

7 August 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles (RIN 3235-AL27; File No. S7-08-18)

Dear Mr. Fields:

CFA Institute¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or the “Commission”) on its proposals referenced above. CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education and competencies for investment professionals, and on issues of fairness, transparency and accountability of global financial markets.

Executive Summary

We worry that as currently formatted, Form CRS is likely to increase, rather than lessen, investor confusion. The required language and nuanced descriptions of services and standards of conduct result in a document that continues to blur the distinctions between financial “sales people” and “fiduciary advisers”. Clarity on this must be the key objective of the CRS, less it becomes just another unread, unclear part of our financial service disclosure regime. Both investor advocates and the SEC want something that works in this very focused circumstance of retail investor literacy.

We recommend a much clearer definition for the broker-dealers’ proposed “best interest” standard. As is, it is a long, complicated, technical and highly “lingoed” explanation that we fear will be of marginal value in reducing investor confusion. Without a clearer presentation of how

¹ CFA Institute is a global, not-for-profit professional association of more than 160,000 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 153,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 150 member societies in 73 countries and territories.

the best interest standard differs from investment advisers' fiduciary duty standard, the CRS will fail to adequately educate the investor as to important distinctions in choosing a service provider.

What would be very useful in this regard is to continue retail investor outreach and testing on investors' reaction to the proposed document. This will greatly inform needed revisions and create a final version that addresses investor understanding. We also recommend engaging consumer communications experts to provide design and practical guidance on format, placement of information, wording and other aspects of the CRS aimed at increasing the readability of the CRS and the overall investor experience.

Finally, we want to encourage that any new relationship disclosure that is settled upon be part of a continuous process of reminding the investor regularly throughout the relationship. These needn't be long or complicated, but instead rather simple reminders to investors/customers, particularly retail investors, that their broker is the agent of the brokerage firm. Specifically, the disclosure should note that broker service providers legally represent the interests of that firm and not the customer. A simple and regular reminder of the relationship is our best hope for sustained investor understanding.

Discussion

I. Form CRS Relationship Summary

Proposed Form Customer Relationship Summary ("CRS") would require both broker-dealers and registered investment advisers ("firms") to provide specified information to retail investors at or prior to entering into a relationship with them (the "CRS Proposal"). In particular, in no more than four pages, firms would have to provide information (i) about the relationships and services they offer; (ii) their standards of conduct; (iii) fees and costs the investors will pay; (iv) certain conflicts of interest; (v) where to find additional information, including whether the firms and their financial professionals currently have legal or disciplinary events that are reportable; and (vi) questions for investors to ask the firms' financial professionals.

General Comments

We support efforts to help retail investors educate themselves on the differences between broker-dealers and investment advisers—in terms of services offered, fees they charge, conflicts of interest, and importantly, the standard of care under which each operates. CRS is a well-intended step in that direction. Investors remain confused about many of the services provided by broker-dealers and investment advisers, how they differ, and the standard of conduct that attaches to each provider. Action by the SEC to provide meaningful disclosure and suggest questions for investors to consider is a positive step forward. But even the best-intended disclosure has its limitations.

CRS in great part is about financial literacy and creating a more-informed investor. Yet CRS will likely exacerbate, rather than reduce, investor confusion. While the CRS disclosure may serve

primarily to limit broker-dealer liability, we do not believe it will achieve its intended purpose: to educate the retail investor. To do that, CRS must be clear, concise, and understandable for the average retail investor. We do not believe it accomplishes this, and it will require substantial revisions to achieve these goals.

In addition, given the complexity and lack of important definitions in Regulation Best Interest (“Reg. BI”), it is unlikely that any document—including the CRS—can adequately explain the proposed best interest standard to an uninformed public. Since release of this proposal, industry experts in focus groups have struggled to understand the meaning and applicability of Reg BI in various common scenarios. For example, issues relating to *episodic* duties, as well as what *material risks brokers should or must mitigate* require clarity.

In terms of disclosing a broker-dealer’s sales relationship with its firm, CRS fails to offer much improvement on the status quo by neither contributing to clear investor understanding nor acting as a check on caveat emptor. To alert investors to this sales role when describing broker-dealer services and standards of conduct, CRS must require clear and direct language that explains in plain terms a broker’s sales role and the effect that role has on its conflicts, compensation, and standard of conduct.

The timing and one-time approach of the CRS is likely to fail in meeting the SEC’s stated objectives in producing a more-informed client who is better able to choose the service provider most suited to the investor’s needs. Receiving the CRS at or just prior to meeting the provider is unlikely to provide information that changes the investor’s mind. Moreover, the proposed language is not dissimilar to what already appears in the account application/opening documents provided to clients.

Not only does information need to highlight pronounced differences between broker-dealers and investment advisers, it needs to be done so repeatedly. Simply stated, client relationship basics need to be “over-communicated” if clients are to be substantially more informed and alerted to the sales versus fiduciary nature of the relationship. To that end, a well-articulated CRS that is provided upfront in the relationship, in combination with a legend noting on each brokerage communication thereafter that the broker is seller’s agent, has a much stronger chance of achieving CRS objectives. We suggest the SEC test this approach in its investor outreach alongside the more complicated “one-and done” CRS proposal.

Moreover, we cannot fully evaluate CRS without knowing investors’ reactions to it and whether, as proposed, it actually provides investors the clarity they need to choose their service provider. While the SEC is conducting investor testing and outreach, the results are not publicly available to help inform public responses. We encourage the SEC to continue investor outreach and testing in order to incorporate their feedback into any final version of CRS.

We also encourage the SEC to engage professionals who are experts in creating communication/information vehicles for consumers. Their input will provide valuable design and practical guidance on whether there are ways to improve the format, placement of

information, wording and all other aspects that may increase the document’s effectiveness and improve the investor experience.

Specific Comments

Our concerns with proposed CRS fall into two main categories. First, and as noted above, use of a “best interest” standard to describe broker-dealers’ conduct is confusing and, we would argue, misleading. Without defining and comparing that standard to the fiduciary duty standard, the proposal will perpetuate and exacerbate that confusion. Second, the design of the CRS fails to invite readability. It is too wordy, lacks design elements that engage the reader, and, in many respects, is too nuanced for the average retail investor who is trying to understand the differences between broker-dealers and investment advisers.

Timing

As proposed, broker-dealers would have to deliver the CRS “before or at” the time retail investors first engage their services, and for investment advisers, “before or at” the time they enter into investment advisory agreements with retail investors. Dual registrants would deliver it at the earlier of (a) entering into the investment advisory agreement or (b) the retail investor engaging the firm’s services, instead of meeting a “before or at” requirement.

We understand that a primary objective of the CRS is to provide clarity early enough in the process so that the investor ultimately chooses the best advice provider to meet its needs. We believe that delivery of the CRS, as proposed, would occur too late, and that an investor’s decision to engage the services of either provider probably would have been made by the time the investor receives the CRS. The CRS Proposal itself notes that the proposed approach allows CRS information to be provided after an investor decides to meet with someone at a firm, and thus may have made a selection based on a person’s name or title.

We like that the CRS will provide questions that investors are encouraged to ask. Once again, however, allowing this to be provided at or after the initial meeting will be too late. By the time of a meeting, a client has preliminarily decided on a service provider and is unlikely to change based on answers to questions received during a meeting. Moreover, we believe it unlikely that a client first viewing questions in such a meeting will take the time to delve deep into those questions or otherwise use the meeting time to address them prior to taking the next step. For these questions to meet the intended purpose and for investors to have time to contemplate the potential effects of answers, investors must have access to them ahead of the initial meeting or engagement.

We strongly support the requirement that firms with public websites must post their CRSs on their sites in an easily accessible location and format. We recommend that investors be able to access the CRS on the firms’ websites without be required to provide the firm with detailed contact information. 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.

We encourage the SEC to go one step farther and *require* firms (including dual registrants) to provide the CRS *at the earlier of* when a customer contacts the firm or enters into an advisory agreement or engagement of services. While the proposed language allows this (“before or at the time”), a requirement would better accomplish the objective of getting critical information to investors to allow them to choose an appropriate provider. That way, investors who are expressing an interest in a service provider would have ample time to review the descriptions and related disclosures before entering into an agreement or engaging the firm.

Format

We appreciate the SEC’s intent to provide investors with a clear, readable and short document to help them understand the differences between broker-dealers and investment advisers. However, we believe Form CRS tries to say too much and in some respects is too nuanced for what it is attempting to accomplish. A more streamlined document will stand a better chance of being read and understood by retail investors. We believe a simpler document with hyperlinks can be effective in directing investors to sources of pertinent information to answer other questions they may have.

We also suggest that CRS offer examples, rather than just descriptions, as relevant illustrations will be more meaningful to investors. For example, hypotheticals of how a particular cost is calculated under both types of providers for similar transactions would help illustrate the pros and cons of choosing one over another.

We support the proposed approach of using one document to provide comparisons of the two service providers. If investors are to use the CRS in deciding on the appropriate provider for their needs, they need information on both. However, we suggest a change in the format to better allow easy comparison. As proposed, all information on the standalone entity that is providing the document is presented first, followed by information on the other. We question whether investors would even read past the description of the service provider with whom they are meeting to the section addressing a different provider type. We suggest a more integrated presentation of information on both providers grouped according to the same topics in the CRS to give readers the ability to better compare.

A number of questions in the Proposal seek comment on the use of graphics, white spaces, colors, visual, font size, ideal number of pages, etc. We agree with others that, as proposed, CRS is too wordy and technically written for the average investor to understand. While we could suggest certain design elements we find more pleasing from a personal point of view, we recognize the SEC is better situated to conduct wide range retail investor testing to learn what elements are most effective.

In addition, we suggest engaging the services of firms specializing in consumer communications that can provide current insights on how consumers best “learn” and digest materials to help

inform the best format.² We think these approaches are more likely to identify the most effective learning outcomes for investors.

Whatever design is finalized for CRS, it should accommodate electronic delivery to investors. We also believe a design with interactive components is needed in today's electronically savvy investor base.

Services Provided

Discussion in the CRS Proposal emphasizes that broker-dealers do not provide ongoing monitoring of client accounts, as a basis for distinguishing them from investment advisers. Yet, within the proposed CRS, broker-dealers are required to state if they offer help with developing investors' investment strategies (an example discusses investors' investment goals or designing with them a strategy to achieve their investment goals) and monitoring the performance of investors' accounts. The Proposal notes that while broker-dealers "do not undertake to provide investment strategy and performance monitoring services when they give recommendations, many offer these services to retail investors as part of their account agreement." It also notes that broker-dealers offering performance monitoring as part of their standard brokerage account services should indicate how frequently they monitor performance.

Given the similarities to what investment advisers offer, CRS disclosure of these additional services will likely confuse investors without language clarifying that they are outside of their usual broker-dealer duties and would typically require a separate contract. To that end, we suggest the broker-dealer statement be revised along the lines of, "While not part of our usual services, you may separately contract for...[services], which will require a separate and often higher fee." Alternatively, we suggest additional language in brackets to the proposed CRS language that states: "Unless we [contractually] agree otherwise, we are not required to monitor your portfolio [, investment strategy,] or [and] investments on an ongoing basis." Either revision should help investors distinguish between the services typically offered by each type of provider.

The CRS would require broker-dealers that "significantly limit" the types of investments they offer to state that they "offer a limited selection of investments," and that "other firms could offer a wider range of choices, some of which might have lower costs." We do not believe this is sufficient. We agree with the SEC's reasoning that offering only proprietary products "preclude[s] investor access to competing products that could offer lower fees or result in better performance over time." We also agree that retail investors should understand these limitations before entering into a relationship with a firm.

But simply stating they offer "limited" investments is not enough, as that will mean different things to different investors. Investors who are informed that a broker-dealer offers only investment products allowed by/associated with its firm will have a more accurate picture of potential conflicts/costs and thus be encouraged to ask meaningful questions. Therefore, we

² The Investor Advisory Committee meeting in Atlanta on 14 June 2018 included a presentation from Susan Kleimann, founder and president of Kleimann Communication Group. Ms. Kleimann provided relevant communications principles to achieve this goal.

suggest requiring broker-dealers offering only proprietary products to clearly state that they only offer investments that their firms or affiliates issue, sponsor or manage. This type of disclosure should also expressly note that costs may be higher than comparable products offered by other firms, and that performance may be lower. We believe disclosure of this type is in keeping with a best interest standard.

Similarly, we suggest that investment advisers be required to state that they offer advice on a regular and ongoing basis to distinguish them from the services regularly offered by broker-dealers. We also suggest that advisers be required to only discuss what they offer, in terms of discretionary or nondiscretionary accounts. Requiring a discussion of both types of accounts when they only offer one would be confusing to customers.

Standard of Conduct—Broker-Dealer

We do not believe that average retail investors will understand the actual standards of conduct applicable to their service provider based on the proposed language. For example, without more context, the average investor will not readily detect the differences between a broker-dealer's obligation to act in the client's best interest and an adviser's being "held to a fiduciary standard" (ie, the terms "best interests" and "fiduciary duty" are too nuanced and potentially too synonymous for an average retail investor to understand).³

We therefore strongly encourage revisions to CRS to clarify the different obligations owed to clients by each type of provider. For example, a statement of an obligation to act in a client's best interest should be immediately followed by a statement that this obligation is not the same as a fiduciary duty and should note key differences. Language should also be added to clarify that the best interest obligation applies only at the time of the recommendation and is not ongoing. This is an important difference in the obligations of broker-dealers and advisers that may not be understood by investors.

And requiring broker-dealers to state that they must "act in your best interest" and "treat you fairly and comply with a number of obligations" does not convey the many conflicts the proposed rules will still permit broker-dealers to retain when servicing their clients. Instead, broker-dealers should have to state expressly that they "are not acting as a fiduciary" and that their registered representatives serve as sales agents for their firms.

As we discuss in our comment letter on Reg. BI, we believe the proposed standard is not one of "best interest," but instead one of "enhanced suitability" requirements. Retail investors first entering into a relationship with a broker-dealer and reviewing the CRS for the first time are unlikely to understand any real differences between a best interest standard and a fiduciary standard. But from an investor protection standpoint, important differences exist.

We thus suggest a more balanced approach when determining the language that providers must use, keeping in mind what it may convey to an average retail investor trying to discern its

³ Note Section 913 of the SEC staff report and Rand study (noting that investors did not understand the difference between suitability and fiduciary standards).

significance. While FINRA rules may indeed require broker-dealers to treat customers fairly, fair treatment is arguably a similarly important component of a fiduciary duty. While a broker-dealer's CRS disclosure provides that it must "treat you fairly," an adviser's disclosure is silent on this matter. Investors may read this to imply that fair treatment is *not* part of the adviser's obligation. We think investor testing and input from communication specialists will be particularly helpful in deciding on language that accurately conveys substance without inflections that may inadvertently mislead.

We support the proposed language that requires broker-dealers to state, "Our interests can conflict with your interests." We suggest adding "including financial interests" to the end of this statement for clarity and completeness. In addition, we suggest revising the statement that follows to read, "when we provide recommendations, we must disclose these conflicts or eliminate them and, in some cases, reduce them" to better mirror the actual standard required by Reg. BI.

Standard of Conduct—Investment Adviser

The CRS language for the investment adviser standard of conduct should similarly be revised to reflect that the fiduciary standard expressly applies to the range of services being provided (monitoring of portfolio, investment strategy and investments) on an ongoing basis. Investors need to know the time period and services covered under the applicable standard of conduct for each provider. To that end, we believe that language needs to be added to the CRS to clarify that the fiduciary duty standard applies to *all* advice, not just to investments. This needs to be presented in close context to language used the broker-dealer noting that its best interest standard applies only to recommendations.

Thus, we suggest a revision to the proposed language that states: "Advisers are held to a fiduciary standard that covers the entire investment advisory relationship. For example, advisers/we are required to monitor your portfolio, investment strategy and investments on an ongoing basis." Instead, we recommend that the second sentence reads: "This standard applies throughout the entire time that advisers monitor your portfolio, investment strategy and investments on an ongoing basis." We believe this is a more appropriate presentation of the relevant standard of care, particularly given that the third sentence preceding this notes that advisers "regularly monitor your account."

Perhaps most important is the need to add language to the CRS that accurately reflects the adviser's duty, as noted in the SEC's "Interpretation Regarding Standard of Conduct for Investment Advisers," which was released concurrently with the CRS Proposal. That Interpretation unequivocally states that an investment adviser's duty of loyalty requires it "to put its client's interests first." If investors truly are to distinguish advisers' standard of care from that of broker-dealers, the CRS must make the distinction clear.

Fees and Costs

We support required language at the beginning of this section encouraging readers to “ask your financial professional to give you personalized information on fees and costs that you will pay.” This direct expression should prompt inquiry by the investor.

We encourage the SEC also to require actual examples of costs illustrative of what investors may pay. While certain of the proposed descriptions may be helpful, examples that investors can use to apply to their situations will be a more useful disclosure tool.

While this section describes different fee arrangements for Firms, it nowhere mentions the higher costs that may result from certain practices. The Proposal notes that “each firm would include the incentives it and its financial professionals have to put their own interests ahead of their retail investors’ interest based on the account fee structures...” But if the provider does offer only proprietary products, engages in sales contests or sales quotas, or otherwise derives higher fees from practices that cost investors more, that also should be referenced here.

While some of these conflicts are addressed in the heading that follows—Conflicts of Interest—we suggest at least a mention or cross-references to other sections (e.g., “for practices/arrangements that may result in higher costs to you, see the discussion under ‘Conflicts of Interest’”). Investors skimming a CRS will most likely focus on the fees and costs discussion and should be alerted to the fact that in addition to different fee *arrangements and structures*, different *practices and conflicts* may also result in higher costs.

We note the different treatment afforded the broker-dealer disclosure depending on whether the CRS is that of a dual registrant or a standalone broker. While the dual registrant CRS states that an investor will pay a fee every time the investor buys or sells an investment, this is excluded from a standalone broker’s CRS. We believe it is valuable for investors to understand that each transaction in a brokerage account has a cost, particularly given how broker-dealer “advice” is episodic. We therefore suggest that the proposed, “the fee you pay is based on the specific transaction and not the value of your account” be revised along the lines of, “the fee you pay, referred to as a commission, is charged every time you buy or sell an investment, rather than on the overall value of your account.”

As proposed, advisers would have to state: “The more assets you have in the advisory account, including cash, the more you will pay us. We therefore have an incentive to increase the assets in your account in order to increase our fees.” While an asset-based fee increases as assets grow, we suggest that cultivating increased assets in a client’s account also may reflect growth resulting from investment gains. We suggest a revision that notes the effect on costs in a more even-handed manner.

Conflicts of Interest

We agree that disclosing all potential conflicts of interests that broker-dealers and investment advisers face would be too cumbersome for the CRS. Nevertheless, we support the required disclosures in the CRS relating to financial incentives associated with proprietary products,

products offered by third parties, revenue-sharing arrangements, and principal trading as examples useful for alerting investors to the types of conflicts of interest that may exist with their service providers. These highlight some of the more common conflicts that are of interest to investors and that should spur them to question their providers about whether others exist.

While understanding the impracticality of discussing all conflicts of interest in the CRS, we do encourage the SEC to require providers to emphasize the importance of understanding conflicts of interest, particularly with respect to financial incentives, and encourage investors to ask their providers about all of their conflicts. We also recommend that broker-dealers and investment advisers be required to provide hyperlinks to discussions of additional conflicts beyond those discussed in the CRS in the account opening documents and Form ADV Part 2, respectively.

We also recommend that conflicts be disclosed in the same order in the CRS. If a provider does not have a particular conflict, it should state so. We believe this approach will allow for comparability and less confusion than allowing each provider to choose an order and simply omit disclosure of inapplicable conflicts. In terms of format, we again suggest that the SEC survey investors on preferred approaches, as well as consult with professionals trained in consumer communications for additional innovative techniques shown to be most effective in engaging the consumer.

Additional Information

We support requiring firms to encourage investors to seek additional information on the firms' legal and disciplinary events, and then link to sources containing that information. Not only would requiring a full discussion of the nature of those events be cumbersome in a document that strives for brevity, but it would also be confusing, given the different requirements for broker-dealers and advisers governing the complaints and events they must report. Instead, the proposed approach alerts investors when the firm has reportable legal or disciplinary events and allows interested investors to easily research the details. 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. We also support providing information in the CRS as to how investors can make complaints and report problems.

Key Questions

We also support providing investors with relevant questions to help them become more informed consumers when selecting service providers. But we are concerned about the placement of the suggested list of questions. We question whether most clients who are first receiving this document while meeting with the service provider will be able read it to the end and then to take the time to ask the embedded questions. Rather than grouping all questions at the end, interspersing applicable questions in relevant sections of CRS may be more effective in prompting client engagement.

We also are concerned about the proposed flexibility that allows providers to tailor these questions to their businesses. While we understand the reasoning that certain questions or

portions of questions may be irrelevant for a particular business, we also think this selective approach would allow providers to omit information that may raise uncomfortable issues for them. To remedy this concern, we suggest the SEC require a “core” set of questions with general applicability to be presented, and allow providers to supplement them, as necessary.

Finally, we question the requirement that providers not exceed 14 questions in total. While the given reason is for brevity’s sake, this number seems arbitrary, particularly given the potential for substantial design and format changes to the CRS. Perhaps more importantly, we believe it unlikely that most clients in their first meetings with their providers will thoroughly consider, much less ask, 14 questions. A smaller, streamlined group of the most pivotal issues might stand better chances of being addressed.

II. Restrictions on the Use of Certain Names or Titles

The proposal on the use of certain names and titles restricts any broker-dealer, and any natural person who is an associated person of such broker or dealer, when communicating with a retail investor, from using the words “adviser” or “advisor” as part of its name or title unless it is registered as an investment adviser or is a supervised person of an investment adviser and provides advice on behalf of that person (the “Title Proposal”). In communications to retail investors, both broker-dealers and investment advisers would be required to disclose their firms’ registration status and associated financial professionals to disclose their association with their firms.

General Comments

We believe investors typically associate the titles “adviser” and “advisor” with registered investment advisers. We therefore agree that “it is important for retail investors to better understand the distinction between investment advisers and broker-dealers and to have access to the information necessary to make an informed choice and avoid potential harm.” We believe the prevalent and ongoing misuse of titles has perpetuated mis-selling and increased investor confusion by reinforcing a belief that there is little difference in standards.

Investor confusion about the roles and duties of different financial services providers who use “adviser/advisor” in their titles has become problematic from both an investor protection and trust standpoint. Use of the proposed CRS, alone, will not allay the substantial investor confusion in the marketplace about the differences between broker-dealers and investment advisers. Thus, we think this express restriction on the use of titles is critical.

At the same time, we find the proposed restrictions that pertain to dual registrants/dual-hatted professionals confusing and unlikely to be understood by investors. A simple and straightforward approach would be to require broker-dealers to call themselves “brokers” or “broker-dealers” in marketing materials and communications with clients. Likewise, their registered representatives should have to refer to themselves as “brokers” or “salespersons.”

This, in combination with the improved CRS disclosures, would create a clearer statement about the service provider and reduce investor confusion.

Specific Comments

Standalone Broker-Dealers

We strongly support efforts to restrict standalone broker-dealers from using the “adviser/advisor” titles in advertising and communications to investors unless they are registered investment advisers (or providing advice under the supervision of a registered adviser). This is an important step in an environment where certain activities of broker-dealers and advisers have been allowed to blur.

We do have concerns, however, that the proposal does not go far enough in restricting the use of titles in situations that may still lead to considerable investor confusion. In particular, we note that under the proposal, broker-dealers could still use the titles when acting on behalf of a bank or insurance company, or when acting on behalf of a municipal advisor or a commodity trading advisor. We believe the potential for retail investor confusion upon receiving services from its local bank that are labeled as “advisory,” or as being provided by an “adviser” is great and needs to be addressed. Unless this presents a jurisdictional issue, we do not understand the exceptions afforded to broker-dealers acting on behalf of banks and urge the SEC to extend the restriction on the use of “adviser” and “advisor” to this area.

Dually Registered Firms and Dually Hatted Financial Professionals

While the argument could be made that restrictions on titles is fairly straightforward in the context of standalone broker-dealers, its application to dual registrants is complicated and confusing. We find these proposed restrictions convoluted and unlikely to be understood by investors. In fact, we believe it will add to investor confusion and we therefore urge reconsideration of the approach.

(a) Firms. As we understand it, restrictions on the use of titles would not apply to dually registered firms. Even if a dual registrant only offers brokerage services, it can still refer to itself as adviser/or. This reflects the SEC’s belief that the determination on the use of titles should not be based on the capacity in which the firm is acting in a particular circumstance. But we question whether an unsophisticated investor receiving brokerage services from someone using the adviser/or title will understand the lower standard of care to which his provider adheres with respect to his account. In cases like this, ensuring investor understanding may be more important than simplifying the official registration status of the firm.

(b) Dual-hatted individuals. We understand the SEC does not want to have title restrictions pivot on the capacity of a service provider in a particular circumstance. For example, a dually registered firm that offers only brokerage services can use the adviser/or in its name or title. Similarly, a dual-hatted professional of a dual registrant can use adviser/or in his/her name

or title when offering brokerage-only services to particular clients. If the objective is to reduce investor confusion, we believe a different approach is needed.

We find it noteworthy that the Title Proposal expresses concern that investors will be harmed if broker-dealers exit the business or change their business models because they have had to stop using adviser/or as their titles. The Proposal also mentions that the market for investment advice is competitive and that broker-dealers often choose such names or titles (adviser/or) to be effective in marketing their services to investors. This line of reasoning affirms the view that broker-dealers purposefully use the adviser/or title to create an association with investment advisers in investors' minds. Accordingly, the SEC appears to recognize that broker-dealers are intentionally holding themselves out as advisers to capitalize on the perception of higher standards offered by registered investment advisers.

In defending its decision to restrict titles (instead of alternative approaches), the Title Proposal notes that “Broker-dealers and their natural associated persons can face liability for intentionally, recklessly, or negligently misleading investors about the nature of the services they are providing through, among other things, materially misleading advertisements or other communications that include statements or omissions, or deceptive practices or courses of business,” citing Rule 10b-5 under the Securities Exchange Act of 1934. We find this rationale challenging. We question how often cases are brought under Rule 10b-5 for broker-dealers calling themselves advisers or holding themselves out as advisers. Furthermore, if investors remain confused as to the applicable standards of their service providers, they will find it difficult to challenge mis-selling.

Holding Out

We believe it is commonplace for broker-dealers with commission-based models to rely on the “solely incidental” exclusion of section 202(a)(11)(C) of the Investment Company Act of 1940 to *imply*, as well as provide, investment advice that far exceeds both the spirit and reasonable reading of that exclusion. Investor expectations of their service providers are connected to how those providers hold themselves out. And those prohibited from using the adviser/advisor titles may well use other titles that similarly convey the providing of investment advice.

To remediate that potential confusion, we urge the SEC to extend its restriction on the use of “adviser” or “advisor” to those who hold themselves out as advisers through their marketing of any activities associated with investment securities or securities markets. A “holding out” prohibition in addition to the proposed title prohibition thus would better capture those who may not expressly refer to themselves as “adviser/or” but through their actions convey that meaning to investors.

We therefore support another alternative considered by the SEC based on a “holding out” determination. In that approach, broker-dealers could not rely on the solely incidental exclusion when holding themselves out in a way that represented or implied that they were offering investment advice “subject to a fiduciary relationship with an investment adviser.” We agree that this approach would be effective in curtailing the use of titles other than adviser/or and provide

added protections for retail investors for those marketing themselves in ways that imply adherence to a fiduciary standard when that is not the case.

Registration Status

Under the proposal, broker-dealers and investment advisers would be required to prominently disclose their registration status in print or electronic communications with retail investors. Associated and supervised persons of broker-dealers and investment advisers, respectively, would also have to disclose their status, as would dual-hatted professionals.

We support this approach to help distinguish between the legal/statutory entity and the title the entity may be using. The convergence and overlap of services offered by both advisers and broker-dealers have blurred distinctions between the two in the minds of investors. Requiring them to call themselves what they legally are will enable investors to better understand the distinction.

We encourage the SEC to not only allow this disclosure on the front of business cards, but to require it. We also encourage further guidance on what constitutes a “communication” for these purposes.

Conclusion

We strongly support providing investors with clear and consistent information that educates them on their service providers. Without significant revisions, however, we believe that CRS fails to clearly distinguish the differences between broker-dealers and investment advisers ways that allow meaningful understanding by retail investors. Should you have any questions about our positions, please do not hesitate to contact James Allen, CFA [REDACTED], [REDACTED] or Linda Rittenhouse at [REDACTED], [REDACTED].

Sincerely,

/s/ Kurt N. Schacht

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