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August 7, 2018

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Electronic Address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: File No. S7-08-18  
Proposed Rule: Form CRS Relationship Summary; Amendments to Form ADV;  
Required Disclosures in Retail Communications and Restrictions on the use of Certain  
Names or Titles**

Dear Secretary Fields:

The National Society of Compliance Professionals (“NSCP”) submits this letter in response to the request by the Securities and Exchange Commission (“SEC”) for comments on proposed new rules (the “Proposal”); Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles.

The Proposed Rules are of considerable interest to the NSCP and its members. NSCP is a nonprofit, membership organization with approximately 2,000 members and is dedicated to serving and supporting compliance professionals in the financial services industry in both the U.S. and Canada. To our knowledge, NSCP is the largest organization of securities industry professionals in the U.S. and Canada devoted exclusively to compliance. Considering NSCP’s focus on compliance and compliance professionals, our comments will be limited to concerns that impact compliance programs and/or compliance professionals.

NSCP’s responses to particular questions posed by the Securities and Exchange Commission, which responses follow below, reflect the view of interested NSCP members who provided comments to NSCP in response to the Proposal.

**I. Form CRS Relationship Summary**

*Do commenters agree with the overall assessment that the relationship summary would benefit retail investors and assist them in making a choice of what type of account matches their preferences? Do commenters believe there are alternatives to the structure and content of the relationship summary*

*that we have not considered that could make it more beneficial to retail investors? Are there any unintended costs of the relationship summary for retail investors that that we have not considered?*

NSCP members who commented believe that some form of a disclosure document may benefit retail investors regarding account choice. The proposed Form CRS Summary, however, creates a number of redundancies with the required disclosures in Form ADV, Part 2 for investment advisory relationships. Those redundancies should be addressed to mitigate potential burdensome layers of documentation for customers, which may reduce the benefit of such disclosure. Further, requiring investment advisers to maintain two documents with overlapping requirements creates challenges to maintaining both and invites unnecessary and unproductive scrutiny (by claimants' attorneys seeking to exploit any possible discrepancy) between the differences, particularly given the page limitations on Form CRS.

*What additional costs and benefits do you envision with extending the disclosure of disciplinary history?*

NSCP members believe that extending the disclosure of disciplinary history to be included in Form CRS would add additional administrative burden and costs outweighing any true benefit to the customer. Firm disclosure events are already publicly disclosed by firms for investors and individual disciplinary history is readily available via FINRA BrokerCheck and SEC Action Lookup. NSCP suggests alternatively, that firms be permitted to incorporate, by reference, public disclosure events thus allowing the ability for more meaningful disclosure to be included in the Form CRS Summary. NSCP suggests alternatively, that firms be permitted to incorporate by reference public disclosure events thus allowing the ability for more meaningful disclosure to be included in the Form CRS Summary. Mandating the inclusion of such events in the Form CRS Summary would likely stress larger firms' ability to meet the Form CRS Summary length limitation.

*What costs do commenters anticipate that firms and financial professionals will incur in implementing and complying with the proposed Form CRS, both initial and ongoing? Please provide estimates of the time and cost burdens for preparing, delivering and filing the proposed form. What costs do commenters expect firms and financial professionals will incur to prepare answers to the "Key Questions to Ask" in the proposed Form CRS? Please provide estimates of the time and cost burden for preparing to answer the questions.*

NSCP members estimated that the time required to prepare, deliver and file Form CRS would be anywhere from 80 to 500 hours dependent on the size and business model of the firm. Included in the time estimate per firm is the time for compliance and/or legal departments to identify and quantify the necessary data required for disclosure, drafting form CRS as well as to develop operational and recordkeeping policies and procedures. For example, input will be necessary from business lines,

including, sales and marketing, and in the case of firms with an independent business model, the independent registered representative or adviser, during the drafting and updating of Form CRS. NSCP members commented that a minimum of two hours of firm level training or two hours of training per independent registered representative or advisor will be required, (110 registrants X 2 hours = 220 training hours) prior to implementation and delivery of Form CRS.

Upon implementation of Form CRS, NSCP members anticipate additional time will be spent answering questions from registered representatives and advisers regarding Form CRS and reviewing client applications to ensure all documentation is in order. Ongoing training will also be required for new and existing employees to ensure understanding of Form CRS regulatory requirements.

NSCP members commented that there will be additional costs associated with implementation and ongoing compliance with Form CRS however; those costs are difficult to quantify until the Commission has promulgated a final rule. Firms expect costs to increase for human resources, associated IT programming, and service provider engagement if required, *i.e.*, legal advice.

*Are there other reasonable alternatives that the Commission should consider? If so, please provide additional alternatives and how their costs and benefits would compare to the proposal.*

NSCP members commented that more firm-customizable delivery methods and mediums should be considered for more meaningful disclosure. Audio, video, and more technology-friendly records and delivery methods should be permitted as many clients would prefer to receive information in this manner. When firms are required to use outdated and non-preferred modes of delivery, communications with clients is actually diminished as many clients do not bother to read important disclosures.

*Would retail investors be more likely to read a firm's relationship summary if we required or permitted firms to use certain design elements—such as larger font sizes or greater use of white space, colors, or visuals? Could this be accomplished while still providing retail investors with the information we are proposing to require in a short and easy-to-read relationship summary?*

If the purpose of the Form CRS is for the disclosed items addressed therein to actually reach clients, firms need flexibility, not just in font size and color, although that is helpful, but in manner of delivery. With each passing month, more and more clients are requesting to communicate with their brokers and advisers utilizing newer technologies (which is often prohibited by current SEC guidance, which NSCP believes is outdated and diminishes the effectiveness of client disclosures and communications in general.)

*We are proposing that the firm use plain language principles and the Instructions refer to the SEC's Plain English Handbook. Should we modify any of these principles? Should the Instructions refer to any other principles to promote understandable wording?*

NSCP members believe the SEC's Plain English Handbook is sufficient for written documents. Referring to additional principles will only cause confusion for broker-dealer and investment adviser firms.

*Do any elements of the proposed presentation requirements impose unnecessary costs or compliance challenges? Please provide specific data. Are there any changes to the proposal that could lower those costs? Please provide examples.*

NSCP members commented that all of the aspects of Form CRS are already included in the requirements of Form ADV, Part 2A and Appendix I for RIAs. The effort to create a documentation requirement for broker-dealers would impose duplication for investment advisers and has not leveraged any of the current investment adviser disclosure requirement. Form CRS would impose additional costs and compliance burdens associated with document production and compliance review.

Particularly for dual registrants or those with many retail offerings, challenges will result in providing complete and sufficient disclosure without exceeding the proposed page limitation of the document. The Proposal may inadvertently pave way for plaintiffs' attorneys to file baseless claims arising from inconsistent disclosures, as noted above. The costs associated with defending such claims would surely create a burden for broker-dealers and investment advisers alike.

The Proposal acknowledges that there is no way to eliminate all conflicts from this business but proposes that firms can meet their duties through a combination of elimination, mitigation and disclosure of various conflicts. NSCP members suggested that the SEC provide significant and detailed guidance differentiating among conflicts that can be mitigated by meaningful disclosure and those which must be eliminated because disclosure could not be considered sufficient to meet best interest standards. While this is necessarily a facts and circumstances test, insight into how the SEC views the issues will be of enormous value to firms trying to comply with their fiduciary duties. Similarly, additional specificity regarding expectation on the disclosure surrounding proprietary products and relationships among and between affiliates that receive compensation or other benefits would be helpful. Firms are often challenged because of the seemingly incompatible obligations to be both concise and complete and are also concerned about unduly confusing clients.

a. Key Questions to Ask

*Would firms create policies and procedures, including supervision and compliance reviews, relating to how their financial professionals respond to these questions? Would implementing and maintaining such processes be burdensome or costly for firms? Why or why not? Do investment advisers and broker-dealers currently have systems in place to answer these questions, particularly the request to “do the math for me” and provide not only fee information related to the relationship and certain externalized fees, but also information about fees that are implicit to a given product?*

NSCP members responded that firms would be obligated to develop formal practices, including policies, supervisory procedures, testing protocols, training and recordkeeping responsibilities in order to demonstrate compliance with how financial professionals respond to the “Key Questions to Ask” section of Form CRS. Many firms and their representatives still interact with clients in-person or by phone. Implementation of supervisory steps regarding this type of interaction is burdensome on the firms, the financial professionals, and the customer because it invariably can only be executed by implementing a mechanism, such as a form, for the client to complete or an acknowledgement for the client to receive, review, and acknowledge. Firms conducting business and interactions by electronic means would need to dedicate human and technological resources to determine how supervision might appropriately be achieved and build that into their systems.

Further, not all of the questions have ready answers, particularly at the outset of a client relationship. For example, the "Do the math for me" question presumes that the firm knows how much trading and other services a client will require. Depending on the products used to achieve client objectives, there may be more trading in the first year, when a client's assets are allocated according to a plan, with fewer trades but more client meetings or reports in subsequent years. Such meetings and reports may only be offered on an advisory platform, so even though the costs could be lower if the client paid only for transactions, the client would not be obtaining the same service. Similarly, may tax-deferred accounts trade with more frequency than taxable accounts, but require fewer transfer and other services.

*Do firms anticipate that they would implement recordkeeping policies and procedures to address communications between financial professionals and retail investors about the “Key Questions to Ask”? What kind of recordkeeping policies and procedures would firms anticipate implementing in order to address such communications? Should we require financial professionals to highlight these key questions when they deliver a relationship summary to a retail investor? How could the questions be highlighted when the relationship summary is delivered electronically?*

NSCP members commented that it would be advisable for the SEC to provide a “Key

Questions to Ask” template for retail customers. This would result in the best and least biased approach to presenting FAQs for retail customers and help to guide their understanding of the relationship.

As noted in Section II.E. of the Proposal, firms would need to develop processes to evidence compliance with such a delivery requirement. Such requirement would not be overly burdensome if delivery of a templated document was part of the account opening process. It would add yet another document and potentially an acknowledgement for the customer’s attention and consumption. If the Proposal contemplates an ongoing delivery requirement for such a document, firms would need to implement a process to do so. Resources would be dispensed to plan and create such a delivery process. Additional costs would be incurred for delivery, especially for small firms who are more likely to conduct such delivery in hard copy.

## II. Restrictions on the Use of Certain Names and Titles and Required Disclosures

*Would the alternative approach discussed above that would preclude a broker-dealer or an associated natural person of a broker-dealer from relying on the broker-dealer exclusion of section 202(a)(11)(C) of the Advisers Act if it “held itself out” as an investment adviser address investor confusion? [...]. Are there operational and compliance challenges associated with this approach, and if so, what are they?*

NSCP members commented that the alternative approaches would provide little benefit to the retail investor and would cause confusion in understanding the relationship. To impose an investment adviser standard to all interactions except in situations which are clearly broker-dealer account recommendations would be impossible to implement and monitor from a compliance perspective. It is also the case that not all personnel are registered in both a broker-dealer and investment adviser capacity; thus requiring compliance process and procedures having to be developed and implemented for such situations.

*Instead of a prohibition or restriction on the use of certain terms, should we permit such terms but require BDs 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”? 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”? Are there operational and compliance challenges associated with this approach, and if so, what are they?*



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NSCP members believe that this alternative approach would be the most feasible of those mentioned in section III. B of the Proposal; however, this alternative approach would similarly create new supervision and compliance processes and procedures, adding additional costs to a firm’s compliance program. The challenge of this alternative would be lining up compliance processes and procedures to a retail investor’s understanding of the capacity of their broker-dealer or investment adviser representative via disclaimer.

\* \* \* \* \*

We commend the SEC for giving us this opportunity to present our views on the SEC’s proposal on Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles NSCP would welcome the opportunity to answer any follow-up questions that the SEC may have on this submission or to provide such further assistance as the SEC may request.

Thank you for your attention to these comments. Questions regarding the foregoing should be directed to the undersigned at [REDACTED].

Sincerely,

**Lisa D. Crossley**  
**Executive Director | NSCP**  
**The National Society of Compliance Professionals**

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