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Is the SEC's Proposed "Best Interest" Standard for Broker-Dealers in Anyone's Best Interest?

Proposal seeks to clarify and enhance obligations applicable to a broker-dealer's retail customer interactions, but may raise more questions than answers.

The Securities and Exchange Commission (SEC) proposed for public comment Regulation Best Interest (the Best Interest Proposal) on April 18, 2018.[1] If adopted as proposed, the Best Interest Proposal would require a broker-dealer and natural persons who are associated persons of a broker-dealer (together referred to herein as the broker-dealer) to act in the ***best interest*** of a ***retail customer*** when making a ***recommendation*** of any securities transaction or investment strategy involving securities to the retail customer (the Best Interest Standard). A significant element of the proposed Best Interest Standard is that the broker-dealer not place its financial or other interest ahead of the interest of the retail customer.

The SEC believes that the Best Interest Proposal will "reduce the potential harm to retail customers from recommendations provided in circumstances where conflicts of interest, including those arising from financial incentives, exist while preserving investor access to advice and choice with regard to advice relationships and compensation methods, and is workable for the transaction-based relationship offered by broker-dealers."[2]

While the Best Interest Proposal builds, in part, on existing broker-dealer regulatory obligations, it introduces new concepts and definitions that — rather than providing clarity and enhanced investor protection — may actually further blur the line between broker-dealers and investment advisers, and could result in retail customers having less access to investment advice and being offered a more limited range of products and services.

Separately, the SEC proposed the adoption of Form CRS (the CRS Proposal), which would require broker-dealers and investment advisers to provide a brief document describing the relationships and services the firm offers (a Relationship Summary) to retail investors.[3] The CRS Proposal also contains provisions that would restrict certain broker-dealers and their financial professionals from using the term "adviser" or "advisor" as part of their name or title in communications with retail investors.

The comment period for the Best Interest Proposal and CRS Proposal ends on August 7, 2018.[4]

The Best Interest Proposal

Broker-dealers that engage in securities transactions in the United States or otherwise effect securities transactions with US persons (subject to limited exceptions) are required to be registered with the SEC under the Securities Exchange Act of 1934 (Exchange Act) and become members of the Financial Industry Regulatory Authority, Inc. (FINRA). As such, broker-dealers are already subject to certain rules and requirements that apply when they make a recommendation to a customer. In particular, broker-

dealers have a duty of fair dealing, which, among other obligations, requires broker-dealers to make only "suitable" recommendations to customers and to receive only "fair and reasonable compensation" for the services they provide. Broker-dealers are also currently subject to regulatory requirements to eliminate, mitigate, or disclose certain conflicts of interest.

The Best Interest Proposal introduces a new standard that seeks to clarify and enhance the existing regulatory requirements applicable to broker-dealers.[5] In doing so, however, the SEC may well have added to the confusion that currently exists between the role of a "broker-dealer" versus that of an "investment adviser" and has set a bar that, if adopted as proposed, will be challenging for broker-dealers to meet without potentially limiting the nature of their relationship with, and the types of investment opportunities offered to, retail customers.

The principal elements of the Best Interest Proposal and certain significant questions regarding its implementation are discussed below.

Who is a "retail customer"?

The SEC proposes to define "retail customer" as "a person, or the legal representative of such person, who: (1) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer or a natural person who is an associated person of a broker or dealer, (2) uses the recommendation primarily for personal, family, or household purposes."[6]

Accordingly, the Best Interest Proposal would extend the definition of "retail customer" beyond natural persons to include any persons who receive a recommendation, if the recommendation is used by such person for "personal, family or household purposes." This differs substantially from the approach taken under the existing FINRA suitability requirements, pursuant to which certain institutional entities and high net worth individuals are excluded from the full scope of retail suitability requirements if certain conditions are met. Although the SEC noted that this change was made, among other reasons, to capture certain types of entities that might be excluded as "institutional accounts" under FINRA's suitability rule, such as trusts that represent the assets of natural persons, the effect of such definitional change is potentially much broader.[7]

The Best Interest Proposal also departs from the definition of retail customer in Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which mandated the SEC to conduct a study of existing legal standards of care for broker-dealers and investment advisers, in that it extends to any person who receives a "recommendation of any securities transaction or investment strategy involving securities" as opposed to "personalized investment advice." The Best Interest Proposal does not explicitly define "recommendation" and the SEC believes instead that whether a "recommendation" has been made should turn on the facts and circumstances of the particular situation, consistent with current broker-dealer regulation. Factors that have historically been considered in the context of broker-dealer suitability obligations in determining whether a recommendation has been made include whether the communication "reasonably could be viewed as a 'call to action' and . . . [whether the communication] would influence an investor to trade a particular security or group of securities."[8]

The limitation that recommendations be "primarily for personal, family or household purposes" is, according to the Best Interest Proposal, intended to be "sufficiently broad and flexible to capture recommendations related to the various reasons retail customers may invest."[9] The SEC suggested that a broker-dealer is already generally required under existing regulations to obtain sufficient facts concerning a retail customer to determine an account's primary purpose for purposes of the Best Interest Standard.[10] However, whether the collection of information for separate purposes and under different standards would

actually result in the broker-dealer being able to readily ascertain the primary purpose with respect to every communication remains unclear. Further, that the Best Interest Standard would extend to communications with the "legal representative" of a person could raise significant operational and implementation issues. Although the inclusion of legal representatives seemingly was intended to capture communications with persons such as trustees or managing agents of a trust maintained for the benefit of natural persons, it is not clear as to whether this would extend to other contexts, such as, *e.g.*, communications between a broker-dealer and an investment advisor acting on behalf of advisory clients.

What does the Best Interest Obligation require?

The "best interest" obligation would only be satisfied to the extent that each of the obligations identified below is met.

- **Disclosure Obligation:** The broker-dealer, prior to or at the time of the recommendation, reasonably discloses to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer and all material conflicts of interest associated with the recommendation.

- **Care Obligation:** The broker-dealer, in making the recommendation, exercises reasonable diligence, care, skill, and prudence to satisfy its "duty of care," which includes the following elements:

    - **Generic reasonable basis best interest** — understand the potential risks and rewards associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers

    - **Customer specific best interest** — have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks and rewards associated with the recommendation

    - **Overall or "quantitative" best interest** — have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile

- **Conflict of Interest Obligations:** The broker-dealer establishes, maintains, and enforces written policies and procedures reasonably designed to:

    - In the case of **material conflicts generally** — identify and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with recommendations of the broker-dealer

    - In the case of **material conflicts relating to financial incentives** — identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations[11]

What does "best interest" mean?

The Best Interest Proposal does not define "best interest;" rather, the SEC states that whether a broker-dealer acted in the best interest of a retail customer when making a recommendation will turn on the facts and circumstances of the particular recommendation and the particular retail customer.[12] While the lack of

definition renders implementation challenging, the SEC provides some guidance regarding its views of how a broker-dealer could act in the best interest of a retail customer with respect to each of the obligations identified above.

The Disclosure Obligation

The SEC provides the following examples of material facts relating to the scope and terms of the relationship with the retail customer:

- Acting as a broker-dealer with respect to the recommendation
- Fees and charges that apply
- The type and scope of services provided
- Material conflicts of interest[13]

The Best Interest Proposal describes a "material conflict of interest" as a conflict of interest that a reasonable person would "expect might incline a broker-dealer—consciously or unconsciously—to make a recommendation that is not disinterested."[14]

The Best Interest Proposal outlines a non-exhaustive list of material conflicts with respect to making a recommendation to a retail customer, including recommending:

- Proprietary products, products of affiliates, or limited range of products
- One share class versus another share class of a mutual fund
- Securities underwritten by the firm or a broker-dealer affiliate
- The rollover or transfer of assets from one type of account to another (such as recommendations to rollover or transfer securities in an Employee Retirement Income Security Act 1974 (ERISA) account to an individual retirement account
- Allocation of investment opportunities among retail customers[15]

The Disclosure Obligation can only be satisfied if the broker-dealer provides sufficient information to enable a retail customer to make an informed decision with regard to the recommendation. The Best Interest Proposal requires that such information be concise, clear, and understandable.[16] In addition, the retail customer should have adequate time to consider the information in order to make informed investment decisions.[17]

The Care Obligation

Under the Care Obligation, a broker-dealer generally should consider reasonable alternatives, if any, offered by the broker-dealer in determining whether it has a reasonable basis for making the recommendation. However, the SEC notes that this would not require a broker-dealer to analyze all possible securities, all other products, or all investment strategies to recommend the single "best" security or investment strategy for the retail customer, nor necessarily require a broker-dealer to recommend the least expensive or least remunerative security or investment strategy.

Instead, a broker-dealer would be required to:

- Undertake reasonable diligence to understand the potential risks and rewards of the recommended security or strategy

- Have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers based on that understanding[18]

What constitutes "reasonable diligence" would vary depending on the complexity of and risks associated with the recommended security or investment strategy and the broker-dealer's familiarity with the recommended security or investment strategy.[19] Other factors may include the investment objectives, characteristics (including any special or unusual features), liquidity, risks and potential benefits, volatility, and likely performance of market and economic conditions, the expected return of the security or investment strategy, as well as any financial incentives to recommend the security or investment strategy.

Under the Best Interest Proposal, "customer-specific suitability" obligations go beyond current regulatory requirements in that the broker-dealer must have a reasonable basis to believe that the recommendation is in the "best interest" of, rather than "suitable for," a given retail customer.[20] Moreover, the SEC cautions that a broker-dealer could not meet the Care Obligation through disclosure alone. For example, if a broker-dealer is choosing among identical securities with different costs, the SEC believes it would be inconsistent with the Best Interest Standard for the broker-dealer to recommend the more expensive alternative for the customer, even if the broker-dealer had disclosed that the product was higher in cost.[21]

The Care Obligation also goes beyond FINRA's concept of "quantitative suitability."[22] FINRA's quantitative suitability rule only applies to a member or associated person who has actual or *de facto* control over a customer account. Under the Best Interest Proposal, this requirement applies whether or not a broker-dealer exercises actual or *de facto* control over a customer's account.[23] The SEC believes that imposing this requirement without a "control" requirement would provide consistency among the investor protections provided to retail customers under the Best Interest Standard, by requiring a broker-dealer to always form a reasonable basis as to the recommended trading in a retail customer's account, irrespective of whether the broker-dealer "controls" or exercises *de facto* control over the retail customer's account. Accordingly, the Best Interest Proposal would expand the existing "quantitative suitability" obligation, without a "control" element.

Conflict of Interest Obligations

Broker-dealers need to maintain and implement adequate compliance and supervisory policies and procedures to identify and, at a minimum, disclose (and mitigate, in the case of financial incentives) or eliminate, material conflicts of interest.[24] While noting that there is flexibility to tailor the policies and procedures to account for, among other factors, business practices, size and complexity of the broker-dealer, range of services and products offered, and associated conflicts presented,[25] the SEC identified the following components for broker-dealers to consider including in their programs:

- Policies and procedures outlining how the firm identifies its material conflicts (and material conflicts arising from financial incentives), including such material conflicts of natural persons associated with the broker-dealer, clearly identifying all such material conflicts of interest and specifying how the broker-dealer intends to address each conflict

- Robust compliance review and monitoring systems

- Processes to escalate identified instances of noncompliance to appropriate personnel for remediation
- Procedures that clearly designate responsibility to business lines personnel for supervision of functions and persons, including determination of compensation
- Processes for escalating conflicts of interest
- Processes for a periodic review and testing of the adequacy and effectiveness of policies and procedures
- Training on the policies and procedures[26]

Scope of the Best Interest Obligation

Who has the obligation? As discussed above, the obligation to comply with the Best Interest Standard would apply to broker-dealers and to natural persons who are associated persons of a broker-dealer. The SEC has limited the expanse of the definition to a "natural person who is an associated person" to avoid the application to "all associated persons of a broker-dealer," including affiliated entities of a broker-dealer (which the SEC clarified are not the intended focus).[27] For firms that are registered as both broker-dealers and investment advisers, compliance would only be required when the firm is providing a recommendation in its capacity as a broker-dealer. As a practical matter, determining whether a firm is acting in its capacity as a broker-dealer or as an investment adviser is not always clear and could raise interpretative and operational challenges for firms that are dual registrants.

What does the obligation apply to? The obligation to comply with the Best Interest Standard would apply when a broker-dealer is making a "recommendation" to a "retail customer." The definition of "retail customer" includes, potentially, both natural and non-natural persons and does not include any sophistication threshold. As noted above, whether a recommendation has been made to a retail customer that triggers the best interest obligation would be interpreted consistent with existing broker-dealer regulation under the federal securities laws and FINRA rules.[28] Whether a recommendation has been made turns on the facts and circumstances of the particular situation and whether a recommendation has, in fact, been given is not susceptible to a bright line test.[29]

The SEC proposes to apply the Best Interest Standard to recommendations of any securities transaction (*i.e.*, any sale, purchase, or exchange) and investment strategy, including explicit recommendations to hold a security or regarding the manner in which it is to be purchased or sold, to retail customers.[30]

Where are the limits? As noted above, factors that have historically been considered in the context of whether a "recommendation" has been made for purposes of determining broker-dealer suitability obligations, include whether the communication could reasonably be viewed as a call to action or influence an investor to engage in a securities transaction. Consistent with existing broker-dealer suitability obligations, certain communications would be excluded from the meaning of "recommendation" so long as they do not include a recommendation of a particular security. For example, provision of general investor education materials (*e.g.*, a brochure discussing asset allocation strategies) or limited investment analysis tools (*e.g.*, a retirement savings calculator) would generally be excluded from characterization as a recommendation.[31] "Implicit recommendations," such as certain transactions that a broker-dealer executes on a retail customer's behalf, even if not separately authorized would be subject to the Best Interest Standard.[32]

When does the obligation apply? A broker-dealer must comply with the Best Interest Standard "when making" a recommendation to a retail customer and a broker-dealer would be required to act in the best interest of the retail customer "at the time the recommendation is made." The Best Interest Proposal focuses on each particular instance when a recommendation is made to a retail customer and whether the broker-dealer satisfied its best interest obligation at the time of the recommendation.[33] However, the Best Interest Proposal would not:

- Require a broker-dealer to have a continuous duty to a retail customer or impose a duty to monitor the performance of the account
- Require the broker-dealer to refuse to accept a customer's order that is contrary to a broker-dealer's recommendations
- Apply to self-directed or otherwise unsolicited transactions by a retail customer[34]

Why the Best Interest Proposal? The SEC has been evaluating the standards applicable to investment advice for some time. In 2011, as mandated by Section 913 of the Dodd-Frank Act, the SEC Staff published a study in which it made certain recommendations that it believed would enhance retail customer protections and reduce confusion as to the standards of conduct that apply when firms provide personalized investment advice. For example, the SEC cited instances of retail customers who use the services of broker-dealers and investment advisers and are not aware of the differences in regulatory status of these entities, with some investors believing that investment advisers and broker-dealers offered the same services and were subject to the same duties. The Department of Labor (DOL) also engaged in rulemaking to broaden the definition of "fiduciary" in connection with providing investment advice under the Employee Retirement Income Security Act of 1974 (ERISA), which was subsequently vacated by a ruling issued by the US Court of Appeals for the Fifth Circuit in March 2018. In light of the DOL rule, and other market developments, the SEC indicated that the Best Interest Proposal is intended to eliminate uncertainty and clarify the standards of conduct applicable to broker-dealers and investment advisers.

How will the Best Interest Proposal be implemented? The Best Interest Proposal includes new record-making and recordkeeping requirements for broker-dealers with respect to certain information collected from or provided to retail customers. As part of developing a "retail customer's investment profile," the Best Interest Proposal may require broker-dealers to seek to obtain certain retail customer information that is currently not required pursuant to Rule 17a-3(a)(17) of the Exchange Act. The Best Interest Proposal also requires broker-dealers to disclose in writing the material facts relating to the scope and terms of their relationship with the retail customer and all material conflicts of interest that are associated with the investment recommendations provided to the retail customer.[35] Such material facts would include, according to the SEC, that the broker-dealer is acting in a broker-dealer capacity with respect to the recommendation; the fees and charges that apply to the retail customer's transactions; and the type and scope of services provided by the broker-dealer.[36]

Form CRS Relationship Summary

In a companion release to the Best Interest Proposal, the SEC proposed new and amended rules and forms under both the Exchange Act and the Investment Advisers Act of 1940 (Advisers Act) which would require broker-dealers and investment advisers to provide a Relationship Summary on Form CRS to retail investors to inform them about the relationships and services the firm offers. The Relationship Summary would also be required to disclose the standard of conduct and fees and costs associated with the services provided by the firm, specified conflicts of interest, and whether the firm and its financial professionals currently have reportable legal or disciplinary events.[37]

With respect to broker-dealers, delivery of the Form CRS would be required under a new Rule 17a-14 under the Exchange Act and would occur before or at the time the retail investor first engages the firm's services.[38] For investment advisers, Form CRS would be required by Form ADV Part 3 and initial delivery would take place before or at the time the firm enters into an investment advisory agreement with the retail investor.[39] In addition, a firm would be required to provide a relationship summary to an existing client or customer who is a retail investor before or at the time a new account is opened or as changes are made to the retail investor's account that would materially change the nature and scope of the firm's relationship with such retail investor.[40]

For purposes of the CRS Proposal, a "retail investor" would be defined as a prospective or existing client or customer who is a natural person (an individual). All natural persons would be included in the definition, regardless of the individual's net worth. This definition differs from the definition of "retail customer" in the Best Interest Proposal, which, as explained above, potentially would capture both natural and non-natural persons.

The Relationship Summary would be limited to four pages and contain the following sections:

- An introduction
- The relationships and services the firm offers to retail investors
- The standard of conduct applicable to those services
- The fees and costs that retail investors will pay
- Comparisons of brokerage and investment advisory services (for standalone broker-dealers and investment advisers)
- Conflicts of interest
- 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
- Key questions for retail investors to ask the firm's financial professional[41]

To the extent that information in the Relationship Summary becomes materially inaccurate, firms would be required to update their Relationship Summary within 30 days. The Relationship Summary must be filed with the SEC, and would be available on the SEC's public disclosure website.[42] Firms also would be required to post the latest version on their own websites.

Naming Restrictions

Finally, as part of the CRS Proposal, the SEC also is proposing to restrict any broker-dealer, and any natural person who is an associated person of such broker-dealer, from using as part of its name or title the term "adviser" or "advisor" when communicating with a retail investor unless such broker-dealer is registered as an investment adviser under the Advisers Act or with a state and is acting in that capacity when engaging in such communication. However, the SEC would not restrict a broker-dealer's or its associated natural persons' use of the term "adviser" or "advisor" when acting on behalf of a bank or insurance company, or when acting on behalf of a municipal advisor or a commodity trading advisor. According to the SEC, these naming restrictions are intended to eliminate confusion among retail

investors regarding the services offered by, and the standards of conduct applicable to, broker-dealers and investment advisers.[43]

Conclusion

SEC Chairman Clayton noted in connection with the Best Interest Proposal that regulatory complexity has driven significant change in the market for investment advice, with some broker-dealers limiting the products and services they provide to customers and moving some customers away from full-service brokerage, which includes investment advice, to discount brokerage which does not.

If adopted, the Best Interest Proposal would certainly represent a notable departure from the current regulatory framework applicable to broker-dealers. However, because the Best Interest Proposal does not clearly define "best interest," "recommendation, or "retail customer", firms will likely face significant challenges implementing and complying with numerous aspects of the regulation.

Accordingly, while the Best Interest Proposal and related rulemakings are intended to clarify the standards of conduct for broker-dealers and investment advisers, it remains to be seen whether these efforts would instead further shrink the field of full-service broker-dealers and further limit available options for retail customers. Moreover, the potential costs imposed on broker-dealers for making recommendations to retail customers may result in such customers having to make investment decisions without any guidance from broker-dealers, leaving those who are arguably least equipped to make such decisions entirely on their own.

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Endnotes

[1] *See* SEC Release No. 34-83062, Regulation Best Interest, Proposed Rule [the Proposing Release], *available at:* https://www.sec.gov/rules/proposed/2018/34-83062.pdf. *See also* Press Release, SEC Proposes to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Investment Professionals, *available at:* https://www.sec.gov/news/press-release/2018-68

[2] Proposing Release at p. 11.

[3] *See* SEC Release No. 34-83063; IA-4888, Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, Proposed Rule [the Form CRS Release], *available at:* https://www.sec.gov/rules/proposed/2018/34-83063.pdf.

[4] In addition to the Best Interest Proposal and the CRS Proposal, the SEC proposed an interpretation to reaffirm and, in some cases, clarify the SEC's views of the fiduciary duty that investment advisers owe to their clients. *See* SEC Release No. IA-4889. Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation. That interpretation is beyond the scope of this *Client Alert*.

[5] The SEC noted that FINRA and a number of cases have interpreted FINRA's suitability rule as requiring a broker-dealer to make recommendations that are "consistent with his customers' best interests" or are not "clearly contrary to the best interest of the customer," but this is not an explicit requirement of FINRA's suitability rule. *See* Best Interest Proposal at p. 8.

[6] Proposing Release at p. 83.

[7] *See* Proposing Release at p. 85 and accompanying fn. 159.

[8] Proposing Release at p. 75.

[9] Proposing Release at p. 84.

[10] *See* Proposing Release at p. 84, fn. 156.

[11] *See* Proposing Release at p. 44-45.

[12] *See.* Proposing Release at p. 52.

[13] *See* Proposing Release at p. 98. While these examples are indicative of what the SEC believes would generally be material facts regarding the scope and terms of the relationship, broker-dealers would need to determine what other material facts relate to the scope and terms of the relationship, and reasonably disclose them in writing prior to or at the time of a recommendation.

[14] Proposing Release at p. 110.

[15] *See* Proposing Release at p. 111-113. The SEC noted that the requirement under Best Interest Proposal that a broker-dealer disclose information about material conflicts of interest is not intended to limit or restrict a broker-dealer's obligations under federal securities laws, including the general antifraud provisions of the federal securities laws, relating to disclosure of additional information to a customer at the time of the customer's investment decision.

[16] *See* Proposing Release at p. 113-118. The SEC stated that broker-dealers generally should apply plain English principles to written disclosures including, the use of short sentences and active voice, and avoidance of legal jargon, highly technical business terms, or multiple negatives.

[17] *See* Proposing Release at p. 119.

[18] *See* Proposing Release at p. 137. According to the SEC, broker-dealer must adhere to both components to meet its obligation. Thus, a broker-dealer could violate the obligation if he or she did not understand the potential risks and rewards of the recommended security or investment strategy, even if the security or investment strategy could have been in the best interest for at least some retail customers.

[19] *See* Proposing Release at p. 139.

[20] *See* Proposing Release at p. 142.

[21] *See* Proposing Release at p. 148.

[22] *See* Proposing Release at p. 150.

[23] *See* Proposing Release at p. 150.

[24] *See* Proposing Release at p. 170.

[25] *See* Proposing Release at p. 171.

[26] *See* Proposing Release at p. 172.

[27] *See* Proposing Release at p. 72.

[28] *See* Proposing Release at p. 73.

[29] *See* Proposing Release at p. 74.

[30] *See* Proposing Release *at* p. 82.

[31] *See* Proposing Release at p. 76.

[32] *See* Proposing Release at p. 77.

[33] *See* Proposing Release at p. 78.

[34] *See* Proposing Release at p. 79-80

[35] *See* Proposing Release at p. 196-197.

[36] *See* Proposing Release at p. 261-262.

[37] *See* Form CRS Release at p. 1.

[38] *See* Form CRS Release at p. 12-13 and fn. 23.

[39] *See* Form CRS Release at p. 12.

[40] *See* Form CRS Release at p. 140-141.

[41] *See* Form CRS Release at p. 14.

[42] *See* Form CRS Release at p. 136-137.

[43] *See* Form CRS Release at p. 172-173.