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Guiding You on Your Compliance Journey

DATE: August 7, 2018

TO: Securities Exchange Commission

FROM: Trailhead Consulting, LLC

RE: Proposed Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles

Our firm works primarily with state-registered investment advisers but has one SEC registered client and several very close to meeting the requirements for SEC registration. The principal offices of most advisers we work with are in Montana. As investment advisers registered with the state of Montana they are subject to Montana Code Annotated Title 30. Trade and Commerce. Chapter 10. Securities Regulation which includes the following:

ARM §6.10.501 REGISTRATION AND EXAMINATION – SECURITIES SALESPERSON, INVESTMENT ADVISER REPRESENTATIVES, BROKER-DEALERS, AND INVESTMENT ADVISERS

(2) Each application for registration in this state must be made on the most current revised uniform application form as adopted by the North American Securities Administrators Association (NASAA), unless the commissioner, by order, designates another form. Broker-dealers shall use FINRA Form BD, investment advisers shall use FINRA Form ADV, and securities salespersons and investment adviser representatives shall use FINRA Form U-4.

The State of Montana's Commissioner of Securities and Insurance has not codified specific brochure delivery rules as the SEC and other states have, but in correspondence addressed to State Registered Investment Advisers dated October 8, 2010, from the Commissioner of Securities and Insurance indicated the following "The Department strongly encourages all investment advisers to follow the distribution and delivery schedule of the new Brochure and Brochure supplement as provided in the instructions to the new Part 2 of Form ADV."

Therefore, we recommend all investment advisers we work with to adhere to the SEC's brochure delivery requirements.

It is our opinion state securities commissioners may either adopt similar rules requiring the preparation and delivery of this Form ADV Part 3/CRS or issue communication to state registered investment advisers to follow the preparation, distribution, and delivery schedule as provided in the instructions to the new Part 3 of Form ADV. Therefore, when the SEC proposes new forms, it does affect state registered investment advisers so we compiled comments to some of the questions asked in this Proposal.

I. BACKGROUND

II. FORM CRS RELATIONSHIP SUMMARY

A. General Presentation and Format

- Should firms only be required to deliver the relationship summary to retail investors? Or should they be required to deliver one to other types of investors, too, such as individuals representing sole proprietors or other small businesses, or institutional investors that are not natural persons, including workplace retirement plans and funds? Would such investors have the need for the information in the relationship summary to facilitate a choice among different firms, financial professionals, and account types? Or would these investors rely directly on the more detailed disclosures in the Form ADV Part 2 brochure or pursuant to Regulation Best Interest?

  THC COMMENTS: The form should be delivered to individuals representing sole proprietors and small businesses and should also be delivered to individuals/committees representing employer-sponsored plans. Every investor other than maybe those representing large institutions (banks, broker-dealers, etc.) need to be made aware of the different types of financial and investment advice offered in the market place and the compensation differences.

  Many small employer-sponsored plans choose to use a broker-dealer and their salespersons as the "fiduciary" providing investment advisory services, however, they usually just offer a limited number of mutual funds and are paid commission on the mutual fund share purchases made with plan participant contributions. Often the commission isn't even stated on the confirmations or statements because it is reflected in the NAV price paid for the shares. We are certain many plan sponsors and their participants are unaware as to how the financial professional working with their plan is paid.

- Should retail investors be defined for purposes of Form CRS to include all natural persons, as proposed? Should we instead exclude certain categories of natural persons based on their net worth or income level, such as accredited investors, qualified clients, or qualified purchasers? If we did exclude certain categories of natural persons based on their net worth, what threshold should we use for measuring net worth? Should we exclude certain categories of natural persons for other reasons?

  THC COMMENTS: Do not exclude natural persons based on their net worth or income level. It is our experience even the wealthy, high-income earners, and business owners do not understand the different types of financial and investment advice offered in the market place and the compensation differences.

- Should we conform the definition of retail investor to the definition of retail customer as proposed in Regulation Best Interest, which would include non-natural persons who use the recommendation primarily for personal, family, or household purposes? Should the definition of retail investor include trusts or similar entities that represent natural persons, as proposed? Are there other persons or entities that should be covered? Should we expand the definition to cover plan participants in workplace retirement plans who receive services from a broker-dealer or investment adviser for their individual accounts within a plan?

  THC COMMENTS: Yes, trustees and plan participants should receive this form and be included in the definition of retail investor.

- Will the length and presentation proposed for the relationship summary be effective for retail investors? Are there other approaches we should consider? What are the benefits and drawbacks of shorter or longer disclosure for retail investors relative to the proposed approach?

  THC COMMENTS: Yes, we attempted to try to get necessary information on less than 3 pages and it seems it just can't be done (please see Suggested Form CRS attached). Anything longer will probably be ignored by the investor. Shorter forms keep the investor's attention.

- Should we permit the relationship summary, or any part of it, to substitute for other disclosure obligations that broker-dealers or investment advisers have, if the disclosure obligations overlap? If so, for what disclosures could the relationship summary substitute? If not, why not?

  THC COMMENTS: As someone representing investment advisers, NO, the form should not be able to substitute for the Form ADV Part 2 Brochure because that document provides the necessary details of the services, fees, conflicts, etc. of the adviser. The Form CRS should reference and direct the investor to applicable Items in the brochure for additional information.

- Does the proposal sufficiently encourage electronic design and delivery? Are there other ways we can modify the requirements to make clear that paper-based delivery is not the only permissible or desired delivery format?

  THC COMMENTS: Yes

- With respect to firms that use paper delivery to meet investor preferences, are the proposed presentation and content requirements appropriate for a relationship

summary provided in paper or in PDF (e.g., 11 point font, and have margins of at least 0.75 inches on all sides)? Would they be helpful in encouraging relationship summaries that address retail investors' preferences for concise and user-friendly information? If not, what requirements would improve the document's utility and accessibility for retail investors? In particular, are there any areas where requiring the use of a specific check-the-box approach, bullet points, tables, charts, graphs or other graphics or text features would be helpful in presenting any of the information or making it more engaging to retail investors? Should we include different requirements for font size, margins and paper size? Should we restrict certain types or sizes of font, color choices or the use of footnotes?

THC COMMENTS: In an effort to get the form we drafted reduced to 3 pages we used 10-point font and the margins are narrower than .75 on all sides. So maybe require at least 10-point font and do not have margin requirements. We are not sure why .75" margin requirements are necessary.

It is our experience if you have a form that requires the investor to initial at certain statements to document the investor read and understands the statements and that certain disclosures were made to the investor. This encourages communication between the adviser and client. This is only effective if the financial professional doesn't just point and say, "initial here", "initial here", etc. and doesn't have a real conversation about the statements made where the initials are required.

Many State regulations specifically define in their **fraudulent and other prohibited practices statutes** that **in the solicitation of advisory clients**, it is unlawful for a person to: make a false statement of a material fact; or **omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made**. Administrative rules also define engaging in nondisclosure, incomplete disclosure or deceptive practices as a prohibited fraudulent and unethical practice. State securities authorities have indicated they could find that an adviser has omitted a material fact or engaged in nondisclosure or incomplete disclosure if they do not inform an investor that, if applicable, they could leave their retirement funds in their 401(k) account **and to consider the Plan's services available and the fees for those services** in deciding whether to roll over the retirement funds to an account managed by the adviser; or if an adviser fails to inform an investor their current IRA or investment account may be "commission-based", and if transferred to the adviser's management, they will now incur fees

annually and, again, **to consider these compensation arrangements** in deciding whether to transfer the IRA or investment account to the adviser's management.

In an effort to document the investment adviser did NOT omit material facts and/or did NOT engage in nondisclosure or incomplete disclosure the following statements, as applicable, should be initialed at by the investor (see the IMPORTANT DISCLOSURES section of the Suggested Form CRS attached):

If you are considering rolling over your employer-sponsored retirement plan account:
_____ You may be able to maintain your employer-sponsored retirement account with the plan. The fees you would pay if you leave your retirement assets in your current plan(s) **may be more or less** than the fees you will incur if you roll over these assets to our management. Your plan sponsor may pay some of these fees. Please consider this when deciding whether to roll over your employer-sponsored plan account to our management. Your plan administrator delivers an expense and investment disclosure document to you annually. Refer to that document to determine the fees currently assessed upon your plan account.

If you are considering transferring your "commission-based" brokerage account:
_____ It is important for you to understand the account(s) you are seeking advice upon may currently be "commission-based". If so, in servicing your account(s), your current representative, if applicable, is paid with commissions based upon the investments purchased in your account. We are compensated **annually** based upon the level of assets you place under our management. Generally, we deduct the advisory fee quarterly from your assets under management. Please consider these compensation differences in deciding whether to retain us as your investment adviser.

- Do firms commonly market to non-English speakers or provide information – including marketing materials – in languages other than English? To what extent would firms expect to deliver a relationship summary in a language other than English? Should we propose requirements to prepare relationship summaries in languages other than English? For example, should we require that firms prepare, file, and deliver a relationship summary in any language in which they disseminate marketing materials? Are there

concerns with translating the relationship summary without also having to translate the firm's other disclosures? If so, what are those concerns?

THC COMMENTS: The firms we work with only use English and market primarily to English speaking investors.

- Should we limit the relationship summary to four pages (or equivalent limit if in electronic format), as proposed? Is this enough space for firms to provide meaningful information? Should we instead eliminate page limits (and their equivalent for electronic format) or increase the number of permitted pages or their equivalent? Are there particular items that may require longer responses than others? If so, how should the Commission take these into account in considering page limits? For example, if commenters believe the use of graphics will be more effective to communicate fees, should we permit a greater number of pages to account for the use of graphics? Conversely, will retail investors read four pages? Should the page limit be shorter, such as one to three pages? If so, what information in the proposed requirements should we omit? Should we have different page limits for dual registrants than for firms that offer only brokerage or only advisory services? If we do require shorter disclosure, what information should firms be required to provide regardless of the length?

  THC COMMENTS: We believe the SEC should present this information in a side-by-side table comparing investment adviser and broker-dealer relationships, services, fees, obligations, and conflicts of interest. Please find attached a document (Suggested Form CRS) we created that we believe provides the reader a better way to compare the different types of financial advisory services.

- Are there too few or too many items that would be required in the relationship summary? Are there other items that we should also require or proposed items that we should delete? Do commenters agree that we should only permit the items required by the relationship summary? Is there other information that we should permit, but not require, firms to include? If so, what items are those?

  THC COMMENTS: See Suggested Form CRS attached. Permit only those items required by the Form CRS so information is presented consistently by investment advisers and broker-dealers. For investment advisers preparing this form, the language stated in the Broker-Dealer side of the table should be prescribed. The broker-dealer language should be clear, concise, and factual. On the Investment Adviser side of the table, certain language should be prescribed, but then also permit the investment adviser to add language that more specifically describes their firm's services, fees, and conflicts. For broker-dealers preparing this form, the language stated in the

Investment Adviser side of the table should be prescribed. The Investment Adviser language should be clear, concise, and factual. On the Broker-Dealer side of the table, certain language should be prescribed, but then also permit the broker-dealer to add language that more specifically describes their firm's services, fees, and conflicts. This prohibits an investment adviser from making misleading or false statements about broker-dealers and broker-dealers from making misleading or false statements about investment advisers.

- Do commenters agree that all items should be presented in the same order under the same heading to promote comparability across firms? Why or why not? If the items are not listed in the same order, could retail investors still easily compare firm relationship summaries? Does the prescribed order work, or should we consider a different order? Is there information that we should always require to appear on the first page or at the beginning of an electronic relationship summary? Are there any specifications we should include to enhance comparability for electronic delivery of the relationship summary in various forms?

  THC COMMENTS: Yes, all items should be presented in same order under the same heading to promote comparability. See Suggested Form CRS attached for different way of presenting the information in a more generalized and educational way.

- Should we, as proposed, prescribe headings for each item or allow firms to choose their own headings? Should we require or permit a different style of headings, such as a question and answer format or other wording to encourage retail investors to continue reading?

  THC COMMENTS: Yes, prescribe the headings. We don't see any reason to require or permit a different style of headings.

- Should we permit firms to include additional disclosure with the relationship summary, such as a comprehensive fee table, or other disclosures? Would the inclusion of additional disclosures affect whether retail investors would view the relationship summary? What are the benefits and drawbacks of such an approach?

  THC COMMENTS: Readers should be directed to more comprehensive documents such as the Form ADV Part 2 Disclosure Brochure. We do believe broker-dealers should be required to include how they calculate the commissions for purchase and sale orders, range of commissions/sales loads %s charged on investment products, and explain where the actual commission/sales load can be found on the confirmation or can be calculated from the data reported on the order confirmation.

- Should we generally permit firms to use charts, graphs, tables, and/or other graphics or text features to explain the information required by the relationship summary (so long as any such feature meets requirements as specified in the Instructions), as proposed? Should we permit firms to choose the graphical presentation that they will use? Are there specific graphical presentations that we should require? Should we permit other mediums of presentation, such as the use of video presentations?

  THC COMMENTS: This form should be as generalized as possible but allow charts, graphs, tables in documents prepared in response to the KEY QUESTIONS TO ASK.

- Are the mock relationship summaries useful and illustrative of the proposed form requirements? Do they appropriately show the level of detail that firms might provide?

  THC COMMENTS: We believe the form should provide more general and educational information to be presented and compared (please see Suggested Form CRS attached).

With respect to each item for which we prescribe wording in the relationship summary, we request the following comment on each of those required disclosures:

- Does the narrative style work for the prescribed wording or are there other presentation formats that we should require? Should the Commission instead require more prescribed wording? Conversely, is there prescribed wording we have proposed that we should modify or replace with a more general instruction that allows firms to use their own description?

  THC COMMENTS: Yes, prescribe some wording for generalized descriptions of investment adviser and broker-dealer relationships, services, fees and conflicts to ensure this information is presented consistently. All Items will need some general instructions just as the Form ADV Parts 2A and B and allow for advisers some flexibility in describing their specific services, fees, and conflicts.

THC COMMENTS: Since the Suggested Form CRS (attached) completely revamps the proposed form, Iwedid not comment on the individual items of the proposed form; except as found below:

3. Standard of conduct applicable to those services;

THC comments: We suggest the SEC prescribed language required here summarize the enhanced interpretation of an investment adviser's fiduciary duty discussed in the Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on

Enhancing Investment Adviser Regulation and on the broker-dealer side the required prescribed language of a broker-dealer's obligations should be pulled directly from Regulation Best Interest.

6. Conflicts of Interest

THC Comments: Prescribe some wording for generalized descriptions of investment adviser and broker-dealer conflicts of interests and all Items will need some general instructions just as the Form ADV Parts 2A and B and allow firms some flexibility in describing their specific conflicts.

7. Additional Information

THC Comments: 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. If a firm does have legal and disciplinary events this sentence should be stated here and in BOLD font. See Suggested Form CRS attached. Requiring this information be reported on this form is a good thing because broker-dealers do not deliver a similar document like the Form ADV brochure as investment advisers are required to which reports disclosure/disciplinary events.

The following statement is also required in this section: "Visit Investor.gov for a free and simple search tool to research our firm and our financial professionals."

The SEC believes retail investors would further benefit from understanding how to report problems and complaints to the firm and regulators. According they propose to require that firms include the following wording next in this section:

" To report a problem to the SEC, visit Investor.gov or call the SEC's toll-free investor assistance line at (800) 732-0330. [To report a problem to FINRA, [ ].] If you have a problem with your investments, account or financial professional, contact us in writing at [insert your primary business address]

THC Comments: We are not sure how/what state-registered investment advisers would state here if anything. Also, this document is encouraged or required to be delivered prior to entering into a relationship or transaction, so hopefully problems have yet to occur. The account statements or investment adviser reports should include statements informing investors how to report a problem.

8. Key Questions

The commission is proposing to require firms include questions on the CRS for retail investors to ask their financial professionals, with the intent to encourage retail investors to have conversations with their financial professional about the firm's services, fees, conflicts and disciplinary events.

THC Comments: The Suggested Form CRS (attached) completely revamps these questions so one form can be delivered (for stand-alone investment advisers and broker-dealers) to a prospective client.

C. FILING, DELIVERY, AND UPDATING REQUIREMENTS

1. Filing Requirements

2. Delivery Requirements

3. Updating Requirements

- Should the relationship summary be required in addition to firms' existing disclosure requirements, as proposed? Is the relationship summary duplicative of or does it conflict with any existing disclosure requirements in any way? What, if any, changes would we need to make to the relationship summary if we were to permit its delivery in lieu of other disclosures and why would those changes be appropriate? Should the Commission instead make any changes to existing rules to permit the relationship summary to serve as the venue for disclosures required by those rules?

  THC Comments: Yes, but we suggest generalizing the relationship summary – used more to educate retail investors about the different types of financial services and compensation arrangements available. The Form ADV Part 2 Brochure offers the details.

- Should investment advisers that deliver a relationship summary have different delivery requirements for the Form ADV brochure and brochure supplement?

  THC Comments: No, try to keep delivery requirements consistent across both forms.

- Is the IARD the optimal system for investment advisers to file Form CRS with the Commission? Is EDGAR the optimal system for broker-dealers to file Form CRS with the Commission? Should dual registrants be required to file on both EDGAR and IARD? Should broker-dealers instead be required to file Form CRS solely through IARD? What would be the costs or benefits associated with broker-dealers becoming familiar with and filing through IARD system rather than through EDGAR? Is there another method of electronic filing the Commission should consider for Form CRS and why? If broker-dealers should file using a system other than EDGAR, what would be the costs and benefits associated with creation of, and/or becoming familiar with and filing through, that system? Should investment advisers and broker-dealers be required to file on the same system?

  THC Comments: Yes, the IARD is optimal system for investment advisers.

- How important to investors and other interested parties is the fact that the IAPD serves as the single public disclosure website to access an adviser's current filings with the

Commission, and compare certain filings of other advisers? What would be the impact of retail investors having to access a separate website for the relationship summary?

THC Comments: Investors are becoming more and more familiar with the IAPD and broker-check. Having access to the Form CRS and firm's Form ADV Part 2 Disclosure Brochure on one website is important. Don't require investors access a separate website.

- How should the relationship summary be filed? Should it be filed as a text-searchable PDF, similar to how Form ADV is currently filed? Would a structured PDF, a web-fillable form, HTML, XML, XBRL, Inline XBRL or another format be more appropriate, and why? Should the Commission require a single, specified format for all firms, require one format for EDGAR filings and another format for IARD filings, or permit filers to select from two or more possible formats? Would retail investors use the relationship summary to obtain information about one particular firm, or to compare information among firms? What type of format would make it easier for retail investors to use the relationship summary in these ways? For example, would retail investors seek to compare the information about fees across a number of firms, and if so, would a structured format, such as XML or Inline XBRL or an unstructured format, such as PDF or HTML, better facilitate such a comparison? Which filing formats would illustrate the formatting of relationship summaries that are provided electronically, for example, relationship summaries sent in the body of an email, posted on the firm's website, or formatted for a mobile device? Which formats might be most beneficial to retail investors?

  THC Comments: Filing through the IARD as a pdf would be optimal. Structured web-fillable formats can be very frustrating. Posting the Form CRS on the IAPD and on a firm's website would be the most beneficial to retail investors. Attaching the pdf electronic file to an email sent to a retail investor or including a link to the Form CRS on the firm's website in an email would be the most beneficial way to communicate the availability of the firm's Form CRS to a retail investor.

  We believe prospective investors/clients would use the Form CRS for educational purposes and not necessarily compare to another firm. The Part 2 Brochure is used to compare investment adviser services and fees. We are unaware if/how the Form CRS would be used for retail investors to compare broker-dealer services and fees.

- We propose to require that an investment adviser deliver the relationship summary before or at the time the firm enters into an investment advisory agreement with a retail investor or, in the case of a broker-dealer, before or at the time the retail investor first engages the firm's services. Would this requirement give a retail investor ample time to

process the information and ask questions before entering into an agreement? Or should we require that the relationship summary be delivered a certain amount of time before the firm enters into an agreement with a retail investor (*e.g.,* 48 hours or a 15 minute waiting period)? For broker-dealers, should we require delivery of the relationship summary at the earlier of a recommendation or engagement, as opposed to just engagement? We also propose that a broker-dealer would not need to deliver the relationship summary to a retail investor to whom a broker-dealer makes a recommendation, if that retail investor does not open or have an account with the broker-dealer, or that recommendation does not lead to a transaction with that broker-dealer. Should we instead require that broker-dealers deliver the relationship summary to prospective customers regardless of whether that leads to a transaction or account opening?

THC Comments: It is our experience investment advisers are contacted by a prospective client and the adviser delivers the prospective client a copy of their Form ADV Part 2 brochure. The time between delivering this document and entering an actual advisory contractual relationship is often weeks. So, investment advisers we work with will deliver this Form CRS at the same time as it delivers the Part 2 Brochure. Therefore, ensuring it is delivered prior to entering into an advisory agreement is not burdensome for investment advisers.

Advisers we work with most likely will amend their current client agreements to capture delivery and client receipt of the Form CRS, just as they capture delivery and client receipt of the Form ADV Part 2 Brochure and Privacy Policy Notice.

Broker-dealers should be required to deliver to prospective customers the Form CRS regardless of whether a recommendation leads to a transaction. How else can retail investors become educated on the different types of financial services available?

- We also propose to require that a firm deliver a relationship summary before or at the time the firm implements changes that would materially change the nature and scope of the existing relationship with a retail investor, for example by the opening of an additional account or accounts and/or the migration of assets from one account type to another. Should the Commission provide more guidance for what might constitute a material change to the nature and scope of the relationship or the moving of a significant amount of assets from one type of account to another? If so, do commenters have suggestions on how the Commission should interpret "material change to the nature and scope of the relationship" and "significant amount of assets"? Should the delivery of the relationship summary under these circumstances be accompanied by additional oral disclosures or other types of supplemental information? Would this requirement give retail investors sufficient opportunity to process the information and

ask questions before the changes are made? Should we specify how far in advance a firm should deliver the relationship summary before making such changes?

THC Comments: Just to ensure it is documented the adviser did NOT omit a material fact nor did they engage in nondisclosure or incomplete disclosure we may strongly encourage the advisers we work with to include the statements made in the IMPORTANT DISCLOSURES section (please see Suggested Form CRS attached) in account opening paperwork for all existing clients. We do not think it is necessary to deliver the full and complete Form CRS to existing clients (after the first one is delivered) as they are well aware of the advisory relationship they are in, the services they receive, and the fees they pay.

Such delivery requirements for changes made to the nature and scope of the relationship or service may be necessary for broker-dealers, but advisers already communicate the services they will provide in several documents (the Part 2 brochure, the investment advisory agreement/contract executed with the client, AND many advisers prepare an Investment Policy Statement (IPS) for their clients and the services provided are also stated in that document). If an adviser significantly changes the nature and scope of the relationship and services they most likely will need to amend their agreement with the client, update the client's IPS and prepare and deliver a Summary of Material Changes document (if not the full and complete copy of their updated Form ADV Part 2 Brochure) to their clients. So material changes to the nature and scope of the relationship and services will already be communicated to the client.

Keep the Form CRS more general and educational in nature with references to more detailed disclosure documents.

- Should a firm be required to communicate any material changes made to the relationship summary within 30 days, as proposed, or sooner, for example in the case of transactions not in the normal, customary, or already agreed course of dealing? Should a firm have the option of choosing to communicate the new information by either filing an amended Form CRS or by communicating the new information to retail investors in another way? Should we provide more guidance on the types of ways in which the information may be communicated? Should we instead require a firm to deliver an amended relationship summary to its existing retail investors?

  THC Comments: If the form is kept to a more generalized and educational nature, material changes shouldn't occur often. I have not read the Regulation Best Interest Proposal, but it would be beneficial if broker-dealers were to prepare a more detailed document detailing their

services, fees, and conflicts that can be referenced on this Form CRS, just as investment advisers do. If material changes occur requiring updates and amendments to those documents, then those material changes should be communicated in the annual update, again as investment advisers are required to do.

For IAS only: The proposed rule says the investment adviser must communicate the updates within 30 days after the updates are required to be made. So if a material change occurred on July 1, the Form CRS must be updated and filed by July 30 and so communicated to clients by August 30th?? We would rather deliver a summary of material changes made to the Form CRS annually, just as we do the brochure. Keep it consistent. If material legal and disciplinary events occur, this will be communicated to retail investors promptly per the Form ADV Parts 2A and 2B instructions already. If a firm didn't have legal and disciplinary events before, but if something occurs - they must be required to update the Form CRS to include the statement "We have legal and disciplinary events." This updated Form CRS will be delivered to new prospective clients. For IAs the updated Form CRS should be filed but the IA should not be required to deliver the updated CRS to clients as they will be getting the updated **Form ADV Part 2A and/or Part 2B,** prior to the annual update, as applicable.

D. Transition Provisions

- Should a firm be required to comply with the rule's requirements for initial delivery to new and prospective clients and customers and for updating beginning on the date the firm is first required to electronically file its relationship summary with the Commission, as proposed?

- Should a firm deliver the relationship summary to all existing clients and customers who are retail investors within 30 days after first filing the relationship summary with the Commission, as proposed? These requirements would result in a different delivery timetable for broker-dealers and investment advisers because investment advisers would file Form CRS with their Form ADV annual updating amendments. Should we instead require all firms to deliver the relationship summary to retail investors beginning on the same date (*e.g.,* within six months from the effective date of Form CRS), even if investment advisers file Form CRS after that date? Or should we require firms to deliver to existing retail investor customers and clients initial relationship summaries at a later date? For example, firms could be required to deliver the relationship summary only before or at the time a new account is opened or changes are made to the retail investor's account(s) that would materially change the nature and scope of the firm's relationship with the retail investor (including before or at the time the firm recommends that the retail investor transfers from an investment advisory account to a brokerage account or from a brokerage account to an investment advisory account, or moves

assets from one type of account to another in a transaction not in the normal, customary or already agreed course of dealing).

THC Comments: Transition delivery requirements seem reasonable and consistent with past transition delivery requirements.

E. Recordkeeping Amendments

- Are there other records related to the relationship summary or its delivery that we should require firms to keep? Should we require them to maintain copies of the relationship summary for a longer or shorter period than we have proposed? Should broker-dealers and investment advisers be required to keep relationship summary-related records for the same amount of time? Should firms be required to document their responses to the "key questions" from investors?

THC Comments: These record-keeping requirements seem reasonable and consistent with current record-keeping requirements.

As stated previously we may prepare responses to the Key Questions for the adviser to reference if needed, however, it would be overly burdensome to require firms to document their responses to the "Key Questions".

III. RESTRICTIONS ON THE USE OF CERTAIN NAMES AND TITLES AND REQUIRES DISCLOSURES

A. INVESTOR CONFUSION

B. RESTRICTIONS ON CERTAIN USES OF "ADVISER" AND "ADVISOR"

C. ALTERNATIVE APPROACHES

- Do you agree that the use of the terms "adviser" or "advisor" by broker-dealers are the main sources of investor confusion? If so, what do these terms confuse investors about (*e.g.*, the differences as to the standard of conduct their financial professional owes, the duration of the relationship, fees charged, compensation)? Are investors harmed by this confusion? If so, how? Do you agree that "adviser" and "advisor" are often associated with the statutory term "investment adviser"? Do you believe that retail investors understand what the terms "adviser" and "broker-dealer" mean and can correctly identify what type of financial professional they have engaged?

THC Comments: Yes, we believe permitting broker dealers and their salespersons to use the term adviser in their title is the main source of confusion. Prohibiting broker-dealer firms and

their salespersons from using the terms advisor or adviser in their names or titles will help eliminate this confusion. We agree that "adviser" and "advisor" are often associated with the statutory term "investment adviser" and therefore the investor is expecting financial advice, not just a particular investment recommendation(s).

- Do investment advisers and their supervised persons also use names, titles, or professional designations that can lead or contribute to retail investor confusion? If so, please provide examples of these names or titles and how they can lead or contribute to confusion. Should we restrict investment advisers and their supervised persons from using these names or titles?

  THC Comments: Including the question (please see Suggested Form CRS attached) in the Form CRS:

  12. What is your relevant experience, including your licenses, education, and other qualifications? Please explain the abbreviations in your licenses and what they mean.

  maybe will help educate investors of the various types of financial services professionals out there and their qualifications.

- Instead of a prohibition or restriction on the use of certain terms, should we permit such terms but require broker-dealers and their associated natural persons other than dual registrants and dual hatted financial professionals to include a disclaimer in their communications that they are *not* an investment adviser or investment adviser representative, respectively, each time they use or refer to the term "adviser" or "advisor"? Would this approach address investor confusion or mitigate the likelihood that investors may be misled when broker-dealers and their associated natural persons use the term "adviser" or "advisor"? Should this approach be coupled with an affirmative obligation that a dually registered broker-dealer or its dual hatted associated natural persons disclose that it is an investment adviser or an investment adviser representative, respectively, when using terms *other than* "adviser" or "advisor"? Would this requirement discourage broker-dealers from using these terms even if they were not prohibited? How would this approach impact our proposed rule requiring disclosure of the firm's regulatory status and the financial professional's association with the firm? How would this approach impact dually registered firms and dually hatted financial professionals? Are there operational and compliance challenges associated with this approach, and if so, what are they?

  THC Comments: Allowing the title but then reading a disclaimer that says the professional is not an investment adviser would confuse investors. If you are not an investment adviser why do you call yourself an adviser?

- We recognize that the term "adviser" is used differently in connection with the regulation of investment advisory services provided to workplace retirement plans and IRAs under ERISA and the prohibited transaction provisions of the Internal Revenue Code. For example, a statutory exemption for the provision of investment advice to participants of ERISA-covered workplace retirement plans and IRAs, and related DOL regulations, define the term "fiduciary adviser" broadly to include a variety of persons acting in a fiduciary capacity in providing investment advice, including investment advisers registered under the Advisers Act or under state laws, registered broker-dealers, banks or similar financial institutions providing advice through a trust department, and insurance companies, and their affiliates, employees and other agents. Given that there are definitions of "adviser" under other federal regulations that capture entities and individuals who are not regulated under the Advisers Act, would a restriction on the use of the term "adviser" that applies only to registered broker-dealers and their registered representatives contribute to investor confusion or result in conflicting regulations, and possibly increased compliance burdens, or affect competition?

  THC Comments: If the Department of Labor ERISA Division is that concerned about the advice offered and fees charged employer-sponsored retirement plans they need to change their definition of to include only registered investment advisers who are already fiduciaries by law in the definition. That said, if this new SEC Form CRS is required to be delivered to those professionals/fiduciaries responsible for selecting the financial professional to provide investment advice to the plan – this should help those professionals assess the different types of financial advisers and compensation arrangements available. This SEC Form CRS and Regulation Best Interest should also assist retail investors rolling over 401(k) accounts and transferring IRAs in understanding the different types of financial advisers and compensation arrangements available.

D. DISCLOSURES ABOUT A FIRM'S REGULATORY STATUS AND A FINANCIAL PROFESSIONAL'S ASSOCIATION

THC Comments: In the heading of the form we drafted a firm must state if it is a registered investment adviser, broker-dealer, or both and who they are registered with.

At this point, requiring this disclosure on the Form CRS and Form ADV Parts 2A and 2B and in prohibiting stand-alone broker-dealers and their salespersons from using the terms "advisor" or "adviser" in their titles should suffice.