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SEC Proposed Rules to Help Distinguish Between Advisers and BDs

By John I. Sanders

On April 18, 2018, the SEC issued proposed rules which would require investment advisers and broker-dealers to provide summary disclosure documents to new retail investors.^[1] The documents would inform investors of, among other items, (i) the relationship and services the firm offers to retail investors, (ii) the standard of conduct and the fees associated with those services, (iii) conflicts of interest, and (iv) comparisons of brokerage and investment advisory services (for standalone investment advisers and broker-dealers).^[2] Firms would provide the summary disclosure, limited to four pages in length, at the beginning of a relationship and whenever there is a material change to the information in the disclosure.^[3] The proposed rules would also prohibit broker-dealers from using certain confusing terms to describe themselves and their representatives.^[4] Specifically, the proposed rules would prohibit broker-dealers and natural persons associated with broker-dealers from using the terms “adviser” or “advisor” as part of a name or title when communicating with retail investors.^[5] This prohibition would also cover terms like financial advisor (or adviser), wealth advisor (or adviser), trusted advisor (or adviser) and advisory.^[6] The SEC proposed these rules to help alleviate some of the confusion that exists among retail investors with regard to the differences between investment advisers and broker-dealers.^[7] By design, the proposed rules compliment the so-called “Regulation Best Interest” by providing retail investors with the information they need to make an informed decision about whether to work with an investment adviser or a broker-dealer.^[8] We believe the proposed rules, in aggregate, will help investment advisers distinguish themselves and the value they deliver relative to broker-dealers. If you have any questions about the proposed rules or investment adviser regulation generally, please feel free to contact us directly. **John I. Sanders** is an associate based in the firm’s Winston-Salem office. ^[1] Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, 83 Fed. Reg. 21416 (proposed May 9, 2018) (to be codified at 17 C.F.R. pts. 240, 249, 275 and 279). ^[2] *Id.* at 21419. ^[3] *Id.* at 21419, 21455. ^[4] *Id.* at 21459. ^[5] *Id.* at 21461. ^[6] *Id.* ^[7] *Id.* at 21417. ^[8] *Id.* at 21419.