

SEC Proposes Disclosure Requirements and Name Restrictions for Broker-Dealers & Investment Advisers

In a series of three proposed regulations^[1] with requests for comments, the Securities and Exchange Commission (SEC) seeks to enhance communications by broker-dealers and investment advisers to their customers and clients. This Alert addresses Release No. IA-4888 (Relationship Summary Release) proposed under the Investment Advisers Act of 1940, as amended (Adviser's Act) and Securities and Exchange Act of 1934, as amended (Exchange Act) in which the SEC proposes and requests comments from the public regarding: (i) requiring investment advisers and broker-dealers to provide a brief relationship summary to retail investors; (ii) restricting use of the terms "adviser" and "advisor" for broker-dealers; and (iii) requiring disclosure of registration status. Requirements under the proposed rules would apply in addition to, and not in lieu of, current requirements.

Relationship Summary

Currently, investment advisers are required to disclose certain information to their retail investors on Form ADV II. This form includes information about the investment adviser's services, fees, conflicts of interest, education, and other information that could be relevant to an investor's evaluation of potential advisers. Under the current rules and regulations, broker-dealers are not required to complete Form ADV II or to make similar disclosures to retail investors.

Under the proposed rule, broker-dealers and investment advisers would be required to provide retail investors a client relationship summary. A retail investor is defined as a prospective or existing client or customer who is a natural person. The relationship summary would be required by a new Part 3 of Form ADV and rule 204-5 of the Adviser's Act for investment advisers, and new Form CRS and rule 17a-14 of the Exchange Act for broker-dealers.

This brief disclosure form (which would be limited to four pages) would require eight separate items covering: (i) introduction; (ii) relationships and services the firm provides to retail investors; (iii) 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); (vi) conflicts of interest; (vii) where to find additional information, including whether the firm and its financial professionals currently have reportable legal or disciplinary events and who to contact about complaints; and (viii) key questions for retail investors to ask the firm's financial professional. The relationship summary should be prepared in plain English and be concise and direct using short sentences, active voice, and definite, concrete everyday words and avoid legal jargon, highly technical business terms and multiple negatives. In addition, the proposed regulation requires that certain prescribed language and formatting be used in the relationship summary. By standardizing the format in which information is disclosed, the SEC intends to highlight the distinctions between and among investment advisers and broker-dealers.

Under the proposed rule, investment advisers would be required to deliver the relationship summary before or contemporaneously with entering into an investment advisory agreement with the retail investor. Broker-dealers would be required to make initial delivery before or at the time the retail investor first engages the firm's services. Firms dually registered as a broker-dealer and investment adviser would be required to make delivery when entering into the investment advisory agreement or when the retail investor first engages for services, whichever occurs earlier. In addition, all firms who are required to deliver a relationship summary to retail investors would be required to file their relationship summary with the SEC electronically through EDGAR (for broker-dealers) or IARD (for investment advisers), as applicable, and the relationship summary would be publicly available. The relationship summary would be required to be updated within 30 days whenever the information becomes materially inaccurate.



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Related Practice Areas

- Business
- Capital Markets & Securities
- Corporate
- Corporate Governance

Early commenters to the proposed regulation have already asserted that the proposed disclosures are redundant. Yet the SEC asserts that the layered disclosures are necessary to ensure greater clarity and understanding for retail investors.

Restricted Use of “Adviser” and “Advisor”

The Relationship Summary Release also proposes to restrict use of the terms “adviser” and “advisor” by a broker-dealer as part of its name or title unless it is registered as an investment adviser under the Adviser’s Act. The proposed rule would only apply to communications with retail investors, and would not apply to communications with institutional investors. The restrictions would also apply to investment professionals of dually registered firms who only offer brokerage services to retail investors.

Disclosure of Regulatory Status and a Financial Professional’s Association

Finally, the SEC seeks comment on a proposed rule that would require broker-dealers and investment advisers that are registered with the SEC to disclose their registration status to retail investors. The disclosure requirement would extend to associated natural persons of a broker-dealer as well as individuals supervised by investment advisors.

Requests for Comment

In the Relationship Summary Release, the SEC also requests comments on each aspect of the proposed Form CRS and other rule changes. The deadline for submitting comments is August 7, 2018.

The Relationship Summary Release can be found [here](#).

Appendix B, Instructions to Form CRS can be found [here](#).

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Ingrid Welch at (215) 665-4616 or iwelch@cozen.com or Greg Patton at (215) 665-5571 or cpatton@cozen.com.

[1] Proposed Form CRS Relationship Summary, 17 C.F.R. §§ 240, 249, 275 and 279, Investment Advisers Act Release No. IA-4888 (proposed April 18, 2018); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, 17 C.F.R. § 275, Release No. IA-4889 (proposed April 18, 2018); and Regulation Best Interest, 17 C.F.R. §240 Exchange Act Release No. 34-83062 (proposed April 18, 2018) (proposed regulation requiring a broker-dealer making a recommendation to a retail customer would have a duty to act in the best interest of that retail customer when making the recommendation).