

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Regulation Best Interest

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. JUSTIFICATION

1. Necessity of Information Collection

On April 18, 2018, the Commission proposed Rule 15l-1 under the Securities Exchange Act of 1934 (“Exchange Act”) establishing a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer (unless otherwise indicated, together referred to as “broker-dealer”) when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer (“Regulation Best Interest”). The Commission proposed Regulation Best Interest pursuant to its authority under Sections 913(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)¹ and Section 15(l) of the Exchange Act.²

Section 913(f) of the Dodd-Frank Act provides the Commission with discretionary authority to “commence a rulemaking, as necessary or appropriate to the public interest and for the protection of retail customers (and such other customers as the Commission may by rule provide), to address the legal or regulatory standards of care for brokers, dealers. . .[and] persons associated with brokers or dealers. . . for providing personalized investment advice about securities to such retail customers.”³ Exchange Act Section 15(l) gives the Commission the authority to (1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and (2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.”⁴

Proposed Rule 15l-1(a)(1) requires broker-dealers and natural persons who are associated persons of a broker-dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer or natural person who is an associated person making the recommendation ahead of the interest of the retail customer.

¹ Pub. L. 111-203, 124 Stat. 1376, 1827 (2010).

² 15 U.S.C. §78o.

³ Section 913(f) of the Dodd-Frank Act.

⁴ 15 U.S.C. §78o.

Proposed Rule 15l-1(a)(2) establishes four obligations that must be met to satisfy the best interest obligation set forth in Rule 15l-1(a)(1):

1. Disclosure Obligation: requires the broker-dealer or associated person, prior to or at the time of such recommendation, to reasonably disclose to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest associated with the recommendation;⁵
2. Care Obligation: requires the broker-dealer or associated person, in making the recommendation, to exercise reasonable diligence, care, skill and prudence;⁶ and
3. Conflict of Interest Obligations: require the broker-dealer⁷ to (i) establish, maintain, and enforce written policies and procedures reasonably designed to identify and at a minimum disclose, or eliminate, all material conflicts of interest and (ii) establish, maintain, and enforce written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives – associated with such recommendations.⁸

Proposed Rule 15l-1(b)(1) would define “Retail Customer” as a person, or the legal representative of such person, who: (i) 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; and (ii) uses the recommendation primarily for personal, family, or household purposes.⁹

Proposed Rule 15l-1(b)(2) would define “Retail Customer Investment Profile” as information including, but not limited to, “the retail customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail customer may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.”¹⁰

In addition, the Commission proposed new record-making and recordkeeping requirements on broker-dealers and associated persons. The addition of paragraph (a)(25) to Rule 17a-3 would impose new record-making obligations on broker-dealers subject to

⁵ Proposed Rule 15l-1(a)(2)(i).

⁶ Proposed Rule 15l-1(a)(2)(ii).

⁷ The Conflict of Interest Obligations apply solely to the broker or dealer entity, and not to the natural persons who are associated persons of a broker or dealer. For purposes of discussing the Conflict of Interest Obligations, the term “broker-dealer” refers only to the broker-dealer entity, and not to such individuals.

⁸ Proposed Rule 15l-1(a)(2)(iii).

⁹ Proposed Rule 15l-1(b)(1).

¹⁰ Proposed Rule 15l-1(b)(2).

Regulation Best Interest. The Proposed Amendment to Rule 17a-4(e)(5) would impose new record retention obligations on broker-dealers subject to Regulation Best Interest.¹¹

The information that must be collected pursuant to the foregoing proposed rules is intended to: (1) improve disclosure about the scope and terms of the broker-dealer's relationship with the retail customer, which would foster retail customers' understanding of their relationship with a broker-dealer; (2) enhance the quality of recommendations provided by establishing an express best interest obligation under the federal securities laws; (3) enhance the disclosure of a broker-dealer's material conflicts of interest; and (4) establish obligations that require mitigation, and not just disclosure, of conflicts of interest arising from financial incentives associated with broker-dealer recommendations. The information will therefore help establish a framework that protects investors and promotes efficiency, competition, and capital formation.

2. Purpose and Use of Information Collection

i. Disclosure Obligation

As noted above, the Disclosure Obligation under proposed Rule 15l-1(a)(2)(i) would require a broker-dealer, prior to or at the time of recommending a securities transaction or investment strategy involving securities to a retail customer, to: (1) reasonably disclose to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer; and (2) reasonably disclose to the retail customer, in writing, all material conflicts of interest that are associated with the recommendation.

The collection of information arising from the Disclosure Obligation would facilitate a retail customer's understanding of the nature of his or her account, the broker-dealer's fees and charges, as well as the nature of services that the broker-dealer provides, as well as any limitations to those services. It would also reduce retail customers' confusion about the differences among certain financial service providers, such as broker-dealers, investment advisers, and dual-registrants. In addition, the obligation to disclose all material conflicts of interest associated with a recommendation would raise retail customers' awareness of the potential effects of conflicts of interest, and increase the likelihood that broker-dealers would make recommendations that are in the retail customer's best interest.

ii. Care Obligation

Under proposed Rule 15l-1(a)(2)(ii), a broker-dealer would be required to make a reasonable effort to ascertain the potential risks and rewards associated with the recommendation, and to determine whether the recommendation could be in the best interest of at least some retail customers.

¹¹ Because the record-making and recordkeeping obligations are being adopted under Rule 17a-3 and Rule 17a-4, which each have their own respective OMB Control Number, separate supporting statements are being submitted to address these components of Regulation Best Interest.

The Commission believes that the Care Obligation would not require a broker-dealer to collect additional information from the retail customer beyond that currently collected in the ordinary course of business. However, a broker-dealer's analysis of the information collected and any resulting recommendation would need to adhere to the enhanced best interest standard of Regulation Best Interest.

iii. Conflict of Interest Obligations

Proposed Rule 15l-1(a)(2)(iii)(A) would require a broker-dealer¹² to establish, maintain, and enforce written policies and procedures reasonably designed to identify and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with a recommendation. Proposed Rule 15l-1(a)(2)(iii)(B) would require a broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with a recommendation.

The collection of information arising from the Conflict of Interest Obligations would help a broker-dealer develop a process, relevant to its retail customers and the nature of its business, for identifying material conflicts of interest, and then determining whether to eliminate, or disclose and/or mitigate, the material conflict and the appropriate means of eliminating, disclosing, and/or mitigating the conflict. As a result of a broker-dealer's eliminating, disclosing, and/or mitigating the effects of conflicts of interest on broker-dealer recommendations, retail customers would more likely receive recommendations in their best interest. In addition, the retention of written policies and procedures would generally: (1) assist a broker-dealer in supervising and assessing internal compliance with Regulation Best Interest; and (2) assist the Commission and self-regulatory organization staff in connection with examinations and investigations.

3. Consideration Given to Information Technology

The proposed rules do not prescribe particular forms or methods of compliance for broker-dealers or their associated person, to allow maximum flexibility with respect to new technologies as they develop.

4. Duplication

The Commission evaluates disclosure, recordkeeping, and record retention rule-based requirements for duplication, and re-evaluates them whenever it proposes a rule or a change in a rule. Although existing principles and obligations similar to those underlying Regulation Best Interest already apply to broker-dealers under other rules and regulations, no other Commission rule establishes an explicit standard of conduct that requires broker-dealers and their natural associated persons to comply with the express obligations imposed by Regulation Best Interest. We believe that requiring broker-dealers to explicitly act in the best interests of their retail customers

¹² See *supra* note 7.

– by satisfying the obligations underlying Regulation Best Interest, including the collection of information requirements – is necessary to improve investor protection by enhancing the professional standards of conduct that currently apply to broker-dealers when they make recommendations to retail customers.

5. Effect on Small Entities

The Regulatory Flexibility Act (“RFA”)¹³ requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)¹⁴ of the Administrative Procedure Act,¹⁵ as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on “small entities.”¹⁶ For purposes of a Commission rulemaking in connection with the RFA, a broker-dealer will be deemed a small entity if it: (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,¹⁷ or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.¹⁸

Based on 2017 FOCUS Report data about the broker-dealer retail market, we believe that approximately 802 broker-dealers – with an estimated 7,845 retail customer accounts – would qualify as small entities subject to Regulation Best Interest. However, proposed Regulation Best Interest does not distinguish between small entities and other broker-dealers. We recognize that different broker-dealers may require different amounts of time or external assistance in preparing for proposed Relationship Best Interest. The Commission believes, however, that imposing different requirements on smaller firms would not be consistent with investor protection and the purposes of proposed Regulation Best Interest. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

6. Consequences of Not Conducting Collection

The information to be collected and recorded under Regulation Best Interest would allow the Commission, state securities regulatory authorities, and SROs to determine whether broker-

¹³ 5 U.S.C. 601 *et seq.*

¹⁴ 5 U.S.C. 603(a).

¹⁵ 5 U.S.C. 551 *et seq.*

¹⁶ Although Section 601(b) of the RFA defines the term “small entity,” the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10 under the Exchange Act, 17 CFR 240.0-10.

¹⁷ See 17 CFR 240.17a-5(d).

¹⁸ See 17 CFR 240.0-10(c).

dealers are in compliance with Regulation Best Interest, and to ensure that broker-dealers are not placing their interests ahead of the interests of their retail customers when making investment recommendations. If a broker-dealer does not make these records, or it makes these records less frequently, the level of investor protection will be reduced.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. The collection is consistent with 5 CFR 1320.5(d)(2).¹⁹

8. Consultations Outside the Agency

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment of Gift

No payment or gift is provided to respondents.

10. Confidentiality

The records required by Regulation Best Interest are available only to the examination staffs of the Commission, State regulatory authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) and the Commission’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission generally does not publish or make available information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of any person or any other investigation.

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (“PII”).²⁰

¹⁹ Proposed Amendment to Rule 17a-4(e)(5) would impose new record retention obligations on broker-dealers subject to Regulation Best Interest, including a requirement for broker-dealers to preserve certain records for a period of not less than six years. This inconsistency with the Guidelines in 5 CFR 1320.5(d)(2) is discussed separately in the Supporting Statement for Rule 17a-4.

12. Burden of Information Collection and Costs to Respondents

The Commission proposes to adopt Regulation Best Interest, which would require broker-dealers to make, disclose, and keep current various records and information. The Commission estimates this rule would impose on each broker-dealer an initial, one-time burden of 2,245 hours in the first year and an ongoing burden of 2,218 hours per year (including the first year). The Commission estimates there are likely 2,857 broker-dealers respondents (hereinafter, “broker-dealer” and “respondent” are used interchangeably), including 2,055 large broker-dealers and 802 small broker-dealers.²¹ This would result in an estimated burden of 8,899 hours per respondent,²² or 2,966 hours per year per respondent when annualized over three years.²³ The total estimated industry burden would be 25,424,443 hours,²⁴ or 8,474,814 hours per year when annualized over three years.²⁵

Following is a more detailed discussion of the estimated burdens associated with each of the broker-dealers’ four obligations under Regulation Best Interest.

i. Disclosure Obligation

The Disclosure Obligation under proposed Regulation Best Interest, which is a third-party disclosure burden, would require a broker-dealer, prior to or at the time of recommending a securities transaction or strategy involving securities to a retail customer, to: (1) reasonably disclose to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer; and (2) reasonably disclose to the retail customer, in writing, all material conflicts of interest that are associated with the recommendation. The Commission believes that requiring broker-dealers to reasonably disclose to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with a retail customer would facilitate a retail customer’s understanding of the nature of his or her account, the broker-dealer’s fees and charges, as well as the nature of services that the broker-dealer provides, as well as any limitations to those services. It would also reduce retail customers’ confusion about the differences among certain financial service providers, such as broker-dealers, investment advisers, and dual-registrants. In addition, the obligation to disclose all

²⁰ The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

²¹ As of December 31, 2017, 3,841 broker-dealers filed Form BD and were registered with the Commission – either as standalone broker-dealers or as dually-registered entities. Based on data obtained from Form BR, the Commission believes that approximately 74.4% of this population or 2,857 broker-dealers have retail customers and therefore would likely be subject to Regulation Best Interest.

²² 4,463 hours in first year + 4,436 hours in second and third years = 8,899 hours.

²³ 8,899 hours / 3 = 2,966 hours per year.

²⁴ 8,899 hours per respondent * 2,857 broker-dealers = 25,424,443 hours.

²⁵ 25,424,443 hours / 3 years = 8,474,814 hours per year.

material conflicts of interest associated with a recommendation would raise retail customers' awareness of the potential effects of conflicts of interest, and increase the likelihood that broker-dealers would make recommendations that are in the retail customer's best interest.

The Commission assumes for purposes of this analysis that broker-dealers would meet their obligation to reasonably disclose to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer through a combination of delivery of the Relationship Summary, creating account disclosures to include standardized language related to capacity and scope, and types of services and the development of comprehensive fee schedules. In addition, we preliminarily assume that broker-dealers would satisfy the obligation to disclose material conflicts of interest through the use of a standardized, written disclosure document provided to all retail customers and supplemental disclosure provided to certain retail customers for specific products. We also assume for purposes of this analysis that delivery of written disclosure would occur at the beginning of a relationship, such as together with the account opening agreement. For existing retail customers, the disclosure would need to occur "prior to or at the time" of a recommendation. Subsequent disclosures may be delivered in the event of a material change or if the broker-dealer determines additional disclosure is needed for certain types of products.

***a. Disclosure of Capacity, Type and Scope of Services –
Initial One-Time Burden & Costs***

We estimate that a dually-registered firm would incur an initial one-time internal burden of 10 hours for in-house counsel and in-house compliance personnel²⁶ to draft language regarding capacity for inclusion in the standardized account disclosure that is delivered to the retail customer.²⁷

In addition, we estimate that dual-registrants would incur an estimated external initial, one-time cost of \$4,720 for the assistance of outside counsel in the preparation and review of standardized language regarding capacity.²⁸ For the estimated 360 dually-registered firms with retail business,²⁹ we project an annualized initial, one-time aggregate burden of 1,200 hours per

²⁶ The 10 hour estimate includes 5 hours for in-house counsel to draft and review the standardized language, and 5 hours for consultation and review of compliance personnel.

²⁷ The following estimates include the burdens and costs that broker-dealers would incur in drafting standardized account disclosure language related to capacity, scope and terms of the relationship on behalf of their dually-registered representatives. For purposes of this analysis, the Commission assumes that broker-dealers would undertake these tasks on behalf of their registered representatives.

²⁸ This estimate is based on the following calculation: (10 hours for outside counsel review/drafting) x (\$472/hour for outside counsel services) = \$4,720 in initial outside counsel costs.

²⁹ FOCUS Reports, or "Financial and Operational Combined Uniform Single" Reports, are monthly, quarterly, and annual reports that broker-dealers are generally required to file with the Commission and/or SROs pursuant to Exchange Act Rule 17a-5. See 17 CFR 240.17a-5. This data is obtained from FOCUS filings as of December 2017.

year,³⁰ and \$1.7 million in aggregate initial costs, or approximately \$566,667 per year when annualized over three years.³¹

Similarly, to comply with proposed Regulation Best Interest, standalone broker-dealers would likely draft standardized language for inclusion in the account disclosure to provide the retail customer with more specific information regarding the types and scope of services that they provide. We expect that the associated costs and burdens would differ between small and large broker-dealers, as large broker-dealers generally offer more products and services and therefore would need to potentially evaluate a larger number of products and services.

Given these assumptions, we estimate that a small broker-dealer would incur an internal initial, one-time burden of 10 hours for in-house counsel and in-house compliance personnel to draft this standardized language.³² In addition, a small broker-dealer would incur an estimated external cost of \$4,720 for the assistance of outside counsel in the preparation and review of this standardized language.³³ For the estimated 802 small broker-dealers,³⁴ we project an aggregate initial burden of 8,020 hours,³⁵ and aggregate initial costs of \$3.79 million.³⁶

Given the broader array of products and services offered, we estimate that a large broker-dealer would incur an internal burden of 20 hours to draft this standardized language.³⁷ A large broker-dealer would also incur an estimated cost of \$7,080 for the assistance of outside counsel in the preparation and review of this standardized language.³⁸ For the estimated 2,055 large

³⁰ This estimate is based on the following calculation: (360 dually-registered retail firms) x (10 hours) = 3,600 initial aggregate burden hours for years one, two, and three. 3,600 burden hours / 3 years = 1,200 burden hours per year.

³¹ This estimate is based on the following calculation: (360 dually-registered retail firms) x (\$4,720 in external cost per firm) = \$1.7 million in aggregate initial costs over years one, two, and three. \$1.7 million / 3 = \$566,667.

³² The 10 hour estimate includes 5 hours for in-house counsel to draft and review the standardized language, and 5 hours for consultation and review of compliance personnel.
³³ This estimate is based on the following calculation: (10 hours for outside counsel review/drafting) x (\$472/hour for outside counsel services) = \$4,720 in initial outside counsel costs.

³⁴ This data is obtained from FOCUS filings as of December 2017.

³⁵ This estimate is based on the following calculation: (802 small broker-dealers) x (10 hours per small broker-dealer) = 8,020 aggregate burden hours.

³⁶ This estimate is based on the following calculation: (802 small broker-dealers) x (\$4,720 in external cost per small retail firm) = \$3.79 million in aggregate initial costs.

³⁷ The 20 hour estimate includes 10 hours for in-house counsel to draft and review the standardized language, and 10 hours for consultation and review of compliance personnel.

³⁸ This estimate is based on the following calculation: (15 hours for outside counsel review/drafting) x (\$472/hour for outside counsel services) = \$7,080 in initial outside counsel costs.

retail broker-dealers, we estimate an aggregate initial burden of 41,100 hours,³⁹ and \$14.55 million in aggregate initial costs.⁴⁰

We estimate that all broker-dealers would each incur approximately 0.02 burden hours⁴¹ for delivery of the account disclosure document.⁴² Based on FOCUS data, we estimate that the 2,857 broker-dealers that report retail activity have approximately 128 million customer accounts, and that approximately 74.4%, or 95.2 million, of those accounts belong to retail customers.⁴³ We therefore estimate that broker-dealers would have an aggregate one-time initial burden of 1,904,000 hours, or approximately 666 hours⁴⁴ per broker-dealer for the first year after the rule is in effect.⁴⁵

We estimate a total initial aggregate burden for dually-registered, small and large broker-dealers to develop and deliver to retail customers account disclosures relating to capacity and

³⁹ This estimate is based on the following calculation: (2,055 large broker-dealers) x (20 burden hours) = 41,100 aggregate initial burden hours.

⁴⁰ This estimate is based on the following calculation: (2,055 large broker-dealers) x (\$7,080 initial outside counsel costs) = \$14.55 million in aggregate initial costs.

⁴¹ This is the same estimate the Commission makes in the Relationship Summary Proposing Release. It is also the same estimate the Commission made in the Amendments to Form ADV Adopting Release, and for which we received no comment. *See* Amendments to Form ADV, 17 CFR Parts 275 and 279 at 49259. We expect that delivery requirements will be performed by a general clerk. The general clerk's time is included in the initial burden estimate.

⁴² For new retail customers, we expect delivery to occur at the inception of the relationship; for existing customers, we expect delivery to occur prior to or at the time of a recommendation.

⁴³ According to FOCUS filings as of December 2017, the 2,857 broker-dealers (including dual registrants) with retail customers report 128 million customer accounts. Assuming the amount of retail customer accounts is proportionate to the percentage of broker-dealers that have retail customers, or 74.4% of broker-dealers, then the number of retail customer accounts would be 74.4% of 128 million accounts = 95.2 million retail customer accounts. This number likely overstates the number of deliveries to be made due to the double-counting of deliveries to be made by dual registrants to a certain extent, and the fact that one customer may own more than one account.

⁴⁴ These estimates are based on the following calculations: (0.02 hours per customer account x (95.2 million retail customer accounts) = 1,904,000 aggregate burden hours. Conversely, (1,904,000 hours) / (2,857 broker-dealers) = approximately 666 burden hours per broker-dealer.

⁴⁵ We estimate that broker-dealers will not incur any incremental postage costs because we assume that they will make such deliveries with another mailing the broker-dealer was already delivering to retail customers.

type and scope of services of 1,956,620 burden hours.⁴⁶ We estimate a total initial aggregate cost of \$20.04 million.⁴⁷

b. Disclosure of Capacity, Type and Scope of Services – Ongoing Burden & Costs

For purposes of this analysis, we assume that broker-dealers would review and amend the standardized language in the account disclosure, on average, once a year. Further, we assume that broker-dealers would not incur outside costs in connection with updating account disclosures, as in-house personnel would be more knowledgeable about changes in capacity, and the types and scope of services offered by the broker-dealer.

We estimate that each dually-registered broker-dealer would incur approximately five burden hours annually for compliance and business line personnel to review changes in the dual-registrant's capacity and types and scope of services offered, and another two burden hours annually for in-house counsel to amend the account disclosure to disclose material changes to the dual-registrant's capacity and types and scope of services offered, for a total of seven burden hours. The estimated ongoing aggregate burden to amend dual-registrants' account disclosures to reflect changes in capacity and types and scope of services would therefore be 2,520 hours.⁴⁸

With respect to small standalone broker-dealers, we estimate an internal burden of two hours for in-house compliance and business line personnel to review and update changes in capacity and types or scope of services offered, and another two burden hours annually for in-house counsel to amend the account disclosure to disclose material changes to capacity and types or scope of services – for a total of four burden hours. The estimated ongoing aggregate burden for small broker-dealers to amend account disclosures to reflect changes in capacity and types and scope of services would therefore be 3,208 hours for small broker-dealers.⁴⁹

We estimate that large standalone broker-dealers would incur 10 burden hours annually for in-house compliance and business line personnel to review and update changes in capacity and the types or scope of services offered, and another 10 burden hours annually for in-house counsel to amend the account disclosure to disclose material changes to capacity and the types

⁴⁶ This estimate is based on the following calculation: (3,600 aggregate initial burden hours for dual registrants) + (8,020 aggregate initial burden hours for small broker-dealers) + (41,000 burden hours for large broker-dealers) + (1,904,000 aggregate initial burden hours for all broker-dealers to deliver the account disclosures) = 1,956,620 total aggregate initial burden hours.

⁴⁷ This estimate is based on the following calculation: (\$1.7 million in initial aggregate costs for dual registrants) + (\$3.79 million in initial aggregate costs for small broker-dealers) + (\$14.55 million in initial aggregate costs for large broker-dealers) = \$20.04 million in total initial aggregate costs.

⁴⁸ This estimate is based on the following calculation: (7 burden hours per dually-registered firm per year) x (360 dually-registered broker-dealers) = 2,520 ongoing aggregate burden hours.

⁴⁹ This estimate is based on the following calculation: (4 burden hours per broker-dealer per year) x (802 small broker-dealers) = 3,208 ongoing aggregate burden hours.

and scope of services, for a total of 20 burden hours. We therefore believe the ongoing, aggregate burden would be 41,100 hours for large broker-dealers.⁵⁰

With respect to delivery of the amended account agreements in the event of material changes to the capacity disclosure or disclosure related to types and scope of services, we estimate that this would take place among 20% of a broker-dealer's retail customer accounts annually. We therefore estimate broker-dealers to incur a total annual aggregate burden of 380,800 hours, or 133 hours per broker-dealer.⁵¹

The total ongoing aggregate burden for dually-registered, small and large broker-dealers to review, amend, and deliver updated account disclosures to reflect changes in capacity, types and scope of services would be 427,700 burden hours per year.⁵²

The Commission acknowledges that the types of services and offering of products vary greatly by broker-dealer, and therefore that the costs or burdens associated with updating the account disclosure might similarly vary.

***c. Disclosure of Fees –
Initial One-Time Burden & Costs***

We assume that, for purposes of this analysis, the associated costs and burdens would differ between small and large broker-dealers, as large broker-dealers generally offer more products and services and therefore would need to potentially evaluate a wider range of fees in their fee schedules. As stated above, while we anticipate that many broker-dealers may already create fee schedules, we believe that small broker-dealers would initially spend five hours and large broker-dealers would spend ten hours to internally create a new fee schedule in consideration of the requirements of Regulation Best Interest. We additionally estimate a one-time external cost of \$2,360 for smaller broker-dealers⁵³ and \$4,720 for larger broker-dealers for outside counsel to review the fee schedule.⁵⁴ We therefore estimate the initial aggregate burden for small broker-dealers to be 4,010 burden hours,⁵⁵ and the initial aggregate cost to be \$1.89

⁵⁰ This estimate is based on the following calculation: (20 burden hours per broker-dealer per year) x (2,055 large broker-dealers) = 41,100 ongoing aggregate burden hours.

⁵¹ (20%) x (95.2 million retail customer accounts) x (.02 hours for delivery to each customer account) = 380,800 aggregate burden hours. Conversely, 380,800 aggregate burden hours / 2,857 broker-dealers = 133 burden hours per broker-dealer.

⁵² This estimate is based on the following calculation: (2,520 ongoing aggregate burden hours for dually-registered broker-dealers) + (3,280 ongoing aggregate burden hours for small broker-dealers) + (41,100 ongoing aggregate burden hours for large broker-dealers) + (380,800 ongoing aggregate burden hours for delivery of amended account disclosures) = 427,700 total ongoing aggregate burden hours.

⁵³ This cost estimate is based on the following calculation: (5 hours of review) x (\$472/hour for outside counsel services) = \$2,360 outside counsel costs.

⁵⁴ This cost estimate is based on the following calculation: (10 hours of review) x (\$472/hour for outside counsel services) = \$4,720 outside counsel costs.

⁵⁵ This estimate is based on the following calculation: (5 burden hours of review per small broker-dealer) x (802 small broker-dealers) = 4,010 aggregate initial burden hours.

million.⁵⁶ We estimate the aggregate burden for large broker-dealers to be 20,550 burden hours,⁵⁷ and the aggregate cost to be \$9.7 million.⁵⁸

Similar to delivery of the account disclosure regarding capacity and types and scope of services, we estimate the burden for broker-dealers to make the initial delivery of the fee schedule to new retail customers, at the inception of the relationship, and existing retail customers, prior to or at the time of a recommendation, will require approximately 0.02 hours to deliver to each retail customer.⁵⁹ As stated above, we estimate that the 2,857 broker-dealers that report retail activity have approximately 128 million customer accounts, and that approximately 74.4%, or 95.2 million, of those accounts belong to retail customers.⁶⁰ We therefore estimate that a broker-dealer will have an aggregate initial burden of 1,904,000 hours, or approximately 666 hours per broker-dealer for the first year after the rule is in effect.⁶¹

The total aggregate initial burden for broker-dealers is therefore estimated at 1,928,560⁶² hours, and the total aggregate initial cost is estimated at \$11.59 million.⁶³

⁵⁶ This estimate is based on the following calculation: (\$2,360 for outside counsel costs per small broker-dealer) x (802 small broker-dealers) = \$1.89 million in aggregate initial outside costs.

⁵⁷ This estimate is based on the following calculation: (10 burden hours of review per large broker-dealer) x (2,055 large broker-dealers) = 20,550 aggregate initial burden hours.

⁵⁸ This estimate is based on the following calculation: (\$4,720 for outside counsel costs per large broker-dealer) x (2,055 large broker-dealers) = \$9.70 million in aggregate initial costs.

⁵⁹ This is the same estimate the Commission makes in the Relationship Summary Proposing Release. It is also the same estimate the Commission made in the Amendments to Form ADV Adopting Release, and for which we received no comment. *See* Amendments to Form ADV, 17 CFR Parts 275 and 279 at 49259. We expect that delivery requirements will be performed by a general clerk. The general clerk's time is included in the initial burden estimate.

⁶⁰ For new retail customers, we expect delivery to occur at the inception of the relationship; for existing customers, we expect delivery to occur prior to or at the time of a recommendation.

⁶¹ This estimate is based on the following calculation: (95.2 million retail customer accounts) x (.02 hours for delivery to each customer account) = 1,904,000 aggregate burden hours. Conversely, (1,904,000 aggregate burden hours) / (2,857 broker-dealers) = 666 burden hours per broker-dealer.

⁶² This estimate is based on the following calculations: (4,010 aggregate burden hours for small broker-dealers) + (20,550 burden hours for large broker-dealers) + (1,904,000 burden hours for delivery) = 1,928,560 total aggregate initial burden hours.

⁶³ This estimate is based on the following calculation: (\$1.89 million for small broker-dealer costs) + (\$9.7 million large broker-dealer costs) = \$11.59 million in total aggregate costs.

***d. Disclosure of Fees –
Ongoing Burden & Costs***

For purposes of this analysis, we assume that broker-dealers would review and amend the fee schedule on average, once a year. With respect to small broker-dealers, we estimate that it would require approximately two hours per year to review and update the fee schedule, and for large broker-dealers, we estimate that the recurring, annual burden to review and update the fee schedule would be four hours for each large broker-dealer. Based on these estimates, we estimate the recurring, aggregate, annualized burden would be approximately 1,604 hours for small broker-dealers⁶⁴ and 8,220 hours for large broker-dealers.⁶⁵ We do not anticipate that small or large broker-dealers would incur outside legal, compliance, or consulting fees in connection with updating their standardized fee schedule since in-house personnel would be more knowledgeable about these facts, and we therefore do not expect external costs associated with updating the fee schedule.

With respect to delivery of the amended fee schedule in the event of a material change, we estimate that this would take place among 40% of a broker-dealer's retail customer accounts annually. We therefore estimate broker-dealers would incur a total annual aggregate burden of 761,600 hours, or 267 hours per broker-dealer.⁶⁶

The Commission acknowledges that the type of fee schedule may vary greatly by broker-dealer, and therefore that the costs or burdens associated with updating the standardized fee schedule might similarly vary.

***e. Disclosure of Material Conflicts of Interest –
Initial One-Time Burden & Costs***

The Disclosure Obligation of proposed Regulation Best Interest would provide broker-dealers with the flexibility to choose the form and manner of conflict disclosure. However, we believe that many or most broker-dealers would develop a standardized conflict disclosure document and distribute it to retail customers.⁶⁷ We also assume for purposes of this analysis that broker-dealers would update and deliver the standardized conflict disclosure document yearly on an ongoing basis, following the broker-dealer's annual conflicts review process.⁶⁸

⁶⁴ This estimate is based on the following calculation: (2 burden hours per broker-dealer) x (802 small broker-dealers) = 1,604 aggregate burden hours.

⁶⁵ This estimate is based on the following calculation: (4 burden hours per broker-dealer) x (2,055 large broker-dealers) = 8,220 aggregate burden hours.

⁶⁶ This estimate is based on the following calculation: (40% of 95.2 million retail customer accounts) x (.02 hours) = 761,600 aggregate burden hours. Conversely, (761,600 aggregate burden hours) / (2,857 broker-dealers) = 267 burden hours per broker-dealer.

⁶⁷ We assume that delivery for new customers would occur at the inception of the relationship, and that delivery for existing customers would occur prior to or at the time a recommendation is made.

⁶⁸ However, as discussed above, we recognize that broker-dealers might choose to disclose material conflicts of interest on an as-needed basis, and might take a layered approach to

For purposes of this analysis, we assume that a standardized conflict disclosure document would be developed by in-house counsel and reviewed by outside counsel. For small broker-dealers, we estimate it would take in-house counsel, on average, 5 burden hours to create the standardized conflict disclosure document and outside counsel 5 hours to review and revise the document. The initial aggregate burden for the development of a standardized disclosure document, based on an estimated 802 small broker-dealers, would be approximately 4,010 burden hours.⁶⁹ We additionally estimate an initial cost of \$2,360 per small broker-dealer,⁷⁰ and an aggregate initial cost of \$1.89 million for all small broker-dealers.⁷¹

We expect the development and review of the standardized conflict disclosure document to take longer for large broker-dealers because, as discussed above, we believe large broker-dealers generally offer more products and services and employ more individuals, and therefore would need to potentially disclose a larger number of conflicts. We estimate that for large broker-dealers, it would take 7.5 burden hours for in-house counsel to create the standardized conflict disclosure document, and outside counsel would take another 7.5 hours to review and revise the disclosure document. As a result, we estimate the initial aggregate burden, based on an estimated 2,055 large broker-dealers, to be approximately 15,413 burden hours.⁷² We additionally estimate initial costs of \$3,540 per broker-dealer,⁷³ and an aggregate cost for large broker-dealers of approximately \$7.27 million.⁷⁴

We assume that broker-dealers would deliver the standardized conflict disclosure document to new retail customers at the inception of the relationship, and to existing retail customers prior to or at the time of a recommendation. We estimate that broker-dealers would require approximately 0.02 hours to deliver the standardized conflict disclosure document to each retail customer.⁷⁵ We therefore estimate that broker-dealers would incur an aggregate

disclosure, as opposed to a standardized conflict disclosure document. We request comment on whether broker-dealers may choose to take a layered approach to disclosure and the associated costs of burdens.

⁶⁹ This estimate is based on the following calculation: (5 hours) x (802 small broker-dealers) = 4,010 aggregate burden hours.

⁷⁰ This estimate is based on the following calculation: (\$472/hour) x (5 hours) = \$2,360 in initial costs.

⁷¹ This estimate is based on the following calculation: (\$472/hour x 5 hours) x (802 broker-dealers) = \$1.89 million in aggregate initial costs.

⁷² This estimate is based on the following calculation: (7.5 hours x 2,055 large broker-dealers) = 15,413 burden hours.

⁷³ This estimate is based on the following calculation: (\$472/hour) x (7.5 hours) = \$3,540 in initial costs.

⁷⁴ This estimate is based on the following calculation: (\$472/hour) x (7.5 hours x 2,055 large broker-dealers) = \$7.27 million in aggregate costs.

⁷⁵ See *supra* note 41. For purposes of this analysis, we have assumed any initial disclosures made by the broker-dealer related to material conflicts of interest would be delivered together.

initial burden of 1,904,000 hours, or approximately 666 hours per broker-dealer for delivery of the standardized conflict disclosure document the first year after the rule is in effect.⁷⁶

*f. Disclosure of Material Conflicts of Interest –
Ongoing Burden & Costs*

We believe that broker-dealers would incur ongoing annual burdens and costs to update the disclosure document to include newly identified conflicts. While Regulation Best Interest does not require broker-dealers to provide disclosures at specific intervals or times, but rather allows broker-dealers to provide disclosures on an as-needed basis, we assume for purposes of this analysis that broker-dealers would update their conflict disclosure document annually, after conducting an annual conflicts review. We estimate that the conflict disclosure form would be updated internally by both small and large broker-dealers.

We estimate that in-house counsel at a small broker-dealer would require approximately 1 hour per year to update the standardized conflict disclosure document, for an ongoing aggregate burden of approximately 802 hours.⁷⁷ For large broker-dealers, we estimate that the ongoing, annual burden would be 2 hours for each broker-dealer: 1 hour for compliance personnel and 1 hour for legal personnel. We therefore estimate the ongoing, aggregate burden for large broker-dealers to be approximately 4,110 burden hours.⁷⁸ We do not anticipate that small or large broker-dealers would incur outside legal, compliance, or consulting fees in connection with updating their standardized conflict disclosure document, since in-house personnel would presumably be more knowledgeable about conflicts of interest.

With respect to ongoing delivery of the updated conflict disclosure document, we estimate that this would take place among 40% of a broker-dealer's retail customer accounts annually.⁷⁹ We therefore estimate that broker-dealers would incur an aggregate ongoing burden of 761,600 hours, or 267 burden hours per broker-dealer.⁸⁰

⁷⁶ These estimates are based on the following calculations: $(0.02 \text{ hours per customer account} \times 95.2 \text{ million retail customer accounts}) = 1,904,000 \text{ aggregate burden hours}$. Conversely, $(1,904,000 \text{ hours}) / (2,857 \text{ broker-dealers}) = 666 \text{ burden hours per broker-dealer}$.

⁷⁷ This estimate is based on the following calculation: $(1 \text{ hour per broker-dealer}) \times (802 \text{ small broker-dealers}) = 802 \text{ aggregate burden hours}$.

⁷⁸ This estimate is based on the following calculation: $(2 \text{ hours per broker-dealer}) \times (2,055 \text{ large broker-dealers}) = 4,110 \text{ aggregate burden hours}$.

⁷⁹ The Commission estimates that broker-dealers would update fees and material conflicts of interest disclosure more frequently than disclosure related to capacity or type and scope of services.

⁸⁰ This estimate is based on the following calculation: $(40\% \text{ of } 95.2 \text{ million retail customer accounts}) \times (.02 \text{ hours}) = 761,600 \text{ aggregate burden hours}$. Conversely, $(761,600 \text{ aggregate burden hours}) / (2,857 \text{ broker-dealers}) = 267 \text{ hours per broker-dealer}$.

ii. Care Obligation

Any PRA burdens or costs associated with the Care Obligation under proposed Regulation Best Interest are discussed separately with respect to proposed Rule 17a-3(a)(25) (OMB No. 3235-0033).

iii. Conflict of Interest Obligations

Regulation Best Interest would require a broker-dealer entity to establish, maintain, and enforce written policies and procedures reasonably designed to identify and at a minimum disclose, or eliminate, all material conflicts of interest that are associated with a recommendation. Second, Regulation Best Interest would require a broker-dealer⁸¹ to establish, maintain, and enforce written policies and procedures reasonably designed to identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with a recommendation. Written policies and procedures developed pursuant to the Conflict of Interest Obligations of proposed Regulation Best Interest would help a broker-dealer develop a process, relevant to its retail customers and the nature of its business, for identifying material conflicts of interest, and then determining whether to eliminate, or disclose and/or mitigate, the material conflict and the appropriate means of eliminating, disclosing, and/or mitigating the conflict.

We believe that most broker-dealers have policies and procedures in place to address material conflicts of interest, but they do not necessarily have written policies and procedures regarding the identification and management of conflicts as proposed in Regulation Best Interest. To initially comply with this obligation, which is a recordkeeping burden, we believe that broker-dealers would employ a combination of in-house and outside legal and compliance counsel to update existing policies and procedures.

a. Written Policies and Procedures – Initial One Time Burden & Costs

As an initial matter, we estimate that a large broker-dealer would incur a one-time average internal burden of 50 hours for in-house legal and in-house compliance counsel to update existing policies and procedures to comply with Regulation Best Interest.⁸² We additionally estimate a one-time burden of 5 hours for a general counsel at a large broker-dealer and 5 hours for a Chief Compliance Officer to review and approve the updated policies and procedures, for a total of 60 burden hours.⁸³ In addition, we estimate a cost of \$4,720 for outside

⁸¹ See *supra* note 7.

⁸² This estimate would be broken down as follows: 40 hours for in-house legal counsel + 10 hours for in-house compliance counsel to update existing policies and procedures = 50 burden hours.

⁸³ This estimate is based on the following calculation: (50 hours of review for in-house legal and in-house compliance counsel) + (5 hours of review for general counsel) + (5 hours of review for Chief Compliance Officer) = 60 burden hours.

counsel to review the updated policies and procedures on behalf of a large broker-dealer.⁸⁴ We therefore estimate the aggregate burden for large broker-dealers to be 123,300 burden hours,⁸⁵ and the aggregate cost for large broker-dealers to be \$9.70 million.⁸⁶

In contrast, we believe small broker-dealers would primarily rely on outside counsel to update existing policies and procedures, as small broker-dealers generally have fewer in-house legal and compliance personnel. Moreover, since small broker-dealers would typically have fewer conflicts of interest, we estimate that only 40 hours of outside legal counsel services would be required to update the policies and procedures, for a total one-time cost of \$18,880⁸⁷ per small broker-dealer, and an aggregate cost of \$15.1 million for all small broker-dealers.⁸⁸ We additionally believe in-house compliance personnel would require 10 hours to review and approve the updated policies and procedures, for an aggregate burden of 8,020 hours.⁸⁹

We therefore estimate the total initial aggregate burden to be 131,320 hours,⁹⁰ and the total initial aggregate cost to be \$24.8 million.⁹¹

***b. Written Policies and Procedures –
Ongoing Burden & Costs***

For purposes of this analysis, we have assumed that small and large broker-dealers would review and update policies and procedures on a periodic basis to accommodate the addition of, among other things, new products or services, new business lines, and/or new personnel. We also assume that broker-dealers would review and update their policies and procedures for

⁸⁴ Based on industry sources, Commission staff preliminarily estimates that the average hourly rate for legal services is \$472/hour. This cost estimate is therefore based on the following calculation: (10 hours of review) x (\$472/hour for outside counsel services) = \$4,720 in outside counsel costs.

⁸⁵ This estimate is based on the following calculation: (60 burden hours of review per large broker-dealer) x (2,055 large broker-dealers) = 123,300 aggregate burden hours.

⁸⁶ This estimate is based on the following calculation: (\$4,720 for outside counsel costs per large broker-dealer) x (2,055 large broker-dealers) = \$9.70 million in outside counsel costs.

⁸⁷ This cost estimate is based on the following calculation: (40 hours of review) x (\$472/hour for outside counsel services) = \$18,880 in outside counsel costs.

⁸⁸ This cost estimate is based on the following calculation: (\$18,880 for outside attorney costs per small broker-dealer) x (802 small broker-dealers) = \$15.1 million in outside counsel costs.

⁸⁹ This estimate is based on the following calculation: (10 burden hours) x (802 small broker-dealers) = 8,020 aggregate burden hours.

⁹⁰ This estimate is based on the following calculation: (123,300 aggregate burden hours for large broker-dealers) + (8,020 aggregate burden hours for small broker-dealers) = 131,320 total aggregate burden hours.

⁹¹ This estimate is based on the following calculation: (\$9.70 million in aggregate costs for large broker-dealers) + (\$15.1 million in aggregate costs for small broker-dealers) = \$24.80 million total aggregate costs.

compliance with Regulation Best Interest on an annual basis, and that they would perform the review and update using in-house personnel.

For large broker-dealers with more numerous, more complex products and services, and higher rates of hiring and turnover, we estimate that each broker-dealer would annually incur an internal burden of 12 hours to review and update existing policies and procedures: four hours for legal personnel, four hours for compliance personnel, and four hours for business-line personnel to identify new conflicts. We therefore estimate an ongoing, aggregate burden for large broker-dealers of approximately 24,660 hours.⁹² Because we assume that large broker-dealers would rely on internal personnel to update policies and procedures on an ongoing basis, we do not believe large broker-dealers would incur ongoing costs.

We assume for purposes of this analysis that small broker-dealers, with fewer and less complex products, and lower rates of hiring, would mostly rely on outside legal counsel and outside compliance consultants for review and update of their policies and procedures, with final review and approval from an in-house compliance manager. We preliminarily estimate that outside counsel would require approximately five hours per year to update policies and procedures, for an annual cost of \$2,360 for each small broker-dealer.⁹³ The projected aggregate, annual ongoing cost for outside legal counsel to update policies and procedures for small broker-dealers would be \$1.89 million.⁹⁴ In addition, we expect that small broker-dealers would require five hours of outside compliance services per year to update their policies and procedures, for an ongoing cost of \$1,490 per year,⁹⁵ and an aggregate ongoing cost of \$1.19 million.⁹⁶ The total aggregate, ongoing cost for small broker-dealers is therefore projected at \$3.08 million per year.⁹⁷

In addition to the costs described above, we additionally believe small broker-dealers would incur an internal burden of approximately 5 hours for an in-house compliance manager to review and approve the updated policies and procedures per year. The ongoing, aggregate

⁹² This estimate is based on the following calculation: (12 burden hours per large broker-dealer) x (2,055 large broker-dealers) = 24,660 aggregate ongoing burden hours.

⁹³ This estimate is based on the following calculation: (5 hours per small broker-dealer) x (\$472/hour for outside counsel services) = \$2,360 in outside counsel costs.

⁹⁴ This estimate is based on the following calculation: (\$2,360 in outside counsel costs per small broker-dealer) x (802 small broker-dealers) = \$1.89 million in aggregate, ongoing outside legal costs.

⁹⁵ Based on industry sources, Commission staff preliminarily estimates that the average hourly rate for compliance services in the securities industry is \$298/hour. This cost estimate is based on the following calculation: (5 hours of review) x (\$298/hour for outside compliance services) = \$1,490 in outside compliance service costs.

⁹⁶ This estimate is based on the following calculation: (\$1,490 in outside compliance costs per small broker-dealer) x (802 small broker-dealers) = \$1.19 million in aggregate, ongoing outside compliance costs.

⁹⁷ This estimate is based on the following calculation: (\$1.89 million for outside legal counsel costs) + (\$1.19 million for outside compliance costs) = \$3.08 million total aggregate ongoing costs.

burden for small broker-dealers would be 4,010 hours for in-house compliance manager review.⁹⁸

We therefore estimate the total ongoing aggregate ongoing burden to be 28,670 hours,⁹⁹ and the total ongoing aggregate cost to be \$3.08 million per year.¹⁰⁰

The Commission acknowledges that policies and procedures may vary greatly by broker-dealer, given the differences in size and the complexity of broker-dealer business models. Accordingly, we would expect that the need to update policies and procedures might also vary greatly.

***c. Identification of Material Conflicts of Interest –
Initial One-Time Burden & Costs***

With respect to identifying and determining whether a material conflict of interest exists in connection with a recommendation, a broker-dealer would first need to establish mechanisms to proactively and systematically identify conflicts of interest in its business on an ongoing or periodic basis. For purposes of this analysis, we understand that most broker-dealers already have an existing technological infrastructure in place, and we assume that such infrastructure would need to be modified to effect compliance with Regulation Best Interest.

Acknowledging that costs and burdens may vary greatly according to the size of the broker-dealer, we expect that the modification of a broker-dealer's existing technology would initially require the retention of an outside programmer, and that the modification of existing technology would require, on average, an estimated 20 hours of the programmer's labor, for an estimated cost per broker-dealer of \$5,400.¹⁰¹ We additionally project that coordination between the programmer and the broker-dealer's compliance manager would involve five burden hours. The aggregate costs and burdens for the modification of existing technology to identify conflicts of interest would therefore be \$15.43 million,¹⁰² and 14,285 burden hours.¹⁰³

⁹⁸ This estimate is based on the following calculation: (5 hours compliance manager review per small broker-dealer) x (802 small broker-dealers) = 4,010 aggregate ongoing burden hours.

⁹⁹ This estimate is based on the following calculation: (24,660 aggregate ongoing burden hours for large broker-dealers) + (4,010 aggregate ongoing burden hours for small broker-dealers) = 28,670 total aggregate ongoing burden hours.

¹⁰⁰ This estimate is based on the following calculation: (\$3.08 million per year in total aggregate ongoing costs for small broker-dealers) + (\$0 projected ongoing costs for large broker-dealers) = \$3.08 million per year in total aggregate ongoing costs.

¹⁰¹ Based on industry sources, Commission staff preliminarily estimates that the average hourly rate for technology services in the securities industry is \$270. This cost estimate is based on the following calculation: (20 hours of review) x (\$270/hour for technology services) = \$5,400 in outside programmer costs.

¹⁰² This cost estimate is based on the following calculation: (\$5,400 in outside programmer costs per broker-dealer) x (2,857 retail broker-dealers) = \$15.43 million in aggregate outside programmer costs.

We additionally believe that the determination whether the conflicts of interest, once identified, are material, would require approximately five hours per broker-dealer,¹⁰⁴ for an aggregate of 14,285 burden hours for all broker-dealers.¹⁰⁵ The total aggregate burden for the identification of material conflicts is 28,570 hours.¹⁰⁶

***d. Identification of Material Conflicts of Interest –
Ongoing Burden & Costs***

To maintain compliance with Regulation Best Interest, we assume for purposes of this analysis that a broker-dealer would seek to identify additional conflicts as its business evolves. The Commission recognizes that the types of services and product offerings vary greatly by broker-dealer. However, for purposes of this analysis, we assume that broker-dealers would, at a minimum, engage in a material conflicts identification process on an annual basis.¹⁰⁷ We estimate that a broker-dealer’s business line and compliance personnel would jointly spend, on average, 10 hours¹⁰⁸ to perform an annual conflicts review using the modified technology infrastructure. Therefore the aggregate, ongoing burden for an annual conflicts review, based on an estimated 2,857 retail broker-dealers, would be approximately 28,570 burden hours.¹⁰⁹ Because we assume that broker-dealers would use in-house personnel to identify and evaluate new, potential conflicts, we do not believe they would incur additional ongoing costs.

***e. Training –
Initial One-Time Burden & Costs***

Pursuant to the obligation to “maintain and enforce” written policies and procedures, we additionally expect broker-dealers to develop training programs that promote compliance with

¹⁰³ This burden estimate is based on the following calculation: (5 burden hours) x (2,857 broker-dealers) = 14,285 aggregate burden hours.

¹⁰⁴ This burden estimate consists of 2.5 hours for review by a senior business analyst, and 2.5 hours for review by in-house compliance manager.

¹⁰⁵ This burden estimate is based on the following calculation: (5 burden hours) x (2,857 broker-dealers) = 14,285 aggregate burden hours.

¹⁰⁶ This burden estimate is based on the following calculation: (14,285 burden hours for modification of technology) + (14,285 burden hours for evaluation of conflict materiality) = 28,570 total aggregate burden hours.

¹⁰⁷ Analogously, FINRA rules set an annual supervisory review as a minimum threshold for broker-dealers. *See, e.g.*, FINRA Rules 3110 (requiring an annual review of the businesses in which the broker-dealer engages); 3120 (requiring an annual report detailing a broker-dealer’s system of supervisory controls, including compliance efforts in the areas of antifraud and sales practices); and 3130 (requiring each broker-dealer’s CEO or equivalent officer to certify annually to the reasonable design of the policies and procedures for compliance with relevant regulatory requirements).

¹⁰⁸ This burden estimate consists of 5 hours for review by a senior business analyst, and 5 hours for review by an in-house compliance counsel or compliance manager.

¹⁰⁹ This estimate is based on the following calculation: (10 hours of labor per retail broker-dealer) x (2,857 retail broker-dealers) = 28,570 aggregate burden hours.

Regulation Best Interest among registered representatives. We believe that broker-dealers would likely use a computerized training module to train registered representatives on the policies and procedures pertaining to Regulation Best Interest. We estimate that a broker-dealer would retain an outside systems analyst, an outside programmer, and an outside programmer analyst to create the training module, at 20 hours, 40 hours, and 20 hours, respectively. The total cost for a broker-dealer to develop the training module would be approximately \$21,600,¹¹⁰ for an aggregate initial cost of \$61.7 million.¹¹¹

Additionally, we expect that the training module would require the approval of the Chief Compliance Officer, as well as in-house legal counsel, each of whom we expect would require approximately 2 hours to review and approve the training module. The aggregate burden for broker-dealers is therefore estimated at 11,428 burden hours.¹¹²

In addition, broker-dealers would incur an initial cost for registered representatives to undergo training through the training module. We estimate the training time at one hour per registered representative, for an aggregate burden of 435,071 burden hours, or an initial burden of 152.3 hours per broker-dealer.¹¹³ The total aggregate burden to approve the training module and implement the training program would be 446,499 burden hours.¹¹⁴

***f. Training –
Ongoing Burden & Costs***

We believe that, as a matter of best practice, broker-dealers would likely require registered representatives to repeat the training module for Regulation Best Interest on an annual basis. The ongoing aggregate cost for the one-hour training would be 435,071 burden hours per year, or 152.3 burden hours per broker-dealer per year.¹¹⁵

¹¹⁰ This estimate is based on the following calculation: ((20 hours of labor for a systems analyst) x (\$270/hour)) + ((40 hours of labor for a programmer) x (\$270/hour)) + ((20 hours of labor for a programmer analyst) x (\$270/hour)) = \$21,600 in external technology service costs per broker-dealer. The \$270 estimated average hourly rate for technology services is based on industry sources.

¹¹¹ This estimate is based on the following calculation: (2,857 broker-dealers) x (\$21,600 cost per broker-dealer) = \$61.7 million in aggregate costs for technology services.

¹¹² This estimate is based on the following calculation: (2,857 broker-dealers) x (4 burden hours per broker-dealer) = 11,428 burden hours.

¹¹³ This estimate is based on the following calculation: (1 burden hour) x (435,071 registered representatives at standalone or dually-registered broker-dealers) = 435,071 aggregate burden hours. Conversely, (435,071 aggregate burden hours) / (2,857 retail broker-dealers) = 152.3 initial burden hours per broker-dealer.

¹¹⁴ This estimate is based on the following calculation: (435,071 burden hours for training of registered representatives) + (11,428 burden hours to approve training program) = 446,499 total aggregate burden hours.

¹¹⁵ This estimate is based on the following calculation: (1 burden hour) x (435,071 registered representatives at standalone or dually-registered broker-dealers) = 435,071 burden

Summary of Hourly Burdens										
(1) Disclosure of Capacity, Type, and Scope of Services	360 dually-registered BD/IAs	1	10	3,600	3.333	7	10.333	10.333	3,720	101
	802 small standalone BDs	1	10	8,020	3.333	4	7.333	7.333	5,881.07	802
	2,055 large standalone BDs	1	20	41,100	6.667	20	26.667	26.667	54,800.07	0
	2,857 all BDs	33,321.67	.02	1,904,000	.00667	0	.00667	222.26	634,984.07	802
	2,857 all BD's	6,664.33	0	0	0	.02	.02	133.29	380,799.82	802
(2) Disclosure of Fees	802 small standalone BDs	1	5	4,010	1.667	2	3.667	3.667	2,940.93	802
	2,055 large standalone BDs	1	10	20,550	3.333	4	7.333	7.333	15,069.32	0
	2,857 all BDs	33,321.67	.02	1,904,000	.00667	0	.00667	222.26	634,984.07	802
	2,857 all BDs	13,328.67	0	0	0	.02	.02	266.57	761,590.49	802
(3) Disclosure of Material Conflicts of Interest	802 small standalone BDs	1	5	4,010	1.667	1	2.667	2.667	2,138.93	802
	2,055 large standalone BDs	1	7.5	15,413	2.5	2	4.5	4.5	9,247.50	0
	2,857 all BDs	33,321.67	.02	1,904,000	.00667	0	.00667	222.26	634,984.07	802
	2,857 all BDs	13,287.67	0	0	0	.02	.02	266.57	761,590.49	802
TOTAL BURDEN FOR ALL RESPONDENTS (DISCLOSURE OBLIGATION)									3,902,731	

hours. Conversely, (435,071 aggregate burden hours) / (2,857 retail broker-dealers) = 152.3 initial burden hours per broker-dealer.

	A.	B.	C.	D.	E.	F.	G.	H.	I.	
Name of Information Collection [Type of Burden]	Number of Entities Impacted	Annual Responses per Entity	Initial Burden per Entity per Response	Total Initial One-Time Burden	Initial Burden Annualized per Entity per Response	Ongoing Burden per Entity per Response	Annual Burden Per Entity per Response	Total Ongoing Burden per Year	Total Industry Burden	Small Business Entities Affected
Conflict of Interest Obligations 15/-1(a)(2)(iii) [Recordkeeping]					[C ÷ 3 years]		[E + F]	[G * B]	[H * A]	[A * 28.071%]
(1) Written Policies & Procedures	2,055 large BDs	1	60	123,300	20	12	32	32	65,760	0
	802 small BDs	1	10	8,020	3.33	5	8.33	8.33	6,680.66	802
(2) Identification of Material Conflicts of Interest	2,857 all BDs	1	10	28,570	3.33	10	13.33	13.33	38,083.81	802
(3) Training										
(a) Develop Module	2,857 all BDs	1	4	11,428	1.333	0	1.333	1.333	3,808.38	802
(b) Implement Training	2,857 all BDs	152.3	1	435,071	0.333	1	1.333	203.06	580,142.42	802
TOTAL BURDEN FOR ALL RESPONDENTS (CONFLICT OF INTEREST OBLIGATIONS)									694,475	
TOTAL BURDEN FOR ALL RESPONDENTS									4,597,206	

Summary of Costs to Respondents

The Commission proposes to adopt Regulation Best Interest, which would require broker-dealers to make and keep current various records. As described in more detail above, the Commission estimates this rule would impose various costs, in addition to hour burdens, on each broker-dealer. Specifically, the Commission estimates this rule would impose on each broker-dealer an initial cost of \$49,954 in the first year and an ongoing cost of \$1,078 per year (including the first year). The Commission estimates there are 2,857 broker-dealers. This would result in an estimated cost \$53,189 per respondent,¹¹⁶ or \$17,730 per year per respondent when annualized over three years.¹¹⁷ The total estimated industry burden would be approximately \$50,653,315.¹¹⁸

¹¹⁶ \$49,954 initial costs in first year + \$1,078 ongoing in first year + \$1,078 in second year + \$1,078 in third year = \$53,189.

¹¹⁷ \$53,189 / 3 years = \$17,730 per year. These figures represent average, industry-wide costs without respect to the size or type of broker-dealer. As described above and set

Summary of Dollar Costs										
	A.	B.	C.	D.	E.	F.	G.	H.	I.	
Name of Information Collection [Type of Burden]	Number of Entities Impacted	Annual Responses per Entity	Initial Cost per Entity per Response	Total Initial One-Time Cost	Initial Cost Annualized per Entity per Response	Ongoing Cost per Entity per Response	Annual Cost per Entity per Response	Total Annual Cost Per Entity	Total Industry Cost	Small Business Entities Affected
Disclosure Obligation 15/-1(a)(2)(i) [Third-Party Disclosure]					[C ÷ 3 years]		[E + F]	[G * B]	[H * A]	
(1) Disclosure of Capacity, Type, and Scope of Services	360 dually-registered BD/IAs	1	\$4,720	\$1,699,200	\$1,573.33	0	\$1,573.33	\$1,573.33	\$566,400.00	101
	802 small standalone BDs	1	\$4,720	\$3,785,440	\$1,573.33	0	\$1,573.33	\$1,573.33	\$1,261,813.33	802
	2,055 large standalone BDs	1	\$7,080	\$14,549,400	\$2,360	0	\$2,360	\$2,360	\$4,849,800.00	0
(2) Disclosure of Fees	802 small standalone BDs	1	\$2,360	\$1,892,720	\$786.67	0	\$786.67	\$786.67	\$630,906.67	802
	2,055 large standalone BDs	1	\$4,720	\$9,699,600	\$1,573.33	0	\$1,573.33	\$1,573.33	\$3,233,200.00	0
(3) Disclosure of Material Conflicts of Interest	802 small standalone BDs	1	\$2,360	\$1,892,720	\$786.67	0	\$786.67	\$786.67	\$630,906.67	802
	2,055 large standalone BDs	1	\$3,540	\$7,274,700	\$1,180	0	\$1,180	\$1,180	\$2,424,900.00	0
TOTAL COST FOR ALL RESPONDENTS (DISCLOSURE OBLIGATION)									\$13,597,927	

forth in the table, the actual estimated costs differ based on the size and type of broker-dealer.

118 \$17,730 per respondent * 2,857 broker-dealers = \$50,653,315. This figure is slightly different from the value in the chart due to rounding.

	A.	B.	C.	D.	E.	F.	G.	H.	I.	
Name of Information Collection [Type of Burden]	Number of Entities Impacted	Annual Responses per Entity	Initial Cost per Entity per Response	Total Initial One-Time Cost	Initial Cost Annualized per Entity per Response	Ongoing Cost per Entity per Response	Annual Cost Per Entity per Response	Total Annual Cost Per Entity	Total Industry Cost	Small Business Entities Affected
Conflict of Interest Obligations 15l-1(a)(2)(iii) [Recordkeeping]					[C ÷ 3 years]		[E + F]	[G * B]	[H * A]	
(1) Written Policies & Procedures	2,055 large standalone BDs	1	\$4,720	\$9,699,600	\$1,573.33	0	\$1,573.33	\$1,573.33	\$3,233,193.15	0
	802 small standalone BDs	1	\$18,880	\$15,141,760	\$6,293.33	\$3,850	\$10,143.33	\$10,143.33	\$8,134,950.66	101
(2) Identification of Material Conflicts of Interest	2,857 all BDs	1	\$5,400	\$15,427,800	\$1,800	0	\$1,800	\$1,800	\$5,142,600.00	802
(3) Training	2,857 all BDs	1	\$21,600	\$61,711,200	\$7,200	0	\$7,200	\$7,200	\$20,570,400.00	802
TOTAL COST FOR ALL RESPONDENTS (CONFLICT OF INTEREST OBLIGATIONS)									\$37,081,144	
TOTAL COSTS FOR ALL RESPONDENTS (FOR ALL OBLIGATIONS)									\$50,679,071	

14. Cost to Federal Government

Commission staff estimates that there is no annual cost associated with information submitted to the Commission under the new rules, other than the cost of full-time employee labor costs.

15. Explanation of Changes in Burden

N/A

16. Information Collection Planned for Statistical Purposes

Not applicable. The Commission does not publish information collected pursuant to the Rules.

17. OMB Expiration Date Display Approval

The Commission is not seeking approval to not display the OMB approval expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.