
out additional information about a firm’s disciplinary history. 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. 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. On Feedback Forms, commenters rated the Additional Information section as “very useful” or “useful” less often than any other section of the relationship summary. One investor study 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. 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. 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 or not one of their financial professionals has 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 discloseable events. We are requiring a “No” answer in the 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. This is responsive to RAND 2018 survey results, which indicated that 37% of investors did not know where to research disciplinary history. 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. In addition to disciplinary history, the search tools also can provide useful information regarding registration and licensing and financial professional employment history.

The triggering events for a statement that a firm does have legal or disciplinary history are the same as proposed. 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, (ii) legal or disciplinary history per Items 11A–K of Form BD (“Uniform Application for Registration Under the Investment Advisers Act of 1940”).

See Feedback Forms Comment Summary, supra footnote 11 (summary of responses to Question 3(e)). Some commented that, before viewing the summary, they had not known that they could ask or how to check. See, e.g., Anonymous02 Feedback Form (“I didn’t know how to do that”); Anonymous03 Feedback Form (“I looked up my advisor while reading through the summary”); Anonymous26 Feedback Form (“I didn’t know where to go?”); Anonymous29 Feedback Form (“I didn’t know if they had any issues,” see also Philadelphia Roundtable (investor participant noting that “not checking your broker’s disciplinary record” is “something that people should do”). See RAND 2018, supra footnote 13 (“More than 40% 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 2 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 Schwah Letter I (Koski), supra footnote 21 (only 20% of survey participants selected “How to find disciplinary information about a firm’s representatives” when asked to select the four most important topics for a firm to communicate, from a list of 11 topics). See RAND 2018, supra footnote 14 (Additional Information section 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).

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).
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 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 7F, 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 undisclosed 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 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 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 its 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 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.

577 Item 11 of Form BD requires disclosure on the relevant Disclosure Reporting Page (“DRP”) with respect to: (A) felony convictions, guilty pleas, or “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) 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 SIPIC 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 on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the investigating authority.” We believe it is 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 U5 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 SOs, 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.
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 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 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

11. Continued

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 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

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.
Proposed Item 8.10 of Form CRS.

"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?"

With required text features to highlight this conversation starter, as well as information from the Introduction to direct retail investors to 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. 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. Some of the commenter mock-ups included a telephone number even though the firms maintained a public website. 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.

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 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. 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.”

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 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.

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. 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. Some commenters believed that the wording in the comparison section

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 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.
favored broker-dealers over investment advisers. Others indicated that the comparisons should allow for discussions regarding insurance products. As an alternative, some commenters suggested that the Commission include the information intended for the proposed Comparison section on the Commission’s website as educational material, and that firms could link to the educational material from their relationship summaries. Given such concerns and suggestions, a number of mock-ups did not include a comparison section.

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. 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 or wanted more information to help them compare firms. 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 summary, most survey respondents indicated that this section was not useful in helping them to understand differences between firms.

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. 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. 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 relationship summary or summaries are designed in a manner that facilitates comparison of the brokerage and investment advisory services.

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.

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.

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 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 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 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 Best Interest 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 customers who may not be “retail customers” for purposes of Regulation Best Interest. 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 financial professionals retained to represent a natural person 635 and address whether the relationship summary would be delivered to those financial professionals.

629 General Instruction 11.E. to Form CRS.

630 Compare Proposed Exchange Act rule 15j–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.


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.


637 See Regulation Best Interest Release, supra footnote 47, at Section II.B.3.c.

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 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 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 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 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, apart from their broker-dealer relationships” and “do not function as ‘retail customers’”; see also Cetera Letter I; Investcorp 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 client” (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, 2016); 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. 646 See, e.g., Morningstar Letter (“any unequal distribution of this information would be arbitrary”); see also AARP Letter; CFA Letter I; Trailhead Consulting Letter.

643 See supra footnote 5, at Section II, at text accompanying nn.31–32.

644 General Instruction 11.E. to Form CRS.

645 See also text accompanying nn.31–32.

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; IIA Letter I; Invesco Letter; ICI Letter; Oppenheimer Letter; Prudential Letter; T. Rowe Letter.

648 See 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.

649 For example, SIFMA’s comments refer to FINRA Rule 2210, which treats accounts of 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 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. 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. Commenters also asked us to clarify whether the definition of retail investor would include participants in plans not subject to ERISA, such as government accounts or other 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). 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 accounts, such as 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, as well as 401(k) plans and other tax-favored retirement plans. 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 account held in a 401(k) plan or other workplace retirement plan. 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 nondiscretionary 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 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 select 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 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 223(d), a Health Savings Account described by Internal Revenue Code section 223(d) and any similar tax-favored health saving arrangement, a Coverdell education account described by Code section 530 and a qualified tuition program or "529 plan" established pursuant to Code section 529.

For example, we understand that, although not common, some 401(k) plans or 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.

firm, has negotiated the terms of service, and remains responsible for supervising the firm. We 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 retainers and supervisors 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 fiduciaries and service providers) 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. Most commenters agreed with this approach; some noting that workplace retirement plans and their representatives would not benefit from receiving a Form CRS. Two

653 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.

654 Proposing Release, supra footnote 5, at Section II.

655 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 government 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 obligations retained by a plan includ[e]d an existing plan may be subject to disclosures in a fiduciary capacity should not be included); Fidelity Letter ("establish a uniform definition . . . that excludes ERISA and non-ERISA employer sponsored retirement plans 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); NASD Letter Letter (permit delivery of Form CRS using media approved by the plan sponsor).

656 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 the 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").

657 See T. Rowe Letter (noting that Form CRS should apply "if an individual chooses to retain a broker-dealer or advisor to provide recommendations regarding his or her retirement plan accounts . . . [but] "if a plan fiduciary selects a broker-dealer or advisor to provide such services to its plan participants . . . we do not think Form CRS should apply"); 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 government 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 obligations retained by a plan includ[e]d an existing plan may be subject to disclosures in a fiduciary capacity should not be included); Fidelity Letter ("establish a uniform definition . . . that excludes ERISA and non-ERISA employer sponsored retirement plans 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); NASD Letter Letter (permit delivery of Form CRS using media approved by the plan sponsor).
commenters argued that workplace retirement plans and their representatives should receive Form CRS.\textsuperscript{654}

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).\textsuperscript{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, 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 maintained 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.\textsuperscript{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,\textsuperscript{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. 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{664} We agree that requiring this formatting will enable investors and other data users, industry participants, and the Commission and 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.\textsuperscript{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 manner as they currently file Form ADV Parts 1A and 2A as directed by FINRA. Whether dual registrants prepare a single relationship summary or two, they will file their relationship summaries using both IARD and Web CRD®.666 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-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 IARD, 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 web page 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.

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 filed. We do not believe that investment advisers will benefit from these clarifications. Finally, we are adopting certain amendments to the General Instructions to Form ADV to add confirming technical changes and references to the Form ADV, Part 3.677

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

666 See amended General Instruction 7.A.1(i) to Form ADV (indicating that Form ADV, as amended to add Part 3, no longer 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 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).
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 recipient cannot effectively access it; and (iii) 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 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 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 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 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 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 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. 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 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. For example, a firm can use a direct link or provide the relationship summary in the body of an email or message.696 We are 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 of the proposed 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 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 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.”.

693 Based on IARD system data, 8.4% of invested accounts have individual clients who do not report at least one public website.

694 See, e.g., Comment Letter of C. Frederick Reish (Sept. 12, 2018); SIFMA Letter (acknowledging that most firms and organizations note the opportunity to establish relationships with firms that provide services only online); and Exchange Act rule 17a–14(c)(1).

695 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).

696 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 63 FR 24647; and 95 Guidance, supra footnote 678, at 60 FR 53461.

697 General Instruction 10.C. to Form CRS.

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 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 investor; or (iii) the opening
comparison, under the proposal, broker-dealers would have delivered the relationship summary before or at the time the retail investor first engages their services. 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. 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. 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. The variations include, for example, delivery at the point of first contact or inquiry between the retail investor and firm, whenever possible; at the earlier of when a customer contacts the firm or enters into an advisory agreement or engagement of services; and upon the first interaction with a prospective retail investor. 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. 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. 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.”

A few commenters supported requiring a period of time between delivery of the relationship summary and the beginning of the relationship. 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. A number of investors at Commission-held roundtables also supported a waiting period. Other commenters, however, opposed a mandated delay between delivery of the relationship summary and engaging in services.

Various commentors explained logistical and recordkeeping issues if firms were required to deliver the relationship summary at first contact or inquiry between the 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

prior to engaging a firm’s services. 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. 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 have account numbers or other unique identifiers for the firm’s recordkeeping purposes. Other commenters argued that a lapse of time between when a relationship summary was given to a prospective retail investor would be unnecessarily burdensome for firms and would likely provide de minimis benefits. Still other commenters discussed the difficulty of defining when a customer first engages the firm’s services, the terminology used in the proposal.

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

prior to engaging a firm’s services. 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. 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 have account numbers or other unique identifiers for the firm’s recordkeeping purposes. Other commenters argued that a lapse of time between when a relationship summary was given to a prospective retail investor would be unnecessarily burdensome for firms and would likely provide de minimis benefits. Still other commenters discussed the difficulty of defining when a customer first engages the firm’s services, the terminology used in the proposal.

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 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 (“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—e.g., 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 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,”734 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 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.735 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

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).

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 $55.48 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.

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 because such broker-dealers have an independent obligation to deliver such information to their clients’ 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”).

734 See Exchange Act rule 17a–14(c)(1); General Instruction 8.B.[ii] to Form CRS.
the broker-dealer, or that recommendation did not lead to a transaction with that broker-dealer. 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 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 relationships that are not 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 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.

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. 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. 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 the type of account to open. 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. 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. 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.

\[735\] Proposing Release, supra footnote 5.
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 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 summary.748 A few commenters argued that the 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 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 investors who 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.”).

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, e.g., Prudential Letter (“Additional guidance is needed on this point: additional 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).

751 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.”).

752 See, e.g., Prudential Letter (“[M]ore guidance is needed on this point: additional 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).

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).
investor. 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. 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. These commenters recommended limiting additional delivery requirements to circumstances in which a brokerage account is converted to an investment advisory account and vice versa.

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 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 opening any new account that is different from the retail investor’s existing account(s). 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. 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 application” process, i.e., not held directly within an account.

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. 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. While some commenters requested changes to the proposed delivery requirements, they nonetheless supported requiring delivery upon request.

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 investment advisers. 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. This commenter also suggested that the relationship summary should include a hyperlink to the appropriate Form ADV or Form BD, as applicable. 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. 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 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.

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.
758 General Instruction 9.A. to Form CRS.
759 See supra footnotes 752–757 and accompanying text.
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.
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.
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. Firms also must post the latest version on their website (if they have one), and electronically file the relationship summary with the Commission. 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 associated posting and filing obligations. 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.

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, and with broker-dealers’ current obligations, including to update Form ADV if the related disclosure or the relationship summary becomes materially inaccurate by filing with the SEC an additional other-than-annual update whenever any information in your relationship summary becomes materially inaccurate.769

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.770 As noted above, commenters expressed different views regarding this approach. Some commenters advocated for posting the relationship summary on a firm’s website in order to meet the communication requirement.771 On the other hand, one commenter advocated that firms be allowed 60 days to update the relationship summary whenever a change is made, rather than permitting firms to communicate the information in another way.772 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.773 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 investment adviser's 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 the retail investor. This requirement provides firms the flexibility to disclose changes to the relationship summary without requiring them to incur additional delivery costs.

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.774

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.775 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 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.776 The unmarked amended relationship summary and exhibit must be filed with the Commission.777 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 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.778

As discussed in the proposal, for purposes of the requirement to communicate updates to the

769 Advisers Act rule 204–1(a)(2) and Exchange Act rule 17a–14(b)(3); General Instruction 8.A. to Form ADV. 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.

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.

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.”); NASA Letter; LPL Financial Letter; Prudential Letter; Primera 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.
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 and will enhance investor protections to retail investors engaging the financial services of broker-dealers.

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. 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. 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. 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. The extended time to comply with the 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. A number of commenters requested a longer implementation period, ranging from 12 to 24 months from the effective date. One commenter suggested a phased-in approach, such that requirements may be effected at different points in time. 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, as well as to have the opportunity to apply innovative technology and designs.

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 commenters’ suggestions for a longer implementation period. We expect that 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. 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. 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 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 of the date by which they are first required to electronically file their relationship summary with the Commission. In addition, as proposed, firms will be required, as part of the transition, to...

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 indirectly, compensation even though the security

785 The adopted implementation period from the effective date; Comment Letter from Cetera IIA 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), 72% of participants responding to a question describing that new rules could require financial professionals to deliver “a standardized four page disclosure 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).

786 See Advisers rule 204–5(e)(2) and Exchange Act rule 17a–4(f)(4); Instruction 7.C. to Form CRS.
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 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 records 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 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 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 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 brochure809 and broker-dealers, especially those registered with FINRA, are subject to comparable recordkeeping requirements with respect to communications and correspondence with prospective retail investors.810

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(a)(14)(i). 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 rules 17a–3(a)(24) and 17a–4(e)(10) as amended.

802 See Exchange Act rule 17a–3(e).

803 Investment advisers will 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.

804 See, e.g., CCMC Letter; SIFMA Letter.

805 See, e.g., SIFMA Letter; Morgan Stanley; Edward Jones Letter.

806 See, e.g., Advisers Act rule 204–2.

807 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; see also, e.g., FINRA Rule 2110(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.”).

808 See, e.g., Committee of Annuity Insurers Letter; Edward Jones Letter; Morgan Stanley Letter; Primerica Letter; SIFMA Letter; IPA Letter.

809 See id.

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; see also, e.g., FINRA Rule 2110(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 form and medium that can be used 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
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 with or among 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

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

|footnotes 374–375 and accompanying text.|
|See id.|
|See id., supra footnote 5, at footnotes 440–441 and accompanying text.|
|See id. We also proposed rules that would have restricted broker-dealers and their associated professionals, it is important that 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 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 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

**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 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

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**footnotes 374–375 and accompanying text.**

|See CFA Letter I.|
|See id., supra footnote 5, at footnotes 437–439 and accompanying text.|
|See id.|
|See id. We also proposed rules that would have restricted broker-dealers and their associated professionals, it is important that 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

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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. 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.

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. In particular, these commenters noted a range of cost-related impacts, such as replacing new and existing business cards and amending numerous electronic and print marketing materials. Several commenters also noted the difficulty in implementing seeking specific types of communication including business cards, oral communications, and voice overlay and on-screen text in televised or video presentations.

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 understand their relationship. 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. 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. 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.

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 provide clarifying detail on capacity to supplement the information contained in the Relationship Summary.

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.” 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. 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 and must be provided to retail investors 60 days after a material change is made. 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 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.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{847}

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 costs to amend “numerous electronic and print marketing materials, business cards, and other retail customer communications.”\textsuperscript{848}

\textsuperscript{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.”)

\textsuperscript{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.”)

\textsuperscript{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.”)

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.

\textbf{IV. Economic Analysis}

\textbf{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.\textsuperscript{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.\textsuperscript{850} Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.\textsuperscript{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.\textsuperscript{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).

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.

\textbf{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

a. Broker-Dealers

This rule will affect registrants in the market for broker-dealer services, including dual registrants and broker-dealers offering services to retail investors that are affiliated with an investment adviser. 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.

In addition to broker-dealers and Commission-registered investment advisers discussed below in the baseline, there are a number of other entities, such as institutional clients, 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 Advisers, Regulatory Impact Analysis for Final Rule and Exemptions (Apr. 2016), available at https://www.dol.gov/sites/default/files/esaa-laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AR12-2/ria.pdf (“Regulatory Impact Analysis”).

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.

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 affiliation that is a broker-dealer in Section 7A of Schedule D of Form ADV, including 1,878 SEC-registered investment advisers that report an affiliation 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.

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.

Asset estimates are reported in 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.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. 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.

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. Approximately 73.5% of registered broker-dealers report retail customer activity. 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 $3.3 trillion in total assets (89% of total broker-dealer assets) and almost 139 million (97%) customer accounts. Of those broker-dealers serving retail investors, 318 are dually registered as investment advisers.

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.

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.

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 BK, 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.

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.

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 (66%) 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.
Table 1—Panel A: Registered Broker-Dealers as of December 2018

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<th>Size of broker-dealer (total assets)</th>
<th>Total number of broker-dealers</th>
<th>Number of dually registered broker-dealers</th>
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<th>Cumulative number of customer accounts 864</th>
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</tr>
<tr>
<td>Total</td>
<td>3,764</td>
<td>359</td>
<td>4,309</td>
<td>143,333,278</td>
</tr>
</tbody>
</table>

Table 1—Panel B: Registered Retail Broker-Dealers as of December 2018

<table>
<thead>
<tr>
<th>Size of broker-dealer (total assets)</th>
<th>Total number of retail-facing broker-dealers</th>
<th>Number of dually registered retail-facing broker-dealers</th>
<th>Cumulative total assets (billion)</th>
<th>Cumulative number of customer accounts 867</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;$50 billion</td>
<td>16</td>
<td>8</td>
<td>$2,806</td>
<td>40,545,792</td>
</tr>
<tr>
<td>$1 billion to $50 billion</td>
<td>75</td>
<td>18</td>
<td>990</td>
<td>91,991,118</td>
</tr>
<tr>
<td>$500 million to $1 billion</td>
<td>21</td>
<td>5</td>
<td>13</td>
<td>365,814</td>
</tr>
<tr>
<td>$100 million to $500 million</td>
<td>84</td>
<td>16</td>
<td>18</td>
<td>1,603,818</td>
</tr>
<tr>
<td>$10 million to $100 million</td>
<td>378</td>
<td>91</td>
<td>14</td>
<td>3,762,620</td>
</tr>
<tr>
<td>$1 million to $10 million</td>
<td>783</td>
<td>120</td>
<td>2.8</td>
<td>450,132</td>
</tr>
<tr>
<td>&lt;$1 million</td>
<td>1,409</td>
<td>60</td>
<td>0.4</td>
<td>5,675</td>
</tr>
<tr>
<td>Total BDs 867</td>
<td>2,766</td>
<td>318</td>
<td>3,844</td>
<td>138,724,784</td>
</tr>
</tbody>
</table>

We observe significant variation in sources of revenues for broker-dealers, including dually-registered firms. We are unable to determine whether fees 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, 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.\textsuperscript{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 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.

\textbf{TABLE 2—Panel A: Average Broker-Dealer Revenues From Revenue Generating Activities}

<table>
<thead>
<tr>
<th>Size of broker-dealer in total assets</th>
<th>Number of broker-dealers</th>
<th>Commissions (billion)</th>
<th>Fees (billion)</th>
<th>Sales of IC shares (billion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;$50 billion</td>
<td>17</td>
<td>$170,336,258</td>
<td>$414,300,266</td>
<td>$23,386,192</td>
</tr>
<tr>
<td>$1 billion–$50 billion</td>
<td>114</td>
<td>45,203,225</td>
<td>225,063,257</td>
<td>53,671,602</td>
</tr>
<tr>
<td>500 million–1 billion</td>
<td>35</td>
<td>8,768,547</td>
<td>30,141,270</td>
<td>5,481,248</td>
</tr>
<tr>
<td>100 million–500 million</td>
<td>105</td>
<td>12,801,899</td>
<td>33,726,336</td>
<td>16,610,013</td>
</tr>
<tr>
<td>10 million–100 million</td>
<td>490</td>
<td>3,428,843</td>
<td>8,950,892</td>
<td>9,092,971</td>
</tr>
<tr>
<td>1 million–10 million</td>
<td>1,021</td>
<td>996,130</td>
<td>1,037,825</td>
<td>652,905</td>
</tr>
<tr>
<td>&lt;1 million</td>
<td>1,982</td>
<td>197,907</td>
<td>269,459</td>
<td>85,219</td>
</tr>
<tr>
<td>Average of All Broker- Dealers</td>
<td>3,764</td>
<td>5,092,808</td>
<td>21,948,551</td>
<td>4,368,823</td>
</tr>
</tbody>
</table>

\textbf{TABLE 2—Panel B: Aggregate Total Revenues From Revenue Generating Activities for Broker-Dealers Based on Dually-Registered Status}

<table>
<thead>
<tr>
<th>Broker-dealer type</th>
<th>Number of broker-dealers</th>
<th>Commissions (billion)</th>
<th>Fees (billion)</th>
<th>Sales of IC shares (billion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dually Registered as IAs</td>
<td>359</td>
<td>$4.52</td>
<td>$17.54</td>
<td>$2.63</td>
</tr>
<tr>
<td>Broker-Dealers</td>
<td>3,405</td>
<td>4.16</td>
<td>3.25</td>
<td>2.57</td>
</tr>
<tr>
<td>All</td>
<td>3,764</td>
<td>8.68</td>
<td>20.79</td>
<td>5.20</td>
</tr>
</tbody>
</table>

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 (35.4%); 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%, respectively); acting as an underwriter or selling group participant of corporate securities (31.2%); and investment advisory services (26.4%); among others.\textsuperscript{876}

\textbf{TABLE 3—Lines of Business at Retail Broker-Dealers as of December 2018}

<table>
<thead>
<tr>
<th>Line of business</th>
<th>Number of broker-dealers (total)</th>
<th>Percent of broker-dealers (total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Placements of Securities</td>
<td>1,735</td>
<td>62.7</td>
</tr>
<tr>
<td>Mutual Fund Retailer</td>
<td>1,533</td>
<td>55.4</td>
</tr>
<tr>
<td>Broker or Dealer Retailing:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Equity Securities OTC</td>
<td>1,438</td>
<td>52.0</td>
</tr>
<tr>
<td>Corporate Debt Securities</td>
<td>1,306</td>
<td>47.2</td>
</tr>
</tbody>
</table>

\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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.
TABLE 3—LINES OF BUSINESS AT RETAIL BROKER-DEALERS AS OF DECEMBER 2018—Continued

<table>
<thead>
<tr>
<th>Line of business</th>
<th>Number of broker-dealers (total)</th>
<th>Percent of broker-dealers (total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variable Contracts</td>
<td>1,132</td>
<td>40.9</td>
</tr>
<tr>
<td>Municipal Debt/Bonds—Broker</td>
<td>1,101</td>
<td>39.8</td>
</tr>
<tr>
<td>U.S. Government Securities Broker</td>
<td>1,035</td>
<td>37.4</td>
</tr>
<tr>
<td>Put and Call Broker or Dealer or Options Writer</td>
<td>993</td>
<td>35.9</td>
</tr>
<tr>
<td>Underwriter or Selling Group Participant—Corporate Securities</td>
<td>862</td>
<td>31.2</td>
</tr>
<tr>
<td>Non-Exchange Member Arranging for Transactions in Listed Securities by Exchange Member</td>
<td>785</td>
<td>28.4</td>
</tr>
<tr>
<td>Investment Advisory Services</td>
<td>730</td>
<td>26.4</td>
</tr>
<tr>
<td>Broker or Dealer Selling Tax Shelters or Limited Partnerships—Primary Market</td>
<td>619</td>
<td>22.4</td>
</tr>
<tr>
<td>Trading Securities for Own Account</td>
<td>614</td>
<td>22.2</td>
</tr>
<tr>
<td>Municipal Debt/Bonds—Dealer</td>
<td>475</td>
<td>17.2</td>
</tr>
<tr>
<td>U.S. Government Securities—Dealer</td>
<td>339</td>
<td>12.3</td>
</tr>
<tr>
<td>Solicitor of Time Deposits in a Financial Institution</td>
<td>308</td>
<td>11.1</td>
</tr>
<tr>
<td>Underwriter—Mutual Funds</td>
<td>237</td>
<td>8.6</td>
</tr>
<tr>
<td>Broker or Dealer Selling Interests in Mortgages or Other Receivables</td>
<td>216</td>
<td>7.8</td>
</tr>
<tr>
<td>Broker or Dealer Selling Oil and Gas Interests</td>
<td>207</td>
<td>7.5</td>
</tr>
<tr>
<td>Broker or Dealer Making Inter-Dealer Markets in Corporate Securities OTC</td>
<td>207</td>
<td>7.5</td>
</tr>
<tr>
<td>Broker or Dealer Involved in Networking, Kiosk, or Similar Arrangements (Banks, Savings Banks, Credit Unions)</td>
<td>197</td>
<td>7.1</td>
</tr>
<tr>
<td>Internet and Online Trading Accounts</td>
<td>192</td>
<td>6.9</td>
</tr>
<tr>
<td>Exchange Member Engaged in Exchange Commission Business Other than Floor Activities</td>
<td>171</td>
<td>6.2</td>
</tr>
<tr>
<td>Broker or Dealer Selling Tax Shelters or Limited Partnerships—Secondary Market</td>
<td>164</td>
<td>5.9</td>
</tr>
<tr>
<td>Commodities</td>
<td>162</td>
<td>5.9</td>
</tr>
<tr>
<td>Executing Broker</td>
<td>107</td>
<td>3.9</td>
</tr>
<tr>
<td>Day Trading Accounts</td>
<td>89</td>
<td>3.2</td>
</tr>
<tr>
<td>Broker or Dealer Involved in Networking, Kiosk, or Similar Arrangements (Insurance Company or Agency)</td>
<td>85</td>
<td>3.2</td>
</tr>
<tr>
<td>Real Estate Syndicator</td>
<td>94</td>
<td>3.4</td>
</tr>
<tr>
<td>Broker or Dealer Selling Securities of Non-Profit Organizations</td>
<td>71</td>
<td>2.6</td>
</tr>
<tr>
<td>Exchange Member Engaged in Floor Activities</td>
<td>61</td>
<td>2.2</td>
</tr>
<tr>
<td>Broker or Dealer Selling Securities of Only One Issuer or Associate Issuers</td>
<td>43</td>
<td>1.6</td>
</tr>
<tr>
<td>Prime Broker</td>
<td>21</td>
<td>0.8</td>
</tr>
<tr>
<td>Crowdfunding FINRA Rule 4518(a)</td>
<td>21</td>
<td>0.8</td>
</tr>
<tr>
<td>Clearing Broker in a Prime Broker</td>
<td>14</td>
<td>0.5</td>
</tr>
<tr>
<td>Funding Portal</td>
<td>8</td>
<td>0.3</td>
</tr>
<tr>
<td>Crowdfunding FINRA Rule 4518(b)</td>
<td>5</td>
<td>0.2</td>
</tr>
<tr>
<td>Number of Retail-Facing Broker-Dealers</td>
<td>2,766</td>
<td></td>
</tr>
</tbody>
</table>

(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 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.\(^{883}\)

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\(^{877}\) 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.

\(^{880}\) 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.
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. Disclosure has also been a feature of other regulatory efforts related to financial services, including certain FINRA rules.

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. 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.

Of all SEC-registered investment advisers, 359 identify themselves as dually registered broker-dealers. 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. 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. In total, these firms have approximately $4.1 trillion of assets under management. Approximately 8,200 registered investment advisers (61%) serve over 32 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.

### TABLE 4—Panel A: Registered Investment Advisers (RIAs) as of December 2018

<table>
<thead>
<tr>
<th>Size of investment adviser (AUM)</th>
<th>Number of RIAs</th>
<th>Number of dually registered RIAs</th>
<th>Cumulative AUM (billion)</th>
<th>Cumulative number of accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50 billion</td>
<td>270</td>
<td>15</td>
<td>$59,264</td>
<td>20,655,756</td>
</tr>
<tr>
<td>$1 billion to $50 billion</td>
<td>3,453</td>
<td>121</td>
<td>22,749</td>
<td>13,304,154</td>
</tr>
<tr>
<td>$500 million to $1 billion</td>
<td>1,635</td>
<td>47</td>
<td>1,151</td>
<td>1,413,099</td>
</tr>
<tr>
<td>$100 million to $500 million</td>
<td>5,927</td>
<td>119</td>
<td>1,397</td>
<td>5,135,070</td>
</tr>
<tr>
<td>$10 million to $100 million</td>
<td>1,070</td>
<td>24</td>
<td>59</td>
<td>310,031</td>
</tr>
<tr>
<td>$1 million to $10 million</td>
<td>162</td>
<td>3</td>
<td>0.8</td>
<td>69,664</td>
</tr>
<tr>
<td>&lt;$1 million</td>
<td>782</td>
<td>30</td>
<td>0.02</td>
<td>13,976</td>
</tr>
<tr>
<td>Total</td>
<td>13,299</td>
<td>359</td>
<td>84,621</td>
<td>41,081,750</td>
</tr>
</tbody>
</table>

---

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 (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)(9) 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 2110(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 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.

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.
In addition to SEC-registered investment advisers, other investment advisers are registered with state regulators. As of December 2018, there are 17,268 state-registered 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. \(^{899}\)

<table>
<thead>
<tr>
<th>Size of investment adviser (AUM)</th>
<th>Number of RIAs</th>
<th>Number of dually registered RIAs</th>
<th>Cumulative AUM (billion)</th>
<th>Cumulative number of accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50 billion to $100 billion</td>
<td>1,614</td>
<td>111</td>
<td>$9,570</td>
<td>13,224,188</td>
</tr>
<tr>
<td>$100 million to $500 million</td>
<td>4,548</td>
<td>113</td>
<td>$1,026</td>
<td>5,287,584</td>
</tr>
<tr>
<td>$500 million to $1 billion</td>
<td>706</td>
<td>23</td>
<td>700</td>
<td>308,285</td>
</tr>
<tr>
<td>$1 billion to $500 billion</td>
<td>1,007</td>
<td>44</td>
<td>700</td>
<td>1,392,842</td>
</tr>
<tr>
<td>$500 million to $1 billion</td>
<td>1,007</td>
<td>44</td>
<td>700</td>
<td>1,392,842</td>
</tr>
<tr>
<td>Total RIAs (^{894})</td>
<td>8,235</td>
<td>318</td>
<td>41,434</td>
<td>40,887,325</td>
</tr>
</tbody>
</table>

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.

In addition to SEC-registered investment advisers, other investment advisers are registered with state regulators. As of December 2018, there are 17,268 state-registered 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. \(^{899}\)

<table>
<thead>
<tr>
<th>Compensation type</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Percentage of Assets Under Management</td>
<td>12,678</td>
<td>614</td>
</tr>
<tr>
<td>Hourly Charges</td>
<td>3,914</td>
<td>9,378</td>
</tr>
<tr>
<td>Subscription Fees (For a Newsletter or Periodical)</td>
<td>122</td>
<td>13,170</td>
</tr>
<tr>
<td>Fixed Fees (Other Than Subscription Fees)</td>
<td>5,800</td>
<td>7,492</td>
</tr>
<tr>
<td>Commissions</td>
<td>454</td>
<td>12,938</td>
</tr>
<tr>
<td>Performance-Based Fees</td>
<td>4,938</td>
<td>8,354</td>
</tr>
<tr>
<td>Other</td>
<td>1,899</td>
<td>11,393</td>
</tr>
</tbody>
</table>

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

\(^{894}\)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: (i) it has $100 million or more of regulatory assets under management or (or $90 million or more if an adviser is filing its most recent annual update); (ii) it is a large adviser that has $100 million of more of regulatory assets under management and is already registered with the SEC; (iii) the SEC has subject to examination; (iii) meets the requirements for one or more of the revised excessive rules under section 203A; (iv) 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 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.

\(^{900}\)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.
fee programs.\footnote{Footnote 576} 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.\footnote{Footnote 47} 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.\footnote{Footnote 576} 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 the investment adviser’s business practices, fees, conflicts of interest, and disciplinary information,\footnote{Footnote 576} 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.\footnote{Footnote 576} The Part 2A brochure is the primary client-facing disclosure document,\footnote{Footnote 576} however, Parts 1 and 2A are both made publicly available by the Commission through IAPD,\footnote{Footnote 576} 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 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.

\textit{BILLING CODE 8011–01–P}
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,\textsuperscript{908} technological innovation (i.e., 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.\textsuperscript{909} Broker-dealers have indicated that the following factors have contributed to this migration: Provision of revenue stability or increase in profitability,\textsuperscript{910} perceived lower 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.


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.

\textsuperscript{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/dwinding-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.

\textsuperscript{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.

\textsuperscript{911} See Regulation Best Interest Release, supra footnote 47, at Section III.B.2.e.ii, which discusses industry trends.
Figure 2: Time Series of the Number of Retail Clients of

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 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 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 investment adviser representatives.

Table 6—Total Registered Representatives at Broker-Dealers, Investment Advisers, and Dually Registered Firms With Retail Investors

<table>
<thead>
<tr>
<th>Size of firm (total assets for standalone BDs and dually registered firms; AUM for standalone IAs)</th>
<th>Total number of reps.</th>
<th>% of reps. in dually registered firms</th>
<th>% of reps. in standalone BD w/an IA affiliate</th>
<th>% of reps. in standalone BD w/o an IA affiliate</th>
<th>% of reps. in IA w/a BD affiliate</th>
<th>% reps. in IA w/o a BD affiliate</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;$50 million</td>
<td>84,461</td>
<td>73</td>
<td>7</td>
<td>0</td>
<td>19</td>
<td>1</td>
</tr>
<tr>
<td>$1 billion to $50 billion</td>
<td>170,256</td>
<td>67</td>
<td>11</td>
<td>0</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>$500 million to $1 billion</td>
<td>29,874</td>
<td>71</td>
<td>5</td>
<td>0</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>$100 million to $500 million</td>
<td>66,924</td>
<td>51</td>
<td>27</td>
<td>0</td>
<td>4</td>
<td>18</td>
</tr>
<tr>
<td>$10 million to $100 million</td>
<td>106,178</td>
<td>55</td>
<td>42</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>$1 million to $10 million</td>
<td>33,790</td>
<td>35</td>
<td>54</td>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>&lt;$1 million</td>
<td>12,522</td>
<td>8</td>
<td>52</td>
<td>36</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Total Licensed Representatives</td>
<td>504,005</td>
<td>60</td>
<td>23</td>
<td>2</td>
<td>9</td>
<td>6</td>
</tr>
</tbody>
</table>

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 representatives and investment adviser representatives.

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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 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 the number 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. Registrants 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.

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 all 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. In contrast, for firms with total assets below $1 million, 13% of all employees are dually registered representatives.

### Table 7—Employees at Retail Facing Firms Who Are Registered Representatives, Investment Adviser Representatives, or Both

<table>
<thead>
<tr>
<th>Size of firm (total assets for standalone BDs and dually registered firms; AUM for standalone IAs)</th>
<th>Total number of employees</th>
<th>Percentage of dually registered representatives</th>
<th>Percentage of registered representatives only</th>
<th>Percentages of IARs only</th>
</tr>
</thead>
<tbody>
<tr>
<td>$&gt;500 billion</td>
<td>218,539</td>
<td>19</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>$1 billion to $50 billion</td>
<td>328,842</td>
<td>35</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>$500 million to $1 billion</td>
<td>43,211</td>
<td>18</td>
<td>40</td>
<td>10</td>
</tr>
<tr>
<td>$100 million to $500 million</td>
<td>119,214</td>
<td>23</td>
<td>24</td>
<td>9</td>
</tr>
<tr>
<td>$10 million to $100 million</td>
<td>176,559</td>
<td>20</td>
<td>39</td>
<td>1</td>
</tr>
<tr>
<td>$1 million to $10 million</td>
<td>56,230</td>
<td>17</td>
<td>39</td>
<td>1</td>
</tr>
<tr>
<td>&lt;$1 million</td>
<td>18,334</td>
<td>13</td>
<td>46</td>
<td>3</td>
</tr>
<tr>
<td>Total Employees at Retail Facing Firms</td>
<td>960,929</td>
<td>25</td>
<td>23</td>
<td>4</td>
</tr>
</tbody>
</table>

Approximately 87% of investment adviser representatives are dually-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,821 87.6% of registered investment adviser representatives were dually registered as registered representatives as of mid-October 2010.822 In contrast, approximately 52% of registered representatives were dually registered as investment adviser representatives at the end of 2018.823

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 and U5 for their representatives. SROs, regulators and jurisdictions report disclosure events on Form U6.826 FINRA’s BrokerCheck system and IAPD discloses to the public certain information on registered representatives and investment adviser representatives, respectively, 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.827 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.828

920 See supra footnotes 918 and 919. Note that all percentages in the table have been rounded to the nearest whole percentage point.


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.


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 (as of the first of the year), 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 Approximately 35% of households that do invest do so through accounts such as broker-dealer or advisory accounts.

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.830 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 (including 72% of households that also hold a brokerage account).831 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.832

923 See Drug prices not rising when Medicare applies the 340B discount. 820 Federal Register, Vol. 84, No. 134 / Friday, July 12, 2019 / Rules and Regulations
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 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>
<thead>
<tr>
<th>Income category</th>
<th>% Brokerage only</th>
<th>% IRA only</th>
<th>% Both brokerage and IRA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bottom 25%</td>
<td>1.2</td>
<td>7.6</td>
<td>2.4</td>
</tr>
<tr>
<td>25%–50%</td>
<td>3.2</td>
<td>14.5</td>
<td>5.4</td>
</tr>
<tr>
<td>50%–75%</td>
<td>4.1</td>
<td>21.4</td>
<td>11.4</td>
</tr>
<tr>
<td>75%–90%</td>
<td>7.5</td>
<td>33.4</td>
<td>16.5</td>
</tr>
<tr>
<td>Top 10%</td>
<td>12.0</td>
<td>24.7</td>
<td>43.9</td>
</tr>
<tr>
<td>Average</td>
<td>4.4</td>
<td>18.3</td>
<td>11.6</td>
</tr>
</tbody>
</table>

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 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 relative, lawyer, accountant, 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/eoecore/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.”
households who have an IRA. 15% (5.7 million households) rely on advice services of their broker-dealers and 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

<table>
<thead>
<tr>
<th>Income category</th>
<th>% Taking advice from brokers</th>
<th>% Taking advice from financial planners</th>
<th>% Taking advice from bankers, accountants, or lawyers</th>
<th>% Taking no advice or from other sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bottom 25%</td>
<td>20.55</td>
<td>53.89</td>
<td>35.64</td>
<td>24.30</td>
</tr>
<tr>
<td>25%-50%</td>
<td>22.98</td>
<td>38.03</td>
<td>34.92</td>
<td>32.36</td>
</tr>
<tr>
<td>50%-75%</td>
<td>20.75</td>
<td>52.00</td>
<td>34.12</td>
<td>23.61</td>
</tr>
<tr>
<td>75%-90%</td>
<td>22.56</td>
<td>48.94</td>
<td>32.25</td>
<td>28.10</td>
</tr>
<tr>
<td>Top 10%</td>
<td>25.29</td>
<td>50.53</td>
<td>38.47</td>
<td>21.06</td>
</tr>
<tr>
<td>Average</td>
<td>23.02</td>
<td>49.02</td>
<td>35.99</td>
<td>24.94</td>
</tr>
</tbody>
</table>

### Table 9—Panel B: Sources of Advice for Households Who Have an IRA in the U.S. by Income Group

<table>
<thead>
<tr>
<th>Income category</th>
<th>% Taking advice from brokers</th>
<th>% Taking advice from financial planners</th>
<th>% Taking advice from bankers, accountants, or lawyers</th>
<th>% Taking no advice or from other sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bottom 25%</td>
<td>12.14</td>
<td>38.30</td>
<td>43.69</td>
<td>31.85</td>
</tr>
<tr>
<td>25%-50%</td>
<td>9.79</td>
<td>43.82</td>
<td>40.67</td>
<td>32.74</td>
</tr>
<tr>
<td>50%-75%</td>
<td>14.93</td>
<td>45.20</td>
<td>41.23</td>
<td>25.23</td>
</tr>
<tr>
<td>75%-90%</td>
<td>14.68</td>
<td>52.14</td>
<td>41.65</td>
<td>24.26</td>
</tr>
<tr>
<td>Top 10%</td>
<td>21.40</td>
<td>55.40</td>
<td>40.03</td>
<td>18.56</td>
</tr>
<tr>
<td>Average</td>
<td>15.25</td>
<td>48.45</td>
<td>41.17</td>
<td>25.28</td>
</tr>
</tbody>
</table>

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.943

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,944 in 2005, RAND 947 in 2008 and CFA in 2010.948 Commenters to the proposal provided 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.

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.

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941 Id.
942 Id.
943 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.
944 Proposing Release, supra footnote 5, at n.555.
945 Id., at n.556.
946 Id., at n.557.
947 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.
948 Proposing Release, supra footnote 5, at n.555.
949 Id., at n.556.
950 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.
951 Proposing Release, supra footnote 5, at n.555.
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 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 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 they hypothesized. 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 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


b. Investor Confusion

As discussed in the Proposing Release and by commenters to the proposal, many sources indicate that retail
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.” 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.

Similarly, many survey respondents in the OIAD/RAND study had difficulty understanding the basic relational aspects of financial advice and the responsibility for taking risk in any form. Thirty percent of survey participants 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. 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. 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. 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.

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.” 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. 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.

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 financial professional. The vast majority of survey respondents (97%) also believed that their financial professional always or mostly has their investors’ best interest in mind. 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. 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. 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 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. 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
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”.897 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%).”898 The survey also reported that the top four things retail investors wanted communicated were the costs for advice, description of advice services, the obligations of the firm and its representatives, and the conflicts of interest.899 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.900

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.901 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.902 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 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 review 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 regarding the importance that investors place on disclosures about fees and compensation of financial professionals, and how those disclosures should be presented.903 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.904

(3) Disciplinary History

As discussed in the Proposing Release, survey evidence in the 917 Financial Literacy Study indicates 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.905 Despite this, most

981 See Cetera Letter II (Woelfel), supra footnote 17.
982 Schwab Letter I (Koski), supra footnote 21.
983 See, e.g., AARP Letter. See also Better Markets Letter, CFA Letter I; Consumers Union Letter.
984 See 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.
985 See Schwab Letter I (Koski), supra footnote 21 and CCMC Letter (investor polling), supra footnote 21.
986 See CCMC Letter (investor polling), supra footnote 21.
987 See Schwab Letter I (Koski), supra footnote 21.
988 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”).
989 917 Financial Literacy Study, supra footnote 588.
990 See Proposing Release, supra footnote 5, at Section IV.A.3.c.
991 917 Financial Literacy Study, supra footnote 588.
992 917 Financial Literacy Study, supra footnote 588.
994 See Proposing Release, supra footnote 5, at Section IV.A.3.c.
995 917 Financial Literacy Study, supra footnote 588.
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
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.\textsuperscript{997} The FINRA Investor Study found that only 7% of survey respondents use FINRA’s BrokerCheck and approximately 14% of survey respondents were aware of the Investment Adviser Public Disclosure (IAPD) website.\textsuperscript{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,\textsuperscript{999} many retail investors can be confused about their choices in the market for brokerage 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,\textsuperscript{1000} may harm retail investors by deterring them from seeking brokerage or investment advisory services even if they could potentially benefit from it,\textsuperscript{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.\textsuperscript{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 services provided. The relationship summary is expected to provide significant benefit to retail 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.\textsuperscript{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.\textsuperscript{1004}

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.\textsuperscript{1005} Further, financial


\textsuperscript{998} See FINRA Investor Survey, supra footnote 993.

\textsuperscript{999} See supra Section IV.B.

\textsuperscript{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.

\textsuperscript{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

\textsuperscript{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 services they are providing, the nature of their professional relationship and the nature of the potential harm faced by retail investors from confusion about the market for brokerage and investment advisory services.

\textsuperscript{1003} See supra discussion in Section II.A.2.

\textsuperscript{1004} We are extending our discussion on broad economic considerations from the Proposing Release to this 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) The discussinadequate discussion and analysis of the existing economic literature on financial advice; and (3) there were questions of whether the disclosure requirements in the proposed release would adequately address concerns in the economic literature on financial advice; and (3) there were questions of whether the disclosure requirements in the proposed release would provide meaningful information for customers.

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 advice.\footnote{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 investor expects or a level or type of service that is different than the investor expects, such as episodic recommendations instead of ongoing advice.\footnote{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 \textit{8}.

The evidence discussed in \textit{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.\footnote{1007} See, e.g., Thomas Pauls, Oscar Stulper, & Adeara Walter, \textit{Broad-Scope Trust and Financial Advice}. Working Papers (Nov. 2016), available at https://www.researchgate.net/publication/314253638_Broad-scope_trust_and_financial_advice.\footnote{1013}

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

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.\footnote{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 referrals from friends and family may do so solely on the basis of a high level of trust in these referring parties.\footnote{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.\footnote{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

evaluate, the more extensive a search the investor engages in, the more likely the investor will locate a good match. 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.\footnote{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.\footnote{1009} 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.\footnote{1010} For a discussion on search costs in response to main rulemaking see supra Section IV.B.2.a on how investors select a financial professional or firm.\footnote{1013} We recognize that trust is not the only reason why 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”\footnote{1014}; 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 17, discussing how that rulemaking addresses the limitations of disclosure for customers of broker-dealers).\footnote{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; see supra footnote 47, (discussing 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”\footnote{1014}; 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 17, discussing how that rulemaking addresses the limitations of disclosure for customers of broker-dealers).\footnote{1012}

We recognize that trust is not the only reason why 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”\footnote{1014}; 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 17, discussing how that rulemaking addresses the limitations of disclosure for customers of broker-dealers).\footnote{1012}
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. However, because existing disclosures are made on multiple and sometimes lengthy forms, and are obtained in different ways, it can be difficult for investors to grasp the most important features of the financial services from reading these materials. 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 brokerdealers 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, 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. 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 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.

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 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 in must be understandable. Studies have found that the format and structure of disclosure may improve (or decrease) investor understanding of the disclosures being made. We discuss these studies below.

Some commenters questioned the general efficacy of disclosure in the context of investment advice to retail investors. We do not share this view. As we discussed above, we believe a short summary disclosure like Form CRS can provide benefits to retail investors. However, as we also discussed in the Proposing Release, we recognize that there may be limits to the efficacy of disclosure in some

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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).

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.

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.”).

1018 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, 2016) (“EPI Letter”) (stating that “Disclosure requirements can be onerous, and disclosure may not only be 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”).

1019 See Proposing Release, supra footnote 5, at Section IV.B.1.
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.\textsuperscript{1021} Another limitation of the efficacy of disclosure documented in research is that investors may have various behavioral biases, such as anchoring\textsuperscript{1022} and over-confidence,\textsuperscript{1023} which could affect how the disclosed information is interpreted.\textsuperscript{1024} This could in turn lead investors to misinterpret, under-weight, or over-weight the implications of disclosures. Limited attention problems can also impede investors’ ability to effectively process the implications of some disclosures.\textsuperscript{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 disclosed conflict of interest.\textsuperscript{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 “releunct altruists.”\textsuperscript{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 professional’s financial interests.\textsuperscript{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.\textsuperscript{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.\textsuperscript{1030} Studies have found that the structure or format of disclosure may improve (or decrease) investor understanding of the disclosures being made.\textsuperscript{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.\textsuperscript{1032} This “framing effect” could lead investors to draw different conclusions depending on how information is presented. 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,\textsuperscript{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.\textsuperscript{1034} Consistent with such findings, other empirical evidence suggests that disclosure simplification may benefit consumers of disclosed information.\textsuperscript{1035} In general, academic research appears to support the notion that shorter and more focused disclosures could be more effective at increasing investors understanding than longer, more complex disclosures.


\textsuperscript{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 Wls. 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”).

\textsuperscript{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.”


\textsuperscript{1027} 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.
Another characteristic of effective disclosures documented in academic research is disclosure salience.\textsuperscript{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.\textsuperscript{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 disclosure signals.\textsuperscript{1038} Moreover, research suggests disclosure salience is disclosure salience.\textsuperscript{1036} This is a view also supported by commenters.\textsuperscript{1039} See, e.g., Izak Benbasat & Albert Dexter, HIRSHLEIFER AND TEOH STUDY, supra note 1039.

There is also empirical evidence that visualization improves individual perception of information.\textsuperscript{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).\textsuperscript{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.\textsuperscript{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. There is also a trade-off between allowing more disclosure flexibility and ensuring disclosure comparability (e.g., through standardization).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 comparable information that allows them to assess relevant trade-offs.\textsuperscript{1046} The final rules are intended to strike a balance between the relative 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. Informational 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.\textsuperscript{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 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, 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.

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 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. 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.

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 confusion1056 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 improve 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.

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

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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., CFAI 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.

1051 Committee of Annuity Insurers Letter. See supra Section IV.C.

1052 Some commenters raised similar concerns. See, e.g., CFA Letter 1.

1053 Financial Planning Coalition Letter (expressing concern that Form CRS may exacerbate investor confusion). See supra footnotes 77 and 80 and accompanying text.
relatively small in the context of the overall size of the brokerage and investment advisory industries.\textsuperscript{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, 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.\textsuperscript{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 proposed proposal.

However, we recognize that there are potential costs to requiring a page limit.\textsuperscript{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.\textsuperscript{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 features, such as hovers, to provide descriptions or definitions of terms.\textsuperscript{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.\textsuperscript{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.\textsuperscript{1064} The final instructions include an instruction encouraging the use of
electronic and graphical features in the relationship summary. 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, 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 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 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.

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 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. 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.

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 order will allow them to compare firms’ responses. 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.

Because firms will be given very limited flexibility in terms of language for headings and the order of the sections, some firms may find it more difficult to effectively represent 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. 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 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. 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 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. 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. 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. 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. 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.

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. 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. 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.

One section proposed for standalone broker-dealers and investment advisers, which we referred to as the Comparisons section, had entirely prescribed wording. We are not adopting this proposed section. Additionally, we removed prescribed wording from the proposed introduction, which would have noted that brokerage and advisory services were distinct. 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.

The magnitude of the anticipated benefits and costs to retail investors discussed above will depend on a number of factors, including the extent 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.

See generally Section IV.C.

See supra footnote 91.

See supra Section I.A.1.

See generally Section I.A.1. We discuss the benefits and costs of these items, including related to the prescribed wording, below, in Section IV.A.c.

See generally supra Section I.A.1. We acknowledge there is a risk that some firms could use the flexibility to strategically omit

See generally supra Section IV.A.c.

See generally supra footnote 91.

See generally supra Section IV.C.

See generally supra Section I.A.3.

We also acknowledge there is a risk that some firms could use the flexibility to strategically omit
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. 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. 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 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. 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. 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, 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. 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 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, 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 studies and in Feedback Forms revealed confusion about the proposed standard of conduct section in...
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. 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, we believe retail investors may be more primed to process impairments 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, 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.

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 would 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 be required 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. 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. 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.

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.\footnote{See, e.g., Better Markets Letter; AARP Letter; Warren Letter; CFA Letter I; see also supra Section IV.C for a discussion of a moral license.} 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 \textit{Investor.gov/CRS}, where investors can conduct further search for additional information on those events.\footnote{See supra Section II.B.4 for a discussion of the requirements and comments received on the proposal.} 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 information and will have a mechanism to find more information about any disciplinary history. Although this information already exists publicly, clearly linking to \textit{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.\footnote{See, e.g., RAND 2018, supra footnote 10 (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).} 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)\footnote{See supra Section II.B.2.c for a discussion of the requirements and comments received on the proposal.} or avoid hiring a financial professional altogether. Retail investors may also misinterpret a higher baseline rate of disciplinary history for broker-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.\footnote{See supra Section II.B.4.} 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.\footnote{See id.}

(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.\footnote{See supra Section II.B.5 for a discussion of the requirements and comments received on the proposal.} In a change from the proposal, the Additional Information section eliminates the proposed 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.”\footnote{See supra Section II.B.2.c for a discussion of the requirements and comments received on the proposal.} 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.\footnote{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 986; see also supra footnotes 566 and 567.}
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 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 that 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, 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. 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.

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. 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 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. Firms also must deliver the relationship summary to existing clients and customers who are retail investors in certain circumstances. 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.

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

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1104 See supra footnote 1028 and accompanying text.
1105 See supra Section II.A.4. for discussion on conversation starters.
1106 See CFA Institute Letter I.
compliance uncertainties and other costs associated with requiring a relationship summary be delivered at first contact or requiring a waiting period, as 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 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

\(^{1110}\) See supra footnotes 720–724 and accompanying text.

\(^{1111}\) See supra footnote 719 and accompanying text.

\(^{1112}\) 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
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 relationship with their financial professional,\textsuperscript{1114} such as fees and costs, conflicts of interest, and disciplinary history of firms and financial professionals, among other items.\textsuperscript{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\textsuperscript{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 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.\textsuperscript{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 the same survey anticipate more substantial time to implement the requirements of Form CRS (and Regulation Best Interest).\textsuperscript{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 languageprivate or 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 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.

b. Costs to Registrants

The final rule will also impose costs on affected broker-dealers and investment advisers, including: costs associated with preparation, filing,


\textsuperscript{1114} RAND 2018, supra footnote 13 (survey results re: Importance of each topic to respondents).

\textsuperscript{1115} See supra Section IV.B.3.b.

\textsuperscript{1116} See supra footnote 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).

\textsuperscript{1117} See infra Sections V.A.1 and V.D.1 for examples of commenters discussing the costs.

\textsuperscript{1118} See CCMC Letter (Survey conducted by FTI Consulting of 36 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).
accurately describe their services and offerings to retail investors. \(^{1119}\) We also offer the 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 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, this also allows 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

\(^{1119}\) 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”].

\(^{1120}\) See generally footnotes 76–83 and accompanying text.

\(^{1121}\) See supra footnotes 85–90 and accompanying text.

\(^{1122}\) See supra Section II.A.5.
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 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.\(^\text{1124}\) 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\(^\text{®}\) instead of EDGAR. This should reduce overall burdens relative to the proposal as broker-dealers already have extensive experience filing on Web CRD\(^\text{®}\), which is more accessible for broker-dealers. As proposed, dual 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\(^\text{®}\) and IARD. We recognize that requiring dual registrants to file using both Web CRD\(^\text{®}\) 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.\(^\text{1125}\) 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.\(^\text{1126}\) 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.\(^\text{1127}\) 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 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.\(^\text{1128}\) 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 investors.\(^\text{1129}\) 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.

1124 Commenters raised similar concerns. See supra footnote 586 and accompanying text.

1125 See supra Section II.B.3 and footnote 678.

1126 See supra footnote 679–681 and accompanying text.

1127 See supra Section II.B.3 and footnote 680.

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.

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.
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. 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 approximately $5,460 and $9,165, depending on the extent to which external help is used. 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.

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. The aggregate non-amortized initial preparation and filing costs of the relationship summary for these new investment advisers is estimated to be approximately $3.2 million. 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. We estimate the aggregate non-amortized aggregate combined internal and external costs to all current broker-dealers of initially preparing and filing the relationship summary will be approximately $38.8 million.

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 less burdensome if their recordkeeping 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 and correspondence with prospective retail investors. Further, these recordkeeping requirements may benefit firms by assisting them in monitoring

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1130 See, e.g., Edward Jones Letter.
1131 See supra footnote 810.
approximately $4,941 for the average investment adviser.\textsuperscript{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,\textsuperscript{1144} and $3.2 million for newly registered investment advisers.\textsuperscript{1142} For the average broker-dealer, we expect costs for the initial delivery to existing retail investors to be approximately $45,801.\textsuperscript{1143} The aggregate non-amortized initial delivery cost for all current broker-dealers is estimated to be approximately $126.7 million.\textsuperscript{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 summary prominently on their public current version of their relationship dealers.\textsuperscript{1148} For the average investment adviser, we estimate the 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.\textsuperscript{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%)\textsuperscript{1152} than for retail customer accounts for broker-dealers (11.0%).\textsuperscript{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 $41 for the average investment adviser (broker-dealer), and the aggregate annual costs for investment advisers and broker-dealers combined would be approximately $338,272.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 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.\textsuperscript{1157} For broker-dealers, we estimate the annual 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.\textsuperscript{1158} We estimate annual delivery costs will be approximately $91,602 for the average broker-dealer that choose delivery to communicate updated information, and in aggregate approximately $126.7 million annually for all broker-dealers (whether investment adviser or broker-dealer), and the aggregate annual costs for broker-dealers that we expect to choose delivery.\textsuperscript{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 relate to those recordkeeping requirements will be $12.67 for an average investment adviser and approximately $104,354 in aggregate for all investment advisers.\textsuperscript{1160} For broker-

\textsuperscript{1140} See supra Section V.C.2.b.(1) for a description of how this is estimated.

\textsuperscript{1141} Calculated as $4,941 per firm × 8,235 current firms = $40,689,135.

\textsuperscript{1142} Calculated as $4,941 per firm × 656 expected new firms = $3,241,296.

\textsuperscript{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.

\textsuperscript{1144} Id.

\textsuperscript{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.

\textsuperscript{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% × $91 (average cost per firm) × 8,235 (number of existing investment advisers) = $696,437.

\textsuperscript{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% × $91 (average cost per firm) × 8,235 (expected number of new investment advisers) = $54,682.

\textsuperscript{1148} See infra footnote 1370 and accompanying text.

\textsuperscript{1149} See infra Section V.C.2.b.(2).

\textsuperscript{1150} See infra Section V.D.2.d.(2).

\textsuperscript{1151} See infra section V.C.2.c for how we estimate these costs.

\textsuperscript{1152} See infra Section V.C.2.b.(3) for how we estimate these costs.

\textsuperscript{1153} Id.

\textsuperscript{1154} See infra Section V.D.2.c for how we estimate these costs.

\textsuperscript{1155} See infra Section V.D.2.d. (3) for how we estimate these costs.

\textsuperscript{1156} Id.

\textsuperscript{1157} See infra Section V.D.2.d for how we estimate these costs.

\textsuperscript{1158} 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
estimated as (173%× 0.2 hours × $70) + (833%× 0.2 hours × $862) = $12,672. The aggregate cost is then $12,672 × 8,235 (number of investment advisers) = $104,354.

1163 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).

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 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 mismatching a firm or their current financial professional. 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 firm, leading to increased costs (direct and indirect) and potentially suboptimal outcomes as it pertains to 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, and the investor incurs costs associated with obtaining services that do not fit his or her needs. As such, the relationship summary could reduce the costs associated with mismatch for investors, firms, and financial 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 than the short-run switching and search costs. Moreover, these efficiency gains 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. The elimination of this proposed requirement will likely reduce (relative to the proposal) the usefulness to retail investors of 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 firms (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 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.\footnote{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.}

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 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 relationship summary 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 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 firms 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. At the same time, the relationship summary could change the size of the broker-dealer and 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, and the size of these markets.1170

1167 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.3 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.

1168 Source: Items 11C, 11D, and 11E of Form BD and Items 11C, 11D, and 11E 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 statutes, (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.
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. 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 advisory markets, the increased competitiveness would create some general downward price pressure in the market which may 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 for 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 limited 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. 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. 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.

a. Amending Existing Disclosures

The relationship summary will be a new, separate disclosure, in addition to other disclosures that firms already must provide. 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. 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.

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. We believe that a short, standalone relationship summary that facilitates comparisons across different providers through the Feedback Forms, and investor testing. 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.

1170 See supra Table 2, Section IV.B.1.a.

1171 See Proposing Release, supra footnote 5, at nn.13–21 and accompanying text.

1172 See supra footnote 11–21 and accompanying text.

1173 Broader-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.

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. 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. Commenters supporting an SEC-authored educational material 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.

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

1177 See supra footnote 36–40 and accompanying text.
1178 Primerica Letter.
1179 ACLI Letter.
1180 See supra Section II.A.1.
1181 See supra Section II.B.3.
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.
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 the categories of the most common fees permit firms to highlight examples of fees in the relationship summary.1185 or to require firms to include a hypothetical fee example.1186 Under 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 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 firms. 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 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 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 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; IC Letter; SIFMA Letter (noting most firms do not currently have systems in place to allow financial professionals to answer customer-specific questions).1191 Item 3.A.(iv) of Form CRS.

1192 See supra Sections I.A.4 and I.B.3.a.

1193 CFA Letter I ("past experience regarding consumers’ limited use of existing databases, such as IARD and BrokerCheck, is 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 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.

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 24047; and 95 Guidance, supra footnote 678, at 60 FR 53461.
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. 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 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”). 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 relate to (i) “Rule 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 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 primarily used 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 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.

The 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.

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.\textsuperscript{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.\textsuperscript{1201} Others commented more broadly that certain costs to prepare and file the relationship summary would be higher than we estimated in the proposal.\textsuperscript{1202} We have considered these comments and are increasing our PRA burden estimates from 3 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.

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.\textsuperscript{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,\textsuperscript{1204} which is higher relative to the estimate in the Proposing Release.\textsuperscript{1205}

This will leave 5,064 registered investment advisers that do not provide advice to retail investors\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{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 per adviser.\textsuperscript{1210} with a monetized total of $92,404,369, or $6,051 per adviser.\textsuperscript{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.\textsuperscript{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 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

\textsuperscript{1200} See NSCP Letter.

\textsuperscript{1201} See Marotta Letter.

\textsuperscript{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.

\textsuperscript{1203} An exempt reporting adviser is an investment adviser that relies on the exemption from investment adviser registration provided in either section 201(4) 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.

\textsuperscript{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

\textsuperscript{1205} See supra footnote 6.

\textsuperscript{1206} See supra footnote 463.


\textsuperscript{1208} Based on IARD system data.

\textsuperscript{1209} See supra footnote 33603.

\textsuperscript{1210} Based on 12,721 registered investment advisers, the per adviser average increased burden is 29.22 hours per SEC-registered adviser and 3.60 hours per exempt reporting adviser.

\textsuperscript{1211} Based on 13,299 registered investment advisers, the per adviser average increased burden is 29.22 hours per SEC-registered adviser and 3.60 hours per exempt reporting adviser. The amended Form ADV Part 3 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.

\textsuperscript{1212} 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 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.


\textsuperscript{1214} 363,082 hours/(12,024 registered advisers + 3,248 exempt reporting advisers) = 23.77 hours.

\textsuperscript{1215} $92,404,369/12,024 registered advisers + 3,248 exempt reporting advisers) = $6,051.

\textsuperscript{1216} 81 FR 60454.
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. Some commenters said that these estimated burdens were too low, and one argued that the current burden estimates for Form ADV are too low. 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. Commenters also said more broadly that the relationship summary would be burdensome for investment advisers and would result in additional compliance burdens including training.

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. 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 fields, 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 may exceed 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 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. 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. After consideration of comments and changes we made to the requirements 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. We therefore estimate that the

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1224 See, e.g., NSCP Letter; see also CCMC Letter (costs to implement the proposal were underestimated and greater than 40% of firms surveyed anticipated 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).
1225 See Marotta Letter.
1226 See NSCP Letter.
1227 See MarketCounsel Letter.
1228 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).
1229 See infra footnote 1221.
total burden of preparing and filing the relationship summary will be 164,700 hours.\textsuperscript{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.\textsuperscript{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.\textsuperscript{1225} The annual hour burden of preparing and filing the relationship summary will therefore be 54,900.\textsuperscript{1226} In addition, based on IARD system data, the Commission estimates that 1,227 new investment advisers will file Form ADV with us annually; of these, 656 will be required to prepare and file the relationship summary.\textsuperscript{1227} Therefore, the aggregate initial burden for newly registered advisers to prepare and file the relationship summary will be 13,120 \textsuperscript{1228} and, amortized over three years, 4,373 on an annual basis.\textsuperscript{1229} In sum, the total burden for existing and newly registered investment advisers to prepare and file a relationship summary will be 59,273 hours,\textsuperscript{1230} or approximately 6.67 hours per adviser,\textsuperscript{1231} for an annual monetized cost of $16,181,529, or $1,965 per adviser.\textsuperscript{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 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.\textsuperscript{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 setup, 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

\textsuperscript{1234}Another argued 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.\textsuperscript{1235} Based on the concerns expressed by these 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.\textsuperscript{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 outside consulting services in connection with the initial preparation of the relationship summary.\textsuperscript{1237} We estimate that the initial per existing adviser cost for legal services related to
the preparation of the relationship summary will be $2,485.\textsuperscript{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.\textsuperscript{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.\textsuperscript{1240} In addition, we estimate that 1,227 new advisers will register with us annually, 656 of which will be required to prepare and file a relationship summary. For those 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.\textsuperscript{1241} In summary, the annual external legal and compliance consulting cost for existing and new advisers relating to obligations to prepare the relationship summary is estimated to total $7,331,370, or $825 per adviser.\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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 management consulting services x 5 hours per adviser = $3,705.

\textsuperscript{1240} 25\% \times 8,235 existing advisers = $2,485 for legal services = $5,115,994 for legal services. 50\% \times 8,235 existing advisers = $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. $20,371,331/3 = $6,790,444 annually.

\textsuperscript{1241} 25\% \times 656 new advisers = $2,485 for legal services = $540,927 for legal services. 50\% \times 656 new advisers = $3,705 for compliance consulting services = $1,622,780 in external legal and compliance consulting costs for existing advisers. $20,371,331/3 = $6,790,444 annually.

\textsuperscript{1242} 25\% \times 656 new advisers = $2,485 for legal services = $540,927 for legal services. 50\% \times 656 new advisers = $3,705 for compliance consulting services = $1,622,780 in external legal and compliance consulting costs for existing advisers. $20,371,331/3 = $6,790,444 annually.

In the Proposing Release, we estimated that the relationship summary would increase the annual burden associated with Form ADV by 0.5 hours\textsuperscript{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.\textsuperscript{1244} To account for this change, we are increasing the annual burden to 1 hour per year to amend and file a relationship summary.\textsuperscript{1245}

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, a adviser preparing a relationship summary will likely amend and file the disclosure an average of 1.71 times per year.\textsuperscript{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,\textsuperscript{1247} or approximately 1.58 hours per adviser,\textsuperscript{1248} for an annual monetized cost of $3,844,386, or $467 per adviser.\textsuperscript{1249}

\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{1246} Based on IARD data of December 31, 2018, 8,235 investment advisers = 8.25 hours per adviser.\textsuperscript{1250} 73,355 total aggregate annual hour burden 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.

\textsuperscript{1247} 14,082 hours x 50\% x $237 = $20,025,915. $20,025,915/(8,235 existing registered advisers) = $2,485 for compliance consulting services = $540,927 annually in external legal and compliance consulting costs for newly registered advisers.

\textsuperscript{1248} 14,082 hours x 50\% x $467 = $2,485 for compliance consulting services = $540,927 annually in external legal and compliance consulting costs for newly registered advisers.

\textsuperscript{1249} 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 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.

\textsuperscript{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.

\textsuperscript{1251} 73,355 hours/(8,235 existing advisers + 656 newly registered advisers) = 8.25 hours per adviser.

\textsuperscript{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 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.

\textsuperscript{1253} See supra footnote 1242.
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 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, and 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 1,099 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 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 $4,950,816.1260 The revised total annual collection of information burden for exempt reporting advisers, using the currently approved estimate of 3.60 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 164,655,1263 for a monetized cost of $4,950,816, or $983 per exempt reporting adviser.

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 adoption of Form ADV Part 3, (ii) the cost for investment advisers to private funds to report the fair value of their private fund assets, and (iii) the annual cost burden for Form ADV.

The currently approved total annual 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.1260 We do not consider these costs to be burdens for purposes of the PRA. We estimate the burden for new advisers to prepare Form ADV Part 3 will affect those per adviser cost burden estimates for outside legal and compliance consulting fees, increases which are attributable 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.
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 288 registered advisers may incur costs of $37,625 each on an annual basis, for an aggregate annual total cost of $1,083,000.\textsuperscript{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.\textsuperscript{1272} This represents an $8,083,870 increase from the current external costs estimate for the information collection.\textsuperscript{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 204(b)(7) 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. 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.\textsuperscript{1274}

As discussed above in Section II.E several commenters suggested that our estimated burdens for the relationship summary recordkeeping obligations were too low.\textsuperscript{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.\textsuperscript{1276} 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.\textsuperscript{1277}

\textsuperscript{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).

\textsuperscript{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).

\textsuperscript{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 recordkeeping burdens under amendments to rule 204–2 because we are not establishing new 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.

\textsuperscript{1277} See SIFMA Letter.

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 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.\textsuperscript{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.\textsuperscript{1279} See section 210(b) of the Advisers Act.

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\textsuperscript{1271} 6% × 4,806 = 288 advisers needing to obtain the fair value of certain private fund assets. 288 advisers × $37,625 = $10,836,000.

\textsuperscript{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 as of December 31, 2018 = $1,637 per registered adviser.

\textsuperscript{1273} $21,767,370−$13,683,500 = $8,083,870.

\textsuperscript{1274} See section 210(b) of the Advisers Act.
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 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 relationship summary obligations,1283 for a monetized cost of $95,588,191, or $11,607 per adviser.1284 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 926,712,1285 for a monetized cost of $58,716,472, or $11,595 per adviser.1286 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.1287 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 respondents to rule 204–2, under the amendments, is estimated to be 2,435,364 total hours,1288 for a monetized cost of $154,304,663.1289

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.1290 The revised annual aggregate hourly burden for rule 204–2 will be 2,435,364 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 235,5731291 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.

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 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

See supra footnote 1286.

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 differs 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.

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.

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 76.

This differs from the proposal, which required only firms that do not have a public website to include a toll-free number that
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 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 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 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 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 newly-registered advisers with relationship summary obligations equal 12,216 hours.

\(^{1300}\) See supra footnote 863 and accompanying text.

\(^{1301}\) Proposing Release, supra footnote 5 at section V.C.2.a.

\(^{1302}\) See e.g., Online internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 25158] (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 30–3, 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.

\(^{1304}\) 1.5 hours to prepare and post the relationship summary \(\times 91.6\% \times (8,235 \text{ existing advisers} + 656 \text{ newly registered advisers}) = $757,407 \text{ total aggregate monetized cost.}

\(^{1305}\) See 2016 Form ADV Paperwork Reduction Analysis, supra footnote 1209.

\(^{1306}\) 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.

\(^{1307}\) This is the same estimate we made in the Form ADV Part 2 proposal and for which we received no comment. Broker 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.

\(^{1308}\) 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 \(\times 862 = 935 \text{ monetized costs per adviser. 935 \% \times (8,235 existing advisers} + 656 \text{ newly registered advisers}) = 757,407 \text{ total aggregate monetized cost.}

\(^{1309}\) See 2016 Form ADV Paperwork Reduction Analysis, supra footnote 1209.

\(^{1310}\) 12,216 hours / 3 years = 4,072 hours annually. $757,407/3 years = $252,469 in annualized monetized costs.

\(^{1297}\) See supra footnote 609.

\(^{1298}\) See supra footnotes 803–808.

\(^{1299}\) Pickard Djinis and Piscari Letter.

\(^{1299}\) See supra footnotes 803–808.
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, with a monetized cost of $4,941 per adviser or $43,930,431 in aggregate. 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, with annual monetized costs of $1,647 per adviser, or $14,643,477 in aggregate. 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 made to the retail investor’s existing account(s) that would “materially change” the nature and scope of the 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.

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 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.” Commenters also described administrative and operational burdens arising from this requirement and argued that our estimated burdens were too low.

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. Another commenter noted the challenges of designing a system that distinguishes non-ordinary course events from routine account changes.

As discussed above, we replaced the “materially change” requirement with more specific triggers to be clearer about when a relationship summary must be delivered. 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 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.

We will therefore estimate a total annual aggregate hours of 142,256, with a monetized cost of $992 per adviser and $8,819,872 in aggregate. (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 estimates. The communication can be made by delivering the relationship summary or through another disclosure that is

Footnotes:

1310 10% of 3,985 retail clients per adviser × .04 hours to deliver the relationship summary = 16 hours per adviser.

1320 16 hours × (8,235 existing advisers + 656 new advisers) = 142,256 total aggregate hours.

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 perspective 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.
delivered to the retail investor. This requirement is a change from the proposed requirement but is substantively similar.\textsuperscript{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.\textsuperscript{1328} We are not changing the 0.5 hours estimates to post the amendments to a public website in alignment 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.\textsuperscript{1329} to post the amended relationship summaries to their website. This translates into an annual monetized cost of $53.32 per adviser, or $402,207 in the aggregate for existing registered advisers with relationship summary obligations.\textsuperscript{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,\textsuperscript{1331} or 136.29 hours per adviser,\textsuperscript{1332} at a monetized cost of $34,792,044 in aggregate,\textsuperscript{1333} or $8,450 per adviser.\textsuperscript{1334} for the 50% of advisers that choose to deliver amended relationship summaries in order to communicate updated information.\textsuperscript{1335}

In a change from the proposal,\textsuperscript{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.\textsuperscript{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 the number of responses related to making copies of the relationship summary available upon request, and printing and mailing costs.

\textsuperscript{1331}8,235 advisers amending the relationship summary \times 3,985 retail clients per adviser \times 50% delivering the amended relationship summary to communicate updated information \times 0.02 hours per delivery = 1.71 amendments annually = 561,162 hours to deliver amended relationship summaries.

\textsuperscript{1332}3,985 retail clients per adviser \times 0.02 hours per delivery = 136.29 hours per adviser.

\textsuperscript{1333}Based on data from the SIFMA Office Salaries Report, we expect that delivery requirements of rule 204-5 will mostly be performed by a general clerk at an estimated cost of $62 per hour. 561.162 hours \times $62 = $34,792,044. We estimate that advisers will not incur any incremental posting costs to deliver the relationship summary, because we estimate that firms will deliver the information 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.

\textsuperscript{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 \times $62 = $8,450 per adviser.\textsuperscript{1335}

\textsuperscript{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.

\textsuperscript{1336}See supra footnotes 699–701 and accompanying text.

\textsuperscript{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.

\textsuperscript{1338}0.5 hours to make paper copies of the relationship summary available upon request \times 8,235 advisers with relationship summary obligations = 4,118 hours.

\textsuperscript{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 \times $62 = $31 in monetized costs per adviser. $31 per adviser \times 8,235 advisers with relationship summary obligations = $253,285 total aggregate monetized cost.

\textsuperscript{1340}This average is based on advisers’ responses to Item 5 of Part 1A of Form ADV as of December 31, 2018.

\textsuperscript{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 2.3% between December 2016 and 2017, and by 2.3% between December 2016 and 2017. (6.7% + 2.3%) \div 2 = 4.5% average annual rate of change over the past two years. We did not receive comments on this estimate.
relationship summary,\textsuperscript{1342} or 3.6 annual hours per adviser.\textsuperscript{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,\textsuperscript{1344} at a monetized cost of $1,838,052, or $223 per adviser.\textsuperscript{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.

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,\textsuperscript{1346} or 120 hours per respondent,\textsuperscript{1347} for a total annual aggregated monetized cost of $61,003,406,\textsuperscript{1348} or $7,408\textsuperscript{1349} per adviser.

\textbf{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\textsuperscript{10} instead of EDGAR. We are also requiring that all 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.\textsuperscript{1350} Others commented more broadly that the implementation costs of the relationship summary would be higher than we estimated in the Proposing Release.\textsuperscript{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,\textsuperscript{1352} and therefore likely will be required to prepare and deliver the relationship summary.\textsuperscript{1353} We also note that these include 318 broker-dealers that are dually registered as investment advisers.\textsuperscript{1354} We did not receive comments related to the methodology used for estimating the number of broker-dealers that will be subject to these requirements. We are maintaining the methodology we used in the Proposing Release and are updating our estimates to reflect the

\textsuperscript{1342} This is the same as the estimate for the burdens delivered in the proposal required by Form ADV Part 2. See Brochure Adopting Release, supra footnote 576.

\textsuperscript{1343} 3,985 clients per adviser with retail clients × 4.5% = 179 new clients per adviser. 179 new clients per adviser × 0.02 hours per delivery = 3.6 hours per adviser for delivery of a relationship summary to new or prospective new clients.

\textsuperscript{1344} 3.6 hours per adviser for delivery obligation to new or prospective clients × 8,235 advisers = 29,646 hours.

\textsuperscript{1345} Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour workyear 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 $82 per hour. 29,646 hours × $82 = $2,401,134. We estimate that advisers will not incur any incremental postage costs to deliver the relationship summary to new or prospective clients.

\textsuperscript{1346} 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.

\textsuperscript{1347} 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. Others commented more broadly that the implementation costs of the relationship summary would be higher than we estimated in the Proposing Release. 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.

\textsuperscript{1348} Also includes estimated administrative costs for preparing the summary.

\textsuperscript{1349} This is the amount of the monetized costs divided by the number of hours estimated.

\textsuperscript{1350} 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. 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.

\textsuperscript{1351} 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.

\textsuperscript{1352} See supra footnote 863 and accompanying text.
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

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 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 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 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

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).

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); Sterne, Windlan & Balli Letter; SIFMA Letter and Investment Advisers Association, Inc. Letter (stating that implementation costs of Regulation Best Interest and Form CRS would be significant).

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).

1359 See, e.g., Exchange Act rule 10b–10 (requiring a broker-dealer effecting transactions in securities to provide to the customer information specific to the transaction at or before completion of the transaction, including the capacity in which the broker-dealer is acting (e.g., 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.

1361 See supra footnote 1220.
and complexity of their business models, but we do not believe that the range could be as high as suggested by some commenters.\textsuperscript{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.\textsuperscript{1363} We estimate that the total burden for broker-dealers to prepare and file the relationship summary will be 110,640 hours.\textsuperscript{1364} for a monetized value of $30,204,720.\textsuperscript{1365} The initial burden will be 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,\textsuperscript{1366} for an annual monetized cost of $10,068,240, or $3,640 per broker-dealer.\textsuperscript{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.\textsuperscript{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 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,\textsuperscript{1369} for a monetized value of $257,238.\textsuperscript{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,\textsuperscript{1371} for an annual monetized cost of $87,746, or $31 per broker-dealer.\textsuperscript{1372}

\textsuperscript{1362} See NSCP Letter (estimating that the time required to prepare, deliver, and file Form CRS would be anywhere from 30 to 50 hours).

\textsuperscript{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.

\textsuperscript{1364} 2,766 × 40.0 hours/3 = 36,880 total hours.

\textsuperscript{1365} We expect that performance of this function will most likely be 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 × 110,640 hours × $237) + (0.5 × 110,640 hours × $309) = $30,204,720.

\textsuperscript{1366} 110,640 hours for preparing and filing/3 years = 38,263 total aggregate annual hour burden to prepare and file relationship summary. 38,263 hours × $3,640 per broker-dealer = $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.

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 hours, or 13.83 hours per broker-dealer,\textsuperscript{1373} for an annual monetized cost of $10,153,986, or $3,671 per broker-dealer.\textsuperscript{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.\textsuperscript{1375} Based on the concerns expressed by this commenter and the changes we are making to the relationship summary, for example, requiring 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

\textsuperscript{1367} $30,204,720 total initial aggregate monetized cost for preparation 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 × $3,640 per broker-dealer = $10,068,240 total annual monetized cost for preparation, filing, and posting the relationship summary. $10,068,240/2,766 broker-dealers subject to relationship summary obligations = $3,640 per broker-dealer.

\textsuperscript{1368} See NSCP Letter.
the industry purposes of the PRA analysis, particularly given our experience with the burdens for Form ADV.\textsuperscript{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.\textsuperscript{1377} We estimate that the initial per broker-dealer cost for compliance consulting services related to the preparation of the relationship summary will be $3,705.\textsuperscript{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.\textsuperscript{1379} and 1,383 broker-dealers will use outside compliance consulting services, for a total initial aggregate cost burden of $5,124,015.\textsuperscript{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.\textsuperscript{1381} Annually, this represents $2,853,590, or $1,032 per broker-dealer, when amortized over a three-year period.\textsuperscript{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 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.\textsuperscript{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 year to post to their websites an estimated total of 5,532 amendments per year.\textsuperscript{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 per year.\textsuperscript{1385} We estimate that broker-dealers will update the relationship summary at least twice a year.\textsuperscript{1386} Therefore, we estimate 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 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

\textsuperscript{1376} See supra footnote 1221.

\textsuperscript{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 suggested that outside legal services cost approximately $497 per hour. $497 per hour for legal services × 5 hours per broker-dealer = $2,485. The hourly cost estimate of $741 per hour for outside consulting services cost approximately $741 per hour. $741 per hour for outside consulting services × 50% of broker-dealers = $3,705.

\textsuperscript{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 suggested that outside compliance consulting services cost approximately $497 per hour. $497 per hour for legal services × 5 hours per broker-dealer = $2,485. The hourly cost estimate of $741 per hour for outside consulting services cost approximately $741 per hour. $741 per hour for outside consulting services × 50% of broker-dealers = $3,705.

\textsuperscript{1379} $5,124,015 × 50% = 2,562,007.50 × $741 = $1,892,175.95

\textsuperscript{1380} $3,436,755 + $5,124,015 = $8,560,770.

\textsuperscript{1381} $8,560,770 ÷ 1,383 broker-dealers = $6,158.17 per broker-dealer.

\textsuperscript{1382} $8,560,770 ÷ 0.5 hours per broker-dealer = $16,721,540 per year.

\textsuperscript{1383} We do not expect ongoing external legal or compliance consulting costs for the relationship summary.\textsuperscript{1387} 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 more knowledgeable about the information to include in the amendments than outside legal or 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

\textsuperscript{1384} 2,766 broker-dealers amending relationship summaries × 2 amendments per year = 5,532 amendments per year. 5,532 amendments ÷ 1 hour to amend and file = 5,532 hours. 2,766 broker-dealers × 0.5 hours to post amendments to website × 2 amendments a year = 2,766 hours.

\textsuperscript{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 × 50% × $237 + 5,532 hours × 50% × $309 = $1,510,236. 1,510,236 × 0.5 hours per broker-dealer = $755,118 per year.

\textsuperscript{1386} Based on data from the SIFMA Office Salaries Report, we expect 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 amendments × $62 = $171,475.60 broker-dealers = $82 in annual monetized costs.

\textsuperscript{1387} $1,510,236 to prepare and file amendment + $171,475.60 to post the amendments = $1,681,711.60.

\textsuperscript{1388} See NNCP Letter.
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 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 or (ii) recommending that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) 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. 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, 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.

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 2,043,300 hours, or approximately 739 hours per broker-dealer for the first year after the rule is in effect. 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. Amortized over three years, the total annual hourly burden is estimated to be 681,100 hours, or approximately 246 hours per broker-dealer.

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, 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.”

Commenters also described administrative and operational burdens arising from this requirement and argued that our estimated burdens were too low. 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. Another noted the challenges of designing a system that distinguishes non-ordinary course events from routine account changes.

As discussed above, we replaced the “materially change” requirement with more specific triggers to be clearer about when a relationship summary must be delivered. 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 significant burdens as described above 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, at an aggregate monitized cost of $25,336,920, or approximately $9,160 per broker-dealer.

(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 triggers described above 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 updates are required to be made and without charge. We do not expect this change to increase the PRA estimates. The communication can be made by delivering the relationship summary or by communicating the information through another way 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.

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. Therefore, the estimated burden 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 translating into a monetized cost of $126,684,600 in aggregate, or $45,801 per broker-dealer.

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

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.

2 Amendments per year × 102,165 million customer accounts × 50% delivering the amended relationship summary to communicate updated information × 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.

Based on data from the SIFMA Office Salaries Report, modified to account for an 1,800-hour work-year and multiplied by $25.336,920 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 × $62 = $25,336,920. 408,660 hours × 2,766 broker-dealers = $9,160 per broker-dealer. We estimate that broker-dealers will 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.

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.

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.

See supra footnotes 758–763 and accompanying text.

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).

See SIFMA Letter.

See LPL Financial Letter.

See supra footnote 761 and accompanying text.
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 burden hours to make copies of the relationship summary available upon request.\footnote{0.5 hours to make paper copies of the relationship summary available upon request × 2,766 broker-dealers with relationship summary obligations = 1,383 hours.} We did not receive comments on this burden 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\% more new retail investors each year.\footnote{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 broker-dealer × 2,766 broker-dealers = $31 million.} 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.\footnote{81.3 hours per broker-dealer, at a monetized cost of $62 per hour.} 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.\footnote{See supra footnotes 857–865 and accompanying text.} We did not receive comments on the burdens specific to delivering the relationship summary to new and prospective retail investors.\footnote{This represents the average annual rate of growth from 2014–2018 in the number of accounts for all broker-dealers reporting retail activity.} 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.\footnote{81.3 hours per broker-dealer, at a monetized cost of $62 per hour.} 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.

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 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 broker-dealer basis.\footnote{3,408,533 hours per year, or 1,232 hours per broker-dealer, at a monetized cost of $62 per hour.} This translates into an aggregate annual monetized cost of $219,110,726, or $79,216 per broker-dealer per year.\footnote{79,216 per broker-dealer per year.} 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.\footnote{Amortized over a three year period.}

E. Recordkeeping Obligations Under Exchange Act Rule 17a–3

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 confidential.\footnote{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.} Exchange Act section 17a(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.\footnote{Exchange Act rules 17a–3 and 17a–4 specify minimum requirements with respect to the records.} 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 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

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.1431

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.1432 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 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. 

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 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

![](https://example.com)
currently approved annual reporting and recordkeeping cost estimate to respondents is $29,520,000.1434 We estimate that the adopted amendments will result in an increase in the collection of information burden estimate by 0.10 hour1435 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 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 amendments1441 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 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 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 956,7831445 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 85,6331447 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 $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

1434 4,104 broker-dealers × $5,000 annual recordkeeping cost per broker-dealer = $20,520,000.
1435 In the Proposing Release, we applied the same 0.1 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.
1437 2,766 broker-dealers × 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 × $70 = $19,390. 19,390/2,766 broker-dealers = $7 per broker-dealer.
1439 2,766 broker-dealers required to prepare relationship summary × (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 × $70 = $49,198,870.
1441 See supra footnotes 858–863 and accompanying text.
1442 998 broker-dealers × 254 hours = 253,492 hours for broker-dealers not preparing a relationship summary.
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. 702,841 hours × $70 = $49,198,870.
1445 See supra footnote 1444.
1446 See supra footnote 1444.
1447 1,042,866 hours × $67.8 million = $811,480.
1448 3,764 registered broker-dealers as of December 31, 2018 × $18,820,000 broker-dealer in record maintenance costs = $18,820,000. $20,520,000 – $18,820,000 = $1,700,000.
1449 5 U.S.C. 604(a).
1450 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).)
1451 See Proposed Release, supra footnote 5.
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.

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 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 circumstances1458 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 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 and Paperwork Reduction Act Analysis above.

1453 See NSCP Letter; Pickard Djinis and Pisarri Letter.
1454 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.
1455 See NSCP Letter.
1456 See Pickard Djinis and Pisarri Letter.
1457 Id.
1458 See 17 CFR 275.0–7.
should mitigate the costs to all firms, delivered to the retail investor, which by communicating the information delivering the relationship summary or larger firms who have more retail investors, than on the extent that small firms are more necessarily be higher for small firms. To

requirements should impose lower

attributable to ongoing delivery legal and compliance cost for investment advisers and broker-dealers, attributable to ongoing delivery requirements are estimated above in the Paperwork Reduction Analysis. 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 VLE 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 decision points when firms are required to deliver another relationship summary. 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: (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. As discussed in Section V.A.1 above, the Commission estimates that based on IARD data as of December 31, 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. 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. 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. 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.

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: (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, 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.

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. 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

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 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 incremental external legal and compliance cost for small advisers to be estimated at $785 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 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 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

1476 See supra footnote 1352 and accompanying text.
1477 See supra footnote 1352 (discussing how we identify retail sales activity from Form BR).
1478 See supra Sections V.A and IV.D.2.
1479 See supra Section V.A.
1480 See supra Section VI.A.3.
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 amortized over three years is approximately 6.67 hours. 6.67 hours per adviser for preparing and filing the relationship summary × 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 × 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.
1483 See supra Section V.A.2.b. $825 in external legal and compliance costs per adviser × 183 small advisers = $150,975 in aggregate for small advisers.
1484 See supra Sections V.D and IV.D.2.
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 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 disproportionately 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.

2. Delivery and Updating Requirements Related to the Relationship Summary

As discussed in Section II.C above, firms must follow current 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. Additionally, firms must deliver the relationship summary to a 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.

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.

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 the new relationship summary. 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, were given to any client on any particular 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. 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. As discussed in Section 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.\footnote{0.2 hours × 183 small advisers = 37 hours, when rounded up to the nearest hour.} \footnote{As discussed in, the Paperwork Reduction Act 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.} We therefore expect the annual monetized cost to small broker-dealers associated with these amendments to be $39 per broker-dealer,\footnote{$12 per adviser × 183 small advisers = approximately $2,196 in aggregate for small advisers.} or $2,196 in aggregate for small advisers.\footnote{See supra Section V.B.} We do not expect investor advisers to incur any external costs with respect to the amendments to Advisers Act rule 204–2.\footnote{As discussed in Section V.E, 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 aggregate for small broker-dealers. \footnote{As discussed in Section V.F, the amendments to Exchange Act rules 17a–3 and 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 × 756 small broker-dealers = approximately 454 annual hours in aggregate for small broker-dealers.} 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.\footnote{See supra Sections V.E and V.F.} 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.\footnote{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.}

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.\footnote{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 the 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

\footnote{As discussed above in Section II.C, there are several reasons why 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, 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.} All relationship

\footnote{The filed relationship summaries will be accessible through the Commission's investor education website Investor.gov. See supra footnote 661 and accompanying text.}
implement structured headings in PDF formatted documents by creating a searchable format with machine-readable headings. There are several reasons we are requiring 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. 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.

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. 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 requiring firms to communicate the information in an updated relationship summary on their websites within 60 days after the updates are required to be made and without charge. 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. However, we believe the final requirements are clear and that further clarification, consolidation, or simplification of the compliance and 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. 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. Although this increases costs to firms, including small firms, as discussed above, 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. In addition, we are encouraging, but not requiring, firms to use charts, graphics, tables, and other graphics or text features to respond to the required disclosures. 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. 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. 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 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 redelivery 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. In addition, the content of the relationship summary will facilitate comparisons across firms. 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.

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”).

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. 7ss(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 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(f), 17, 23 and 36 thereof 15 U.S.C. 78c, 78j, 78o(c)(6), 78o(f), 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

CFR Part 200

Administrative practice and procedure. Organization and functions (Government agencies).
PART 200—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. 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, 77ee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78yll, 78nnn, 80a-2, 80a-20, 80a-21, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq.; and 8032; 7 U.S.C. 44 U.S.C. 3506; 44 U.S.C. 3507.

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

(e) * * * * *

(10) (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) You are not required to comply with paragraph (a) of this section by 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.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 is amended by revising the general authority and adding sectional authority for 249.640 to read as follows:


8. Section 249.641 is added to subpart G read as follows:

§249.641 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

9. The general authority citation for part 275 continues to read as follows and sectional authorities for 275.204–5 and 275.211b–1 are added to read as follows:


10. 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.
(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.

11. Amend §275.204–1 by revising paragraphs (a) and (b) and adding paragraph (e) 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;
(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.

12. 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.

* * * * *

13. 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

14. The authority citation for part 279 is revised to read as follows:


Note: The following amendment does not appear in the Code of Federal Regulations.

15. 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

BILLING CODE 8011–01–P
APPENDIX A

FORM ADV (Paper Version)

- UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND
- REPORT FORM BY EXEMPT REPORTING ADVISERS

Form ADV: General Instructions

Read these instructions carefully before filing Form ADV. Failure to follow these instructions, properly complete the form, or pay all required fees may result in your application or report being delayed or rejected.

In these instructions and in Form ADV, “you” means the investment adviser (i.e., the advisory firm).

If you are a “separately identifiable department or division” (SID) of a bank, “you” means the SID, rather than your bank, unless the instructions or the form provide otherwise.

If you are a private fund adviser filing an umbrella registration, “you” means the filing adviser and each relying adviser, unless the instructions or the form provide otherwise. The information in Items 1, 2, 3 and 10 (including corresponding schedules) should be provided for the filing adviser only.

Terms that appear in italics are defined in the Glossary of Terms to Form ADV.

1. Where can I get more information on Form ADV, electronic filing, and the IARD?


NASAA provides information about state investment adviser laws and state rules, and how to contact a state securities authority, on its website: <http://www.nasaa.org>.


2. What is Form ADV used for?

Investment advisers use Form ADV to:

- Register with the Securities and Exchange Commission
- Register with one or more state securities authorities
• Amend those registrations;
• Report to the SEC as an exempt reporting adviser
• Report to one or more state securities authorities as an exempt reporting adviser
• Amend those reports; and
• Submit a final report as an exempt reporting adviser

3. How is Form ADV organized?

Form ADV contains five parts:

• Part 1A asks a number of questions about you, your business practices, the persons who own and control you, and the persons who provide investment advice on your behalf.
  o All advisers registering with the SEC or any of the state securities authorities must complete Part 1A.
  o Exempt reporting advisers (that are not also registering with any state securities authority) must complete only the following Items of Part 1A: 1, 2, 3, 6, 7, 10, and 11, as well as corresponding schedules. Exempt reporting advisers that are registering with any state securities authority must complete all of Form ADV.

Part 1A also contains several supplemental schedules. The items of Part 1A let you know which schedules you must complete.
  o Schedule A asks for information about your direct owners and executive officers.
  o Schedule B asks for information about your indirect owners.
  o Schedule C is used by paper filers to update the information required by Schedules A and B (see Instruction 18).
  o Schedule D asks for additional information for certain items in Part 1A.
  o Schedule R asks for additional information about relying advisers.
  o Disclosure Reporting Pages (or DRPs) are schedules that ask for details about disciplinary events involving you or your advisory affiliates.

• Part 1B asks additional questions required by state securities authorities. Part 1B contains three additional DRPs. If you are applying for SEC registration or are registered only with the SEC, you do not have to complete Part 1B. (If you are filing electronically and you do not have to complete Part 1B, you will not see Part 1B).

• Part 2A requires advisers to create narrative brochures containing information about the advisory firm. The requirements in Part 2A apply to all investment advisers registered with or applying for registration with the SEC, but do not apply to exempt reporting advisers. Every application for registration must include a narrative brochure prepared in accordance with the requirements of Part 2A of Form ADV. See Advisers Act Rule 203-1.

• Part 2B requires advisers to create brochure supplements containing information about certain supervised persons. The requirements in Part 2B apply to all investment advisers
registered with or applying for registration with the SEC, but do not apply to exempt reporting advisers.

- Part 3 requires advisers to create relationship summary (Form CRS) containing information for retail investors. The 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.

4. When am I required to update my Form ADV?

- SEC- and State-Registered Advisers:
  - **Annual updating amendments:** You must amend your Form ADV each year by filing an annual updating amendment within 90 days after the end of your fiscal year. When you submit your annual updating amendment, you must update your responses to all items in Part 1A, 1B, 2A and 2B (as applicable), including corresponding sections of Schedules A, B, C, and D and all sections of Schedule R for each relying adviser. You must submit your summary of material changes required by Item 2 of Part 2A either in the brochure (cover page or the page immediately thereafter) or as an exhibit to your brochure. 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.

  - **Other-than-annual amendments:** In addition to your annual updating amendment,
    - If you are registered with the SEC or a state securities authority, you must amend Part 1A, 1B, 2A and 2B (as applicable) of your Form ADV, including corresponding sections of Schedules A, B, C, D, and R, by filing additional amendments (other-than-annual amendments) promptly, if:
      - you are adding or removing a relying adviser as part of your umbrella registration;
      - information you provided in response to Items 1 (except 1.O. and Section 1.F. of Schedule D), 3, 9 (except 9.A.(2), 9.B.(2), 9.E., and 9.F.), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B or Sections 1 or 3 of Schedule R becomes inaccurate in any way;
      - information you provided in response to Items 4, 8, or 10 of Part 1A, or Item 2.G. of Part 1B, or Section 10 of Schedule R becomes materially inaccurate; or
o information you provided in your *brochure* becomes *materially* inaccurate (see note below for exceptions).

**Notes:**

**Part 1:** If you are submitting an other-than-annual amendment, you are not required to update your responses to Items 2, 5, 6, 7, 9.A.(2), 9.B.(2), 9.E., 9.F., or 12 of Part 1A, Items 2.H. or 2.J. of Part 1B, Section 1.F. of Schedule D or Section 2 of Schedule R even if your responses to those items have become inaccurate.

**Part 2:** You must amend your *brochure supplements* (see Form ADV, Part 2B) promptly if any information in them becomes *materially* inaccurate. If you are submitting an other-than-annual amendment to your *brochure*, you are not required to update your summary of material changes as required by Item 2. You are not required to update your *brochure* between annual amendments solely because the amount of *client* assets you manage has changed or because your fee schedule has changed. However, if you are updating your *brochure* for a separate reason in between annual amendments, and the amount of *client* assets you manage listed in response to Item 4.E. or your fee schedule listed in response to Item 5.A. has become materially inaccurate, you should update that item(s) as part of the interim amendment.

- **If you are an SEC-registered adviser**, you are required to file your *brochure* amendments electronically through IARD. You are not required to file amendments to your *brochure supplements* with the SEC, but you must maintain a copy of them in your files.

- **If you are a state-registered adviser**, you are required to file your *brochure* amendments and *brochure supplement* amendments with the appropriate *state securities authorities* through IARD.

**Part 3:** 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*. You must include an exhibit highlighting the most recent changes required by Form ADV, Part 3 (Form CRS), General Instruction 8.C.

- **Exempt reporting advisers:**
  
  o **Annual Updating Amendments:** You must amend your Form ADV each year by filing an *annual updating amendment* within 90 days after the end of your fiscal year. When you submit your *annual updating amendment*, you must update your responses to all required items, including corresponding sections of Schedules A, B, C, and D.
o Other-than-Annual Amendments: In addition to your annual updating amendment, you must amend your Form ADV, including corresponding sections of Schedules A, B, C, and D, by filing additional amendments (other-than-annual amendments) promptly if:

- information you provided in response to Items 1 (except Item 1.O. and Section 1.F. of Schedule D), 3, or 11 becomes inaccurate in any way; or
- information you provided in response to Item 10 becomes materially inaccurate.

Failure to update your Form ADV, as required by this instruction, is a violation of SEC rules or similar state rules and could lead to your registration being revoked.

5. What is SEC umbrella registration and how can I satisfy the requirements of filing an umbrella registration?

An umbrella registration is a single registration by a filing adviser and one or more relying advisers who advise only private funds and certain separately managed account clients that are qualified clients and collectively conduct a single advisory business. Absent other facts suggesting that the filing adviser and relying adviser(s) conduct different businesses, umbrella registration is available under the following circumstances:

i. The filing adviser and each relying adviser advise only private funds and clients in separately managed accounts that are qualified clients and are otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds.

ii. The filing adviser has its principal office and place of business in the United States and, therefore, all of the substantive provisions of the Advisers Act and the rules thereunder apply to the filing adviser's and each relying adviser's dealings with each of its clients, regardless of whether any client of the filing adviser or relying adviser providing the advice is a United States person.

iii. Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser’s supervision and control and, therefore, each relying adviser, its employees and the persons acting on its behalf are “persons associated with” the filing adviser (as defined in section 202(a)(17) of the Advisers Act).

iv. The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the SEC.

v. The filing adviser and each relying adviser operate under a single code of ethics adopted in accordance with SEC rule 204A-1 and a single set of written policies and procedures.
adopted and implemented in accordance with SEC rule 206(4)-7 and administered by a single chief compliance officer in accordance with that rule.

To satisfy the requirements of Form ADV while using umbrella registration the filing adviser must sign, file, and update as required, a single Form ADV (Parts 1 and 2) that relates to, and includes all information concerning, the filing adviser and each relying adviser (e.g., disciplinary information and ownership information), and must include this same information in any other reports or filings it must make under the Advisers Act or the rules thereunder (e.g., Form PF). The filing adviser and each relying adviser must not be prohibited from registering with the SEC by section 203A of the Advisers Act (i.e., the filing adviser and each relying adviser must individually qualify for SEC registration).

Unless otherwise specified, references to “you” in Form ADV refer to both the filing adviser and each relying adviser. The information in Items 1, 2, 3 and 10 (including corresponding schedules) should be provided for the filing adviser only. A separate Schedule R should be completed for each relying adviser. References to “you” in Schedule R refer to the relying adviser only.

A filing adviser applying for registration with the SEC should complete a Schedule R for each relying adviser. If you are a filing adviser registered with the SEC and would like to add or delete relying advisers from an umbrella registration, you should file an other-than-annual amendment and add or delete Schedule Rs as needed.

Note: Umbrella registration is not available to exempt reporting advisers.

6. Where do I sign my Form ADV application or amendment?

You must sign the appropriate Execution Page. There are three Execution Pages at the end of the form. Your initial application, your initial report (in the case of an exempt reporting adviser), and all amendments to Form ADV must include at least one Execution Page.

- If you are applying for or are amending your SEC registration, or if you are reporting as an exempt reporting adviser or amending your report, you must sign and submit either a:
  - Domestic Investment Adviser Execution Page, if you (the advisory firm) are a resident of the United States; or
  - Non-Resident Investment Adviser Execution Page, if you (the advisory firm) are not a resident of the United States.

- If you are applying for or are amending your registration with a state securities authority, you must sign and submit the State-Registered Investment Adviser Execution Page.

7. Who must sign my Form ADV or amendment?

The individual who signs the form depends upon your form of organization:
• For a sole proprietorship, the sole proprietor.
• For a partnership, a general partner.
• For a corporation, an authorized principal officer.
• For a “separately identifiable department or division” (SID) of a bank, a principal officer of your bank who is directly engaged in the management, direction, or supervision of your investment advisory activities.
• For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized, and in the case of an electronic filing, should be a typed name.

8. **How do I file my Form ADV?**

Complete Form ADV electronically using the Investment Adviser Registration Depository (IARD) if:

• You are filing with the SEC (and submitting notice filings to any of the state securities authorities), or

• You are filing with a state securities authority that requires or permits advisers to submit Form ADV through the IARD.

**Note:** SEC rules require advisers that are registered or applying for registration with the SEC, or that are reporting to the SEC as an exempt reporting adviser, to file electronically through the IARD system. See SEC rules 203-1 and 204-4.

To file electronically, go to the IARD website (<www.iard.com>), which contains detailed instructions for advisers to follow when filing through the IARD.

Complete Form ADV (Paper Version) on paper if:

• You are filing with the SEC or a state securities authority that requires electronic filing, but you have been granted a continuing hardship exemption. Hardship exemptions are described in Instruction 17.

• You are filing with a state securities authority that permits (but does not require) electronic filing and you do not file electronically.

9. **How do I get started filing electronically?**

First, obtain a copy of the IARD Entitlement Package from the following website: <http://www.iard.com/GetStarted.asp>. Second, request access to the IARD system for your firm by completing and submitting the IARD Entitlement Package. The IARD Entitlement Package explains how the form may be submitted. Mail the forms to: FINRA Entitlement Group, 9509 Key West Avenue, Rockville, MD 20850.
When FINRA receives your Entitlement Package, they will assign a CRD number (identification number for your firm) and a user I.D. code and password (identification number and system password for the individual(s) who will submit Form ADV filings for your firm). Your firm may request an I.D. code and password for more than one individual. FINRA also will create a financial account for you from which the IARD will deduct filing fees and any state fees you are required to pay. If you already have a CRD account with FINRA, it will also serve as your IARD account; a separate account will not be established.

Once you receive your CRD number, user I.D. code and password, and you have funded your account, you are ready to file electronically.

Questions regarding the Entitlement Process should be addressed to FINRA at 240.386.4848.

10. If I am applying for registration with the SEC, or amending my SEC registration, how do I make notice filings with the state securities authorities?

If you are applying for registration with the SEC or are amending your SEC registration, one or more state securities authorities may require you to provide them with copies of your SEC filings. We call these filings “notice filings.” Your notice filings will be sent electronically to the states that you check on Item 2.C. of Part 1A. The state securities authorities to which you send notice filings may charge fees, which will be deducted from the account you establish with FINRA. To determine which state securities authorities require SEC-registered advisers to submit notice filings and to pay fees, consult the relevant state investment adviser law or state securities authority. See General Instruction 1.

If you are granted a continuing hardship exemption to file Form ADV on paper, FINRA will enter your filing into the IARD and your notice filings will be sent electronically to the state securities authorities that you check on Item 2.C. of Part 1A.

11. I am registered with a state. When must I switch to SEC registration?

If at the time of your annual updating amendment you meet at least one of the requirements for SEC registration in Item 2.A.(1) to (12) of Part 1A, you must apply for registration with the SEC within 90 days after you file the annual updating amendment. Once you register with the SEC, you are subject to SEC regulation, regardless of whether you remain registered with one or more states. See SEC rule 203A-1(b)(2). Each of your investment adviser representatives, however, may be subject to registration in those states in which the representative has a place of business. See Advisers Act section 203A(b)(1); SEC rule 203A-3(a). For additional information, consult the investment adviser laws or the state securities authority for the particular state in which you are “doing business.” See General Instruction 1.

12. I am registered with the SEC. When must I switch to registration with a state securities authority?
If you check box 13 in Item 2.A. of Part 1A to report on your annual updating amendment that you are no longer eligible to register with the SEC, you must withdraw from SEC registration within 180 days after the end of your fiscal year by filing Form ADV-W. See SEC rule 203A-1(b)(2). You should consult state law or the state securities authority for the states in which you are “doing business” to determine if you are required to register in these states. See General Instruction 1. Until you file your Form ADV-W with the SEC, you will remain subject to SEC regulation, and you also will be subject to regulation in any states where you register. See SEC rule 203A-1(b)(2).

13. **I am an exempt reporting adviser. When must I submit my first report on Form ADV?**

- **All exempt reporting advisers:**
  You must submit your initial Form ADV filing within 60 days of relying on the exemption from registration under either section 203(l) of the Advisers Act as an adviser solely to one or more venture capital funds or section 203(m) of the Advisers Act because you act solely as an adviser to private funds and have assets under management in the United States of less than $150 million.

- **Additional instruction for advisers switching from being registered to being exempt reporting advisers:**
  If you are currently registered as an investment adviser (or have an application for registration pending) with the SEC or with a state securities authority, you must file a Form ADV-W to withdraw from registration in the jurisdictions where you are switching. You must submit the Form ADV-W before submitting your first report as an exempt reporting adviser.

14. **I am an exempt reporting adviser. Is it possible that I might be required to also register with or submit a report to a state securities authority?**

Yes, you may be required to register with or submit a report to one or more state securities authorities. If you are required to register with one or more state securities authorities, you must complete all of Form ADV. See General Instruction 3. If you are required to submit a report to one or more state securities authorities, check the box(es) in Item 2.C. of Part 1A next to the state(s) you would like to receive the report. Each of your investment adviser representatives may also be subject to registration requirements. For additional information about the requirements that may apply to you, consult the investment adviser laws or the state securities authority for the particular state in which you are “doing business.” See General Instruction 1.

15. **What do I do if I no longer meet the definition of “exempt reporting adviser”?**

- **Advisers Switching to SEC Registration:**
  - You may no longer be an exempt reporting adviser and may be required to register with the SEC if you wish to continue doing business as an investment adviser. For
example, you may be relying on section 203(l) and wish to accept a client that is not a venture capital fund as defined in SEC rule 203(l)-1, or you may have been relying on SEC rule 203(m)-1 and reported in Section 2.B. of Schedule D to your annual updating amendment that you have private fund assets of $150 million or more.

- If you are relying on section 203(l), unless you qualify for another exemption, you would violate the Advisers Act’s registration requirement if you accept a client that is not a venture capital fund as defined in SEC rule 203(l)-1 before the SEC approves your application for registration. You must submit your final report as an exempt reporting adviser and apply for SEC registration in the same filing.

- If you were relying on SEC rule 203(m)-1 and you reported in Section 2.B. of Schedule D to your annual updating amendment that you have private fund assets of $150 million or more, you must register with the SEC unless you qualify for another exemption. If you have complied with all SEC reporting requirements applicable to an exempt reporting adviser as such, you have up to 90 days after filing your annual updating amendment to apply for SEC registration, and you may continue doing business as a private fund adviser during this time. You must submit your final report as an exempt reporting adviser and apply for SEC registration in the same filing. Unless you qualify for another exemption, you would violate the Advisers Act’s registration requirement if you accept a client that is not a private fund during this transition period before the SEC approves your application for registration, and you must comply with all SEC reporting requirements applicable to an exempt reporting adviser as such during this 90-day transition period. If you have not complied with all SEC reporting requirements applicable to an exempt reporting adviser as such, this 90-day transition period is not available to you. Therefore, if the transition period is not available to you, and you do not qualify for another exemption, your application for registration must be approved by the SEC before you meet or exceed SEC rule 203(m)-1’s $150 million asset threshold.

  o You will be deemed in compliance with the Form ADV filing and reporting requirements until the SEC approves or denies your application. If your application is approved, you will be able to continue business as a registered adviser.

  o If you register with the SEC, you may be subject to state notice filing requirements. To determine these requirements, consult the investment adviser laws or the state securities authority for the particular state in which you are “doing business.” See General Instruction 1.

Note: If you are relying on SEC rule 203(m)-1 and you accept a client that is not a private fund, you will lose the exemption provided by SEC rule 203(m)-1 immediately. To avoid this result, you should apply for SEC registration in advance so that the SEC has approved your registration before you accept a client that is not a private fund.
The 90-day transition period described above also applies to investment advisers with their principal offices and places of business outside of the United States with respect to their clients who are United States persons (e.g., the adviser would not be eligible for the 90-day transition period if it accepted a client that is a United States person and is not a private fund).

- **Advisers Not Switching to SEC Registration:**

  - You may no longer be an exempt reporting adviser but may not be required to register with the SEC or may be prohibited from doing so. For example, you may cease to do business as an investment adviser, become eligible for an exemption that does not require reporting, or be ineligible for SEC registration. In this case, you must submit a final report as an exempt reporting adviser to update only Item 1 of Part 1A of Form ADV.

  - You may be subject to state registration requirements. To determine these requirements, consult the investment adviser laws or the state securities authority for the particular state in which you are “doing business.” See General Instruction 1.

16. **Are there filing fees?**

Yes. These fees go to support and maintain the IARD. The IARD filing fees are in addition to any registration or other fee that may be required by state law. You must pay an IARD filing fee for your initial application, your initial report, and each annual updating amendment. There is no filing fee for an other-than-annual amendment, a final report as an exempt reporting adviser, or Form ADV-W. The IARD filing fee schedule is published at <http://www.sec.gov/iard>; <http://www.nasaa.org>; and <http://www.iard.com>.

If you are submitting a paper filing under a continuing hardship exemption (see Instruction 17), you are required to pay an additional fee. The amount of the additional fee depends on whether you are filing Form ADV or Form ADV-W. (There is no additional fee for filings made on Form ADV-W.) The hardship filing fee schedule is available by contacting FINRA at 240.386.4848.

17. **What if I am not able to file electronically?**

If you are required to file electronically but cannot do so, you may be eligible for one of two types of hardship exemptions from the electronic filing requirements.

- **A temporary hardship exemption** is available if you file electronically, but you encounter unexpected difficulties that prevent you from making a timely filing with the IARD, such as a computer malfunction or electrical outage. This exemption does not permit you to file on paper; instead it extends the deadline for an electronic filing for seven business days. See SEC rules 203-3(a) and 204-4(e).
• A **continuing hardship exemption** may be granted if you are a small business and you can demonstrate that filing electronically would impose an undue hardship. You are a small business, and may be eligible for a continuing hardship exemption, if you are required to answer Item 12 of Part 1A (because you have assets under management of less than $25 million) and you are able to respond “no” to each question in Item 12. See SEC rule 0-7.

If you have been granted a continuing hardship exemption, you must complete and submit the paper version of Form ADV to FINRA. FINRA will enter your responses into the IARD. As discussed in General Instruction 16, FINRA will charge you a fee to reimburse it for the expense of data entry.

18. **I am eligible to file on paper. How do I make a paper filing?**

When filing on paper, you must:

• Type all of your responses.
• Include your name (the same name you provide in response to Item 1.A. of Part 1A) and the date on every page.
• If you are amending your Form ADV:
  o complete page 1 and circle the number of any item for which you are changing your response.
  o include your SEC 801-number (if you have one), or your 802-number (if you have one), and your **CRD** number (if you have one) on every page.
  o complete the amended item in full and circle the number of the item for which you are changing your response.
  o to amend Schedule A or Schedule B, complete and submit Schedule C.

Where you submit your paper filing depends on why you are eligible to file on paper:

• If you are filing on paper because you have been granted a continuing hardship exemption, submit one manually signed Form ADV and one copy to: IARD Document Processing, FINRA, P.O. Box 9495, Gaithersburg, MD 20898-9495.

**If you complete Form ADV on paper and submit it to FINRA but you do not have a continuing hardship exemption, the submission will be returned to you.**

• If you are filing on paper because a state in which you are registered or in which you are applying for registration allows you to submit paper instead of electronic filings, submit one manually signed Form ADV and one copy to the appropriate **state securities authorities.**

19. **Who is required to file Form ADV-NR?**

Every **non-resident** general partner and **managing agent** of all SEC-registered advisers and **exempt reporting advisers**, whether or not the adviser is resident in the United States, must
file Form ADV-NR in connection with the adviser’s initial application or report. A general partner or managing agent of an SEC-registered adviser or exempt reporting adviser who becomes a non-resident after the adviser’s initial application or report has been submitted must file Form ADV-NR within 30 days. Form ADV-NR must be filed on paper (it cannot be filed electronically).

Submit Form ADV-NR to the SEC at the following address:

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549; Attn: OCIE Registrations Branch.

Failure to file Form ADV-NR promptly may delay SEC consideration of your initial application.

Federal Information Law and Requirements

Sections 203 and 204 of the Advisers Act [15 U.S.C. 80b-3 and 80b-4] authorize the SEC to collect the information required by Form ADV. The SEC collects the information for regulatory purposes, such as deciding whether to grant registration. Filing Form ADV is mandatory for advisers who are required to register with the SEC and for exempt reporting advisers. The SEC maintains the information submitted on this form and makes it publicly available. The SEC may return forms that do not include required information. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b-17.

SEC’s Collection of Information

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 number. The Advisers Act authorizes the SEC to collect the information on Form ADV from investment advisers. See 15 U.S.C. 80b-3 and 80b-4. Filing the form is mandatory.

The form enables the SEC to register investment advisers and to obtain information from and about exempt reporting advisers. Every applicant for registration with the SEC as an adviser, and every exempt reporting adviser, must file the form. See 17 CFR 275.203-1 and 204-4. By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly. The form is filed annually by every adviser, no later than 90 days after the end of its fiscal year, to amend its registration or its report. It is also filed during the year to reflect material changes. See 17 CFR 275.204-1. The SEC maintains the information on the form and makes it publicly available through the IARD.

Anyone may send the SEC comments on the accuracy of the burden estimate on page 1 of the form, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The SEC has published in the Federal Register the Privacy Act System of Records Notice for these records.
APPENDIX B

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

FORM CRS

Sections 3, 10, 15, 15(c)(6), 15(l), 17, 23, and 36 of the Securities Exchange Act of 1934 ("Exchange Act") and section 913(f) of Title IX of the Dodd-Frank Act authorize the Commission to require the collection of the information on Form CRS from brokers and dealers. See 15 U.S.C. 78c, 78j, 78o, 78o(c)(6), 78o(l), 78q, 78w and 78mm. Filing Form CRS is mandatory for every broker or dealer registered with the Commission pursuant to section 15 of the Exchange Act that offers services to a retail investor. See 17 CFR 240.17a-14. Intentional misstatements or omissions constitute federal criminal violations (see 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)). The Commission may use the information provided in Form CRS to manage its regulatory and examination programs. Form CRS is made publically available.

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 number. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the requirements of 44 U.S.C. 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The information may be disclosed as outlined above and in the routine uses listed in the applicable system of records notice, SEC-70, SEC’s Division of Trading and Markets Records, published in the Federal Register at 83 FR 6892 (February 15, 2018).

1 This cover page will be included for Form CRS (17 CFR 249.640) only.
General Instructions

Under rule 17a-14 under the Securities Exchange Act of 1934 and rule 204-5 under the Investment Advisers Act of 1940, broker-dealers registered under section 15 of the Exchange Act and investment advisers registered under section 203 of the Advisers Act are required to deliver to retail investors a relationship summary disclosing certain information about the firm. Read all the General Instructions as well as the particular item requirements before preparing or updating the relationship summary.

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. See also Advisers Act rule 204-5; Exchange Act rule 17a-14(a).

1. Format.
   A. The relationship summary must include the required items enumerated below. The items require you to provide specific information.
   B. You must respond to each item and must provide responses in the same order as the items appear in these instructions. You may not include disclosure in the relationship summary other than disclosure that is required or permitted by these Instructions and the applicable item.
   C. You must make a copy of the relationship summary available upon request without charge. In paper format, the relationship summary for broker-dealers and investment advisers must not exceed two pages. For dual registrants that include their brokerage services and investment advisory services in one relationship summary, it must not exceed four pages in paper format. Dual registrants and affiliates that prepare separate relationship summaries are limited to two pages for each relationship summary. See General Instruction 5. You must use reasonable paper size, font size, and margins. If delivered electronically, the relationship summary must not exceed the equivalent of two pages or four pages in paper format, as applicable.

2. Plain English; Fair Disclosure.
   A. The items of the relationship summary are designed to promote effective communication between you and retail investors. Write your relationship summary in plain English, taking into consideration retail investors’ level of

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2 The bracketed text will be included for Form ADV, Part 3 (17 CFR 279.1) only.
3 Terms that are italicized in these instructions are defined in General Instruction 11.
financial experience. You should include white space and implement other design features to make the relationship summary easy to read. The relationship summary should be concise and direct. Specifically: (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 you clearly explain them; and (v) avoid multiple negatives. You must write your response to each item as if you are speaking to the retail investor, using “you,” “us,” “our firm,” etc.


B. 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 and the applicable Item, in light of the circumstances under which they were made, not misleading. If a required disclosure or conversation starter is inapplicable to your business or specific wording required by these Instructions is inaccurate, you may omit or modify that disclosure or conversation starter.

C. Responses must be factual and provide balanced descriptions to help retail investors evaluate your services. For example, you may not include exaggerated or unsubstantiated claims, vague and imprecise “boilerplate” explanations, or disproportionate emphasis on possible investments or activities that are not offered to retail investors.

D. 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 self-regulatory organizations. Delivery of the relationship summary will not necessarily satisfy the additional requirements that you have under the federal securities laws and regulations or other laws or regulations.

3. **Electronic And Graphical Formats.**

A. You are encouraged to use charts, graphs, tables, and other graphics or text features in order 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. 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. 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.

B. 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. 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.

C. Explanatory or supplemental information included in the relationship summary pursuant to General Instructions 3.A. or 3.B.: (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. When using interactive graphics or tools, you may include instructions on their use and interpretation.


A. For the “conversation starters” required by Items 2, 3, 4, and 5 below, you must use text features to make the conversation starters more noticeable and prominent in relation to other discussion text, for example, by: using larger or different font, a text box around the heading or questions; bolded, italicized or underlined text; or lines to offset the questions from the other sections.

B. 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 these conversation starters must include a section or page on their website that answers each of the questions and must provide in the relationship summary a means of facilitating access to that section or page. If you provide automated investment advisory or brokerage services but also make a financial professional available to discuss your services with a retail investor, a financial professional must be available to discuss these conversation starters with the retail investor.

C. For references to additional information regarding services, fees, and conflicts of interest required by Items 2.C., 3.A.(iii), and 3.B.(iv) below, you must use text features to make this information more noticeable and prominent in relation to other discussion text, for example, by: using larger or different font, a text box around the heading or questions, bolded, italicized or underlined text, or lines to offset the information from the other sections. A relationship summary provided
electronically must include a hyperlink, QR code, or other means of facilitating access that leads directly to the relevant additional information.

5. **Dual Registrants, Affiliates, and Additional Services.**

   A. If you are a dual registrant, you are encouraged to prepare a single *relationship summary* discussing both your brokerage and investment advisory services. Alternatively, you may prepare two separate *relationship summaries* for brokerage services and investment advisory services. Whether you prepare a single *relationship summary* or two, you must present the brokerage and investment advisory information with equal prominence and in a manner that clearly distinguishes and facilitates comparison of the two types of services. If you prepare two separate *relationship summaries*, you must reference and provide a means of facilitating access to the other, and you must deliver to each *retail investor* both *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.

   B. If you are a broker-dealer or investment adviser and your *affiliate* also provides brokerage or investment advisory services to *retail investors*, you may prepare a single *relationship summary* discussing the services you and your *affiliate* provide. Alternatively, you may prepare separate *relationship summaries* for your services and your *affiliate’s services.*

      (i) Whether you prepare a single *relationship summary* or separate *relationship summaries*, you must design them in a manner that presents the brokerage and investment advisory information with equal prominence and clearly distinguishes and facilitates comparison of the two types of services.

      (ii) If you prepare separate *relationship summaries*:

          a. If a *dually licensed financial professional* provides brokerage and investment advisory services on behalf of you and your *affiliate*, you must deliver to each *retail investor* both your and your *affiliate’s 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. Each of the *relationship summaries* must reference and provide a means of facilitating access to the other.

          b. If General Instruction 5.B.(ii)(a) does not apply, you may choose whether or not to reference and provide a means of facilitating access to your *affiliate’s relationship summary* and whether or not to deliver your and your *affiliate’s relationship summaries* to each *retail investor* with equal prominence and at the same time.
C. You may acknowledge other financial services that you provide in addition to your services as a broker-dealer or investment adviser registered with the SEC, such as insurance, banking, or retirement services, or investment advice pursuant to state registration or licensing. You may include references and means of facilitating access to additional information about those services. Information not pertaining to brokerage or investment advisory services may not, because of the nature, quantity, or manner of presentation, obscure or impede understanding of the information that must be included. See also General Instruction 3.C.


A. You must maintain records in accordance with Advisers Act rule 204-2(a)(14)(i) and/or Exchange Act rule 17a-4(e)(10), as applicable.


A. Initial filing.

(i) If you are an investment adviser and are required to deliver a relationship summary to a retail investor, you must file Form ADV, Part 3 (Form CRS) electronically with the Investment Adviser Registration Depository (IARD). If you are a registered broker-dealer and are required to deliver a relationship summary to a retail investor, you must file Form CRS electronically through the Central Registration Depository (“Web CRD®”) operated by the Financial Industry Regulatory Authority, Inc. (FINRA). If you are a dual registrant and are required to deliver a relationship summary to one or more retail investor clients or customers of both your investment advisory and brokerage businesses, you must file using IARD and Web CRD®. You must file Form CRS using a text-searchable format with machine-readable headings.

(ii) 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.

B. Initial delivery.

(i) Investment Advisers: If you are an investment adviser, you must deliver a relationship summary to each retail investor before or at the time you enter into an investment advisory contract with the retail investor. You must deliver the relationship summary even if your agreement with the retail investor is oral. See Advisers Act rule 204-5(b)(1).

(ii) Broker-Dealers: 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
investor; or (iii) the opening of a brokerage account for the retail investor. See Exchange Act rule 17a-14(c)(1).

(iii) Dual Registrants: A dual registrant must deliver the relationship summary at the earlier of the timing requirements in General Instruction 7.B.(i) or (ii).

C. Transition provisions for initial filing and delivery after the effective date of the new Form CRS requirements.

(i) Filings for Investment Advisers

a. If you are already registered or have an application for registration pending with the SEC as an investment adviser before June 30, 2020 you must electronically file, in accordance with Instruction 7.A. above, your initial relationship summary beginning on May 1, 2020 and by no later than June 30, 2020 either as: (1) an other-than-annual amendment or (2) part of your initial application or annual updating amendment. See Advisers Act rules 203-1 and 204-1.

b. If you file an application for registration with the SEC as an investment adviser on or after June 30, 2020, the Commission will not accept any initial application that does not include a relationship summary. See Advisers Act rule 203-1.

(ii) Filings for Broker-Dealers

a. If you are already registered with the SEC as a broker-dealer before June 30, 2020, you must electronically file, in accordance with Instruction 7.A. above, your initial relationship summary beginning on May 1, 2020 and by no later than June 30, 2020. See Exchange Act rule 17a-14.

b. If you file an application for registration or have an application pending with the SEC as a broker-dealer on or after June 30, 2020, you must file your relationship summary by no later than the date that your registration becomes effective. See Exchange Act rule 17a-14.

(iii) Delivery to New and Prospective Clients and Customers: As of the date by which you are first required to electronically file your relationship summary with the SEC, you must begin to deliver your relationship summary to new and prospective clients and customers who are retail investors as required by Instruction 7.B. See Advisers Act rule 204-5 and Exchange Act rule 17a-14.

(iv) Delivery to Existing Clients and Customers: Within 30 days after the date by which you are first required to electronically file your relationship summary...
summary with the SEC, you must deliver your relationship summary to each of your existing clients and customers who are retail investors. See Advisers Act rule 204-5 and Exchange Act rule 17a-14.

8. **Updating the Relationship Summary and Filing Amendments.**

   A. You must update your relationship summary and file it in accordance with Instruction 7.A. above within 30 days whenever any information in the relationship summary becomes materially inaccurate. The filing must include an exhibit highlighting changes required by Instruction 8.C. below.

   B. You 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. 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.

   C. 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.

9. **Additional Delivery Requirements to Existing Clients and Customers.**

   A. You must deliver the most recent relationship summary to a retail investor who is an existing client or customer 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 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.

   B. You also must deliver the relationship summary to a retail investor within 30 days upon the retail investor’s request.

10. **Electronic Posting and Manner of Delivery.**

    A. You must post the current version of the relationship summary prominently on your public website, if you have one, in a location and format that is easily accessible for retail investors.
B. You may deliver the relationship summary electronically, including updates, consistent with SEC guidance regarding electronic delivery, in particular Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, which you can find at www.sec.gov/rules/concept/33-7288.txt. 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 consistent with SEC guidance, in particular Form CRS Relationship Summary; Amendments to Form ADV, which you can find at https://www.sec.gov/rules/final/2019/34-86032.pdf.

C. If the relationship summary is delivered electronically, it must be presented prominently in the electronic medium, for example, as a direct link or in the body of an email or message, and must be easily accessible for retail investors.

D. If the relationship summary is delivered in paper format as part of a package of documents, you must ensure that the relationship summary is the first among any documents that are delivered at that time.

11. Definitions.

For purposes of Form CRS and these Instructions, the following terms have the meanings ascribed to them below:

A. Affiliate: Any persons directly or indirectly controlling or controlled by you or under common control with you.

B. Dually licensed financial professional: A natural person who is both an associated person of a broker-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.

C. Dual registrant: 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. For example, if you are dually registered and offer investment advisory services to retail investors, but offer brokerage services only to institutional investors, you are not a dual registrant for purposes of Form CRS and these Instructions.

D. Relationship summary: A written disclosure statement prepared in accordance with these Instructions that you must provide to retail investors. See Advisers Act rule 204-5; Exchange Act rule 17a-14; Form CRS.

E. Retail investor: 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.
Item Instructions

Item 1. Introduction

Include the date prominently at the beginning of the relationship summary (e.g., in the header or footer of the first page or in a similar location for a relationship summary provided electronically). Briefly discuss the following information in an introduction:

A. State your name and whether you are registered with the Securities and Exchange Commission as a broker-dealer, investment adviser, or both. Also indicate that brokerage and investment advisory services and fees differ and that it is important for the retail investor to understand the differences. You may also include a reference to FINRA or Securities Investor Protection Corporation membership in a manner consistent with other rules or regulations (e.g., FINRA rule 2210).

B. 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.

Item 2. Relationships and Services

A. Use the heading: “What investment services and advice can you provide me?”

B. Description of Services: State that you offer brokerage services, investment advisory services, or both, to retail investors, and summarize the principal services, accounts, or investments you make available to retail investors, and any material limitations on such services. For broker-dealers, state the particular types of principal brokerage services you offer to retail investors, including buying and selling securities, and whether or not you offer recommendations to retail investors. For investment advisers, state the particular types of principal investment advisory services you offer to retail investors, including, for example, financial planning and wrap fee programs.

In your description you must address the following:

(i) Monitoring: Explain whether or not you monitor retail investors’ investments, including the frequency and any material limitations. If so, indicate whether or not the services described in response to this Item 2.B.(i) are offered as part of your standard services.

(ii) Investment Authority: For investment advisers that accept discretionary authority, describe those services and any material limitations on that authority. Any such summary must include the specific circumstances that would trigger this authority and any material limitations on that authority (e.g., length of time). For investment advisers that offer non-discretionary services and broker-dealers, explain that the retail investor makes the ultimate decision regarding the purchase or sale of investments.
Broker-dealers may, but are not required to state whether you accept limited discretionary authority.

Note: If you are a broker-dealer offering recommendations, you should consider the applicability of the Investment Advisers Act of 1940, consistent with SEC guidance.

(iii) **Limited Investment Offerings**: Explain whether or not you make available or offer advice only with respect to proprietary products, or a limited menu of products or types of investments, and if so, describe these limitations.

(iv) **Account Minimums and Other Requirements**: 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.

C. **Additional Information**: Include specific references to more detailed information about your 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 Items 4.A. and 5 of Part 2A Appendix 1) and Regulation Best Interest, as applicable. If you are a broker-dealer that does not provide recommendations subject to Regulation Best Interest, to the extent you prepare more detailed information about your services, you must include specific references to such information. You 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.

D. **Conversation Starters**: Include the following additional questions for a retail investor to ask a financial professional and start a conversation about relationships and services:

(i) If you are a broker-dealer and not a dual registrant, include: “Given my financial situation, should I choose a brokerage service? Why or why not?”

(ii) If you are an investment adviser and not a dual registrant, include: “Given my financial situation, should I choose an investment advisory service? Why or why not?”

(iii) If you are a dual registrant, 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?”

(iv) “How will you choose investments to recommend to me?”

(v) “What is your relevant experience, including your licenses, education and other qualifications? What do these qualifications mean?”
Item 3. Fees, Costs, Conflicts, and Standard of Conduct

A. Use the heading: “What fees will I pay?”

(i) Description of Principal Fees and Costs: Summarize the principal fees and costs that retail investors will incur for your brokerage or investment advisory services, including how frequently they are assessed and the conflicts of interest they create.

a. Broker-dealers must describe their transaction-based fees. With respect to addressing conflicts of interest, a broker-dealer could, for example, include a statement that a retail investor would be charged more 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.

b. Investment advisers must describe their ongoing asset-based fees, fixed fees, wrap fee program fees, or other direct fee arrangement. The principal fees for investment advisory services should align with the type of fee(s) that you report in response to Form ADV Part 1A, Item 5.E.

(1) Include information about each type of fee you report in Form ADV that is responsive to this Item 3.A. Investment advisers with wrap fee program fees are encouraged 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.

(2) With respect to addressing conflicts of interest, an investment adviser that charges an asset-based fee could, for example, include a statement that the more assets there are in a retail investor’s advisory account, the more a 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.

Note: If you receive compensation in connection with the purchase or sale of securities, you should carefully consider the applicability of the broker-dealer registration requirements of the Securities Exchange Act of 1934 and any applicable state securities statutes.

(ii) Description of Other Fees and Costs: Describe other fees and costs related to your brokerage or investment advisory services and investments in addition to the firm’s principal fees and costs disclosed in Item 3.A.(i) that the retail investor will pay directly or indirectly. List examples of the
categories of the most common fees and costs applicable to your retail investors (e.g., custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees).

(iii) **Additional Information:** 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.” 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. If you are a broker-dealer that does not provide recommendations subject to Regulation Best Interest, to the extent you prepare more detailed information about your fees and costs, you must include specific references to such information. You 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 fees and costs included in response to Item 3.A.(i) or (ii).

(iv) **Conversation Starter:** Include the following question for a retail investor to ask a financial professional and start a conversation about the impact of fees and costs on investments: “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?”

B. If you are a broker-dealer, use the heading: “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?” If you are an investment adviser, use the heading: “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?” If you are a dual registrant that prepares a single relationship summary, use the heading: “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?”

(i) **Standard of Conduct.**

a. If you are a broker-dealer that provides recommendations subject to Regulation Best Interest, 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.” If you are a broker-dealer that does not provide recommendations subject to Regulation Best Interest, 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.”

b. If you are an investment adviser, 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.”

c. If you are a dual registrant that prepares a single relationship summary and you provide recommendations subject to Regulation Best Interest as a broker-dealer, 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.” If you are a dual registrant that prepares a single relationship summary and you do not provide recommendations subject to Regulation Best Interest as a broker-dealer, 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.” If you are a dual registrant that prepares two separate relationship summaries, follow the instructions for broker-dealers and investment advisers in Items 3.B., 3.B.(i).a., and 3.B.(i).b.

(ii) Examples of Ways You Make Money and Conflicts of Interest: If applicable to you, summarize the following other ways in which you and your affiliates make money from brokerage or investment advisory
services and investments you provide to retail investors. If none of these conflicts applies to you, summarize at least one other material conflict of interest that affects retail investors. Explain the incentives created by each of these examples.

a. Proprietary Products: Investments that are issued, sponsored, or managed by you or your affiliates.

b. Third-Party Payments: Compensation you receive from third parties when you recommend or sell certain investments.

c. Revenue Sharing: Investments where the manager or sponsor of those investments or another third party (such as an intermediary) shares with you revenue it earns on those investments.

d. Principal Trading: Investments you buy from a retail investor, and/or investments you sell to a retail investor, for or from your own accounts, respectively.

(iii) Conversation Starter: Include the following question for a retail investor to ask a financial professional and start a conversation about conflicts of interest: “How might your conflicts of interest affect me, and how will you address them?”

(iv) Additional Information: You must include specific references to more detailed information about your 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. If you are a broker-dealer that does not provide recommendations subject to Regulation Best Interest, to the extent you prepare more detailed information about your conflicts, you must include specific references to such information. You 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.

C. Use the heading: “How do your financial professionals make money?”

(i) Description of How Financial Professionals Make Money: Summarize how your financial professionals are compensated, including cash and non-cash compensation, and the conflicts of interest those payments create.

(ii) Required Topics in the Description: Include, to the extent applicable, whether your 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.
Item 4. **Disciplinary History**

A. Use the heading: “Do you or your financial professionals have legal or disciplinary history?”

B. State “Yes” if you or any of your financial professionals currently disclose, or are required to disclose, the following information:

   (i) Disciplinary information in your Form ADV (Item 11 of Part 1A or Item 9 of Part 2A).

   (ii) Legal or disciplinary history in your Form BD (Items 11 A–K) (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312).

   (iii) Disclosures for any of your financial professionals in Items 14 A–M on Form U4 (Uniform Application for Securities Industry Registration or Transfer), or in Items 7A or 7C–F of Form U5 (Uniform Termination Notice for Securities Industry Registration), or on Form U6 (Uniform Disciplinary Action Reporting Form) (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312).

C. State “No” if neither you nor any of your financial professionals currently discloses, or is required to disclose, the information listed in Item 4.B.

D. Regardless of your response to Item 4.B, you must:

   (i) **Search Tool:** Direct the retail investor to visit Investor.gov/CRS for a free and simple search tool to research you and your financial professionals.

   (ii) **Conversation Starter:** Include the following questions for a retail investor to ask a financial professional and start a conversation about the financial professional’s disciplinary history: “As a financial professional, do you have any disciplinary history? For what type of conduct?”

Item 5. **Additional Information**

A. State where the retail investor can find additional information about your brokerage or investment advisory services and request a copy of the relationship summary. This information should be disclosed prominently at the end of the relationship summary.

B. Include a telephone number where retail investors can request up-to-date information and request a copy of the relationship summary.

C. **Conversation Starter:** Include the following questions for a retail investor to ask a financial professional and start a conversation about the contacts and complaints: “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?”
APPENDIX C

Feedback Forms Comment Summary

The Proposing Release, at Appendix F, provided investors seeking to comment on the relationship summary a form with standardized questions for providing their feedback. The Appendix F form could be completed electronically on our website. As of June 4, 2019, 93 individuals provided a relevant response or comment answering at least one question on this form (a “responsive” answer). About 50% (47) were completed electronically using the on-line version of the form on our website. Other commenters (46) submitted a downloaded and completed copy of the form to the comment file in a .pdf file or submitted a completed a copy of the form at one of our investor roundtables.

This Appendix reports the staff’s summary of the 93 comments provided using the Appendix F form with a responsive answer to one or more questions (the “Feedback Forms”). Some questions called for a “structured” response (e.g., Question 2 asks commenters to indicate whether specific sections of the relationship summary are: “very useful,” “useful,” “not useful” or “unsure”). For these questions, the Feedback Forms are summarized from the structured question options. Other questions requested a narrative response and, for these questions, the Feedback Forms are summarized from the sentiment of these narrative answers.

**Question 1: Overall do you find the Relationship Summary useful? If not, how would you change it? If so, what topics and how can they be improved?**

Question 1 requested a narrative answer. 70 (over 70%) of individuals who submitted the Feedback Forms indicated in narrative answers in Question 1 or to other questions that they found the relationship summary to be useful.

Among those who indicated that they found the document overall to be useful, many suggested ways to improve the document. For example, 41 noted that some topics are too technical or otherwise need improvement in response to Question 4 or in other comments, 48 suggested additional information in response to Question 5 or in other comments; and 27 indicated that the document should be shorter in response to Question 6 or in other comments. Also, many indicated that they did not find the relationship summary entirely easy to read and follow (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?).

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1 A few individuals used the on-line version of the Appendix F form to provide comments on other topics and did not provide any responses or comments relevant to any of the form’s questions. These non-responsive comment documents are not included in this summary.

2 Feedback forms completed on line and included in this summary are at listed at Endnote 1.

3 Feedback forms submitted to the comment file on a downloaded and completed copy of the Feedback form or at one of our investor roundtables that are included in this summary are listed at Endnote 2.
9 (about 10%) indicated that they did not find the relationship summary to be useful. The remaining responses to this question did not express a clear sentiment.

**Question Q2(a): How useful is the Type of Relationship and Service section of the Relationship Summary?**

<table>
<thead>
<tr>
<th>Very Useful</th>
<th>Useful</th>
<th>Not Useful</th>
<th>Unsure</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>41</td>
<td>5</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>(44%)</td>
<td>(44%)</td>
<td>(5%)</td>
<td>(4%)</td>
<td>(2%)</td>
</tr>
</tbody>
</table>

**Question Q2(b): How useful is the Our Obligations to You section of the Relationship Summary?**

<table>
<thead>
<tr>
<th>Very Useful</th>
<th>Useful</th>
<th>Not Useful</th>
<th>Unsure</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
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<td>36</td>
<td>42</td>
<td>7</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>(39%)</td>
<td>(45%)</td>
<td>(8%)</td>
<td>(4%)</td>
<td>(4%)</td>
</tr>
</tbody>
</table>

**Question Q2(c): How useful is the Fees and Costs section of the Relationship Summary?**

<table>
<thead>
<tr>
<th>Very Useful</th>
<th>Useful</th>
<th>Not Useful</th>
<th>Unsure</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>43</td>
<td>8</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>(35%)</td>
<td>(46%)</td>
<td>(9%)</td>
<td>(6%)</td>
<td>(3%)</td>
</tr>
</tbody>
</table>

**Question Q2(d): How useful is the Comparison to different account types section of the Relationship Summary?**

<table>
<thead>
<tr>
<th>Very Useful</th>
<th>Useful</th>
<th>Not Useful</th>
<th>Unsure</th>
<th>No Response</th>
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<tr>
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<td>6</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td>(31%)</td>
<td>(42%)</td>
<td>(6%)</td>
<td>(12%)</td>
<td>(9%)</td>
</tr>
</tbody>
</table>

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4 Percentages reported in tables summarized responses to Questions 2 and 3 are based on the total number of Feedback Forms.
**Question Q2(e): How useful is the Conflict of Interests section of the Relationship Summary?**

<table>
<thead>
<tr>
<th>Very Useful</th>
<th>Useful</th>
<th>Not Useful</th>
<th>Unsure</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>30</td>
<td>10</td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>(42%)</td>
<td>(32%)</td>
<td>(11%)</td>
<td>(11%)</td>
<td>(4%)</td>
</tr>
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</table>

**Question Q2(f): How useful is the Additional Information section of the Relationship Summary?**

<table>
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<tr>
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<th>Unsure</th>
<th>No Response</th>
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<td>8</td>
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<tr>
<td>(32%)</td>
<td>(38%)</td>
<td>(11%)</td>
<td>(11%)</td>
<td>(9%)</td>
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</table>

**Question Q2(g): How useful is the Key Questions to Ask section of the Relationship Summary?**

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<th>Unsure</th>
<th>No Response</th>
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<td>3</td>
<td>4</td>
</tr>
<tr>
<td>(55%)</td>
<td>(30%)</td>
<td>(8%)</td>
<td>(3%)</td>
<td>(4%)</td>
</tr>
</tbody>
</table>

**Question Q3(a): Do you find the format of the Relationship Summary easy to follow?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>Somewhat</th>
<th>No</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
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<td>24</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>(62%)</td>
<td>(26%)</td>
<td>(8%)</td>
<td>(4%)</td>
</tr>
</tbody>
</table>

**Question Q3(b): Is the information in the appropriate order?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>Somewhat</th>
<th>No</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>26</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>(61%)</td>
<td>(28%)</td>
<td>(8%)</td>
<td>(3%)</td>
</tr>
</tbody>
</table>

**Question Q3(c): Is the Relationship Summary easy to read?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>Somewhat</th>
<th>No</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>23</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>(59%)</td>
<td>(25%)</td>
<td>(11%)</td>
<td>(5%)</td>
</tr>
</tbody>
</table>
**Question Q3(d): Should the Relationship Summary include additional information about different account types?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>Somewhat</th>
<th>No</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>49</td>
<td>9</td>
<td>29</td>
<td>6</td>
</tr>
<tr>
<td>(%)</td>
<td>53</td>
<td>10</td>
<td>31</td>
<td>6</td>
</tr>
</tbody>
</table>

**Question Q3(e): Would you seek out additional information about a firm’s disciplinary history as suggested in the Relationship Summary?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>Somewhat</th>
<th>No</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>65</td>
<td>14</td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>(%)</td>
<td>70</td>
<td>15</td>
<td>11</td>
<td>4</td>
</tr>
</tbody>
</table>

**Question 4: Are there topics in the Relationship Summary that are too technical or that could be improved?**

Question 4 requested a narrative answer. Narrative answers offered by 25 (more than 25% of Feedback Forms) specifically stated that the relationship summary was not too technical.

On 27 Feedback Forms (about 30%), commenters did not respond to Question 4 or offered an answer that did not address this question. Among these 27, 13 appeared to fully agree that relationship summary format was easy to follow and the relationship summary was easy to read by checking “yes” in response to Question 3(a) (Do you find the format of the Relationship Summary easy to follow?) and Question 3(c) (Is the Relationship Summary easy to read?). Overall, 45 commenters (48%) on Feedback Forms fully agreed that the relation summary is easy to read and follow by checking “yes” in response to Question 3(a) (“Do you find the format of the Relationship Summary easy to follow?”) and Question 3(c) (“Is the Relationship Summary easy to read?”).

On 41 of the Feedback Forms (44% of 93 Feedback Forms), the narrative response to Question 4 or other comments on the Feedback Form indicated that the relationship summary was too technical or suggested one or more topics that could be improved. Across all Feedback Forms (including those with comments indicating that the relationship summary was not too technical):

- 20 Feedback Forms included comment indicating that the relationship summary language was generally too technical, wordy or confusing, or should be made simpler;
- 23 Feedback Forms included narrative comments indicating that information about fees and costs was too technical or needed to be more clear, including seven (7) that asked for definitions of terms such as transaction-based fee, asset-based fee or wrap fee;
- 23 Feedback Forms included narrative comments suggesting that information in sections covering relationships and services and the obligations of financial professionals needed clarification, including ten (10) Feedback Forms that asked for a definition or better explanation of the term “fiduciary”; and
• 14 Feedback Forms included narrative comments suggesting clarification or more information about conflicts of interest.

**Question 5: Is there additional information that we should require in the Relationship Summary, such as more specific information about the form or additional information about fees? Is that because you do not receive the information now, or because you would also like to see it presented in this summary document, or both? Is there any information that should be made more prominent?**

Question 5 requested a narrative answer. 48 of the Feedback Forms (more than 50%) included comments suggesting additional information that could be required in response to Question 5 or another question on the Feedback Form. Many (29) indicated that additional information about fees and costs would be helpful.

On 13 of the Feedback Forms (about 14%) narrative comments responding to Question 5 indicated that no additional information was needed. On the remainder of Feedback Forms (32, over 30% of Feedback Forms), there was no answer given or the answer given was not relevant to Question 5.

**Question 6: Is the Relationship Summary an appropriate length? If not, should it be longer or shorter?**

Question 6 requested a narrative answer. 37 narrative answers responding to Question 6 or another question (about 40% of 93 Feedback Forms) specifically indicated that the relationship summary’s length is appropriate. 27 of the Feedback Forms (about 30%) included comments suggesting that the relationship summary should be shorter. Two commenters suggested that the form should be longer. On the remainder of Feedback Forms (27, or almost 30%), there was no answer given or the answer given was not relevant to Question 6.

**Question 7: Do you find the ‘Key Questions to Ask’ useful? Would the questions improve the quality of your discussion with your financial professional? If not, why not?**

Question 7 requested a narrative answer. Responses on 77 (over 75%) of Feedback Forms indicated that the Key Questions were useful (“useful” and “very useful” answers to Question 2(g) are included, if there was no answer provided to Question 7).

11 Feedback Forms (about 12%) included specific comments agreeing that the Key Questions would encourage discussions with financial professionals. Another two (2) included a comment agreeing that, in general, the relationship summary could encourage dialogue between financial professionals and clients.

Several commenters (8) suggested moving the Key Questions to the beginning or closer to the beginning of the relationship summary, or including the Key Questions within individual sections, rather than placing the key questions at the end of the document.
Endnotes:

I. Introduction

II. Investment Advisers’ Fiduciary Duty

A. Application of Duty Determined by Scope of Relationship

B. Duty of Care

1. Duty To Provide Advice That Is in the Best Interest of the Client

2. Duty To Seek Best Execution

3. Duty To Provide Advice and Monitoring Over the Course of the Relationship

C. Duty of Loyalty

III. Economic Considerations

A. Background

B. Potential Economic Effects

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA–5248; File No. S7–07–18]

RIN 3235–AM36

Commission Interpretation Regarding Standard of Conduct for Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (the “SEC” or the “Commission”) is publishing an interpretation of the standard of conduct for investment advisers under the Investment Advisers Act of 1940 (the “Advisers Act”) or the “Act”).

DATES: Effective July 12, 2019.

FOR FURTHER INFORMATION CONTACT: Olawale Oriola, Senior Counsel; Matthew Cook, Senior Counsel; or Jennifer Songer, Branch Chief, at (202) 551–6797 or ICrules@sec.gov; Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is publishing an interpretation of the standard of conduct for investment advisers under the Advisers Act [15 U.S.C. 80b].

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A. Overview of Comments

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investment advisers and broker-dealers play an important role in our capital markets and our economy more broadly. Investment advisers and broker-dealers have different types of relationships with investors, offer different services, and have different compensation models. This variety is important because it presents investors with choices regarding the types of relationships they can have, the services they can receive, and how they can pay for those services.

On April 18, 2018, the Commission proposed rules and forms intended to enhance the required standard of conduct for broker-dealers and provide retail investors with clear and succinct information regarding the key aspects of their brokerage and advisory relationships. In connection with the publication of these proposals, the Commission published for comment a separate proposed interpretation regarding the standard of conduct for investment advisers under the Advisers Act (“Proposed Interpretation”). We stated in the Proposed Interpretation, and we continue to believe, that it is appropriate and beneficial to address in one release and reaffirm—and in some cases clarify—certain aspects of the fiduciary duty that an investment adviser owes to its clients under section 206 of the Advisers Act. After 206 of the Advisers Act.

Continued

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 of the United States Code, 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.