



September 11, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chairman Clayton:

We are writing on behalf of AARP, Consumer Federation of America, and the Financial Planning Coalition to deliver the results of recent independent usability testing of the proposed Customer Relationship Summary (CRS). We believe the results of this testing clearly indicate the need for the Commission to revise and retest the content, language, and format of the CRS.

Recognizing the important role the CRS plays in the Commission's proposed Regulation Best Interest, our organizations hired Kleimann Communications Group, Inc. to conduct usability testing of the proposed disclosures. Our comment letters noted that we were engaging in the research and promised to provide the results as soon as available. The testing took the form of 90-minute, one-on-one interviews with a total of 16 investors from three geographically diverse locations during the month of July. Kleimann used the Commission's mockup of the CRS for dual registrant firms as the basis for its interviews.

The purpose of the testing was to determine whether typical investors would be able to make an informed choice between a brokerage account and an advisory account based on the disclosures provided in the CRS. In particular, testing focused on whether investors understood key differences in the two types of accounts, whether they understood the different standards of care that would apply, and whether they understood that broker-dealers are not required to provide ongoing account monitoring. The testing demonstrated that many, if not most, investors failed to understand this key information and, therefore, could not use the CRS to make an informed choice of accounts.

We hope this testing will be the first step in a process of revision and retesting by the Commission to arrive at a final document that clearly conveys important information to investors. Given these initial findings, we urge the Commission to commit to undertaking such a process and to delay final adoption of its regulatory package until it can be certain that the disclosures that form the centerpiece of its regulatory package work as intended to support informed investor decision-making.

KEY FINDINGS

The overall level of comprehension was poor.

The testing of the CRS was conducted using a method that required participants to read the disclosures more carefully than most would on their own. Despite the favorable testing conditions, few participants were able to consistently comprehend the information within a single section of the CRS. Fewer still were able to integrate and synthesize the information provided in the document as a whole. Both the formatting and the language contributed to the confusion and would need to be substantially revised for investors to be able to use the disclosures to make an informed choice between the two types of accounts.

Participants did not understand key differences in the nature of services provided.

Many participants in the testing struggled to articulate a clear distinction with regard to the nature of services offered between the brokerage and advisory accounts. The only feature of the accounts that was well understood by nearly all participants was the method of payment by transaction versus asset fees. Even there, however, it was not clear that the information enabled investors to determine the best option for them, and later disclosures regarding costs and fees undermined their understanding of this point.

Most participants did not understand disclosures regarding legal obligations.

In proposing Regulation Best Interest, the Commission chose to adopt a standard of conduct for broker-dealers that is similar, but not identical, to the standard for investment advisers. It did so on the assumption that disclosures would be sufficient to alert investors to these differences. Our testing of CRS does not support that assumption. Instead, we found that most participants assumed the standards would be the same despite the different language used to describe them.

Difficulty with the terminology contributed to the confusion. Most participants had little or no understanding of the term “fiduciary duty.” They were more comfortable with the term “best interest,” although their actual understanding of its meaning was mixed. Most equated “best interest” with making them more money. Only a few recognized it as an obligation to put the customer’s interests first and to develop recommendations that reflect their personal goals and financial situation. Based on their understanding of the term “best interest,” some viewed the CRS as portraying brokerage accounts in a more favorable light.

Confusion was present even with regard to one key difference in legal obligations highlighted in CRS – the obligation to provide ongoing monitoring of the account. While a few participants understood that they would have to pay extra to receive account monitoring in the brokerage account, and some concluded that advisory accounts were likely to include more extensive monitoring in return for the ongoing fees, others assumed the degree of monitoring in the two accounts would be the same. They viewed monitoring as an essential component of the services provided.

Participants were deeply confused by the disclosure of fees and costs.

Participants in the testing understood the need for broker-dealer and investment advisers to get paid for their services, but nearly all expressed surprise at the types and number of fees described in the

CRS Costs and Fees section. In this regard, the disclosures have the potential to serve a beneficial purpose in alerting investors to the variety of fees associated with their accounts. However, both the content and the terminology in this section left participants confused and overwhelmed. Some of those who understood the discussion of transaction and asset fees in the earlier section of the document found themselves confused by the terminology used in this section.

Few understood the descriptions provided of the different types of fees and some indicated that they wanted those terms clarified. Others indicated that they wanted clearer information about the relative costs of the two types of accounts. They did not feel that the information provided enabled them to determine which account would cost them more.

Participants understood the existence, but not the import, of conflicts of interest.

Most participants were able to understand that conflicts of interest were present in both the brokerage and the advisory accounts. They understood that these conflicts took the form of payments that created incentives to recommend certain products. For most participants, however, that is where their understanding ended. Many came away with the mistaken belief, based on the statement regarding principal trades, that investment advisers were required to get pre-trade approval for all transactions involving conflicts. Most saw that as an important distinction between the two types of accounts, with some questioning whether they would even know of the existence of the conflicts in the brokerage account.

Few made a connection between the conflicts described and the possibility that they could result in recommendations that were not in their best interests. Those who did found the practices questionable, using words like “kickback” and “sleazy.” However, many saw the practices as benign, or even as offering potential benefits to them, in the form of getting a discount or a better deal. Regardless of whether they saw the conflicts as a threat or simply as business as usual, they want their interests to come first.

Because the CRS mockup for dual registrant firms assumes that essentially the same conflicts are present in both accounts, it is impossible to tell based on this document how investors would weigh disclosures regarding different types of conflicts. Nor can we determine, based on this model, whether they would be able to distinguish the relative severity of different conflicts. As a result, additional testing is recommended to answer these questions, which are fundamental to a determination of the document’s effectiveness. We encourage the Commission to conduct such testing. The low level of comprehension regarding details of conflicts reflected in our testing suggests that the disclosures are unlikely to enable investors to determine the severity of different types of conflicts.

Other Findings

Information on how to check a broker-dealer or investment adviser’s disciplinary record gets overlooked in the Additional Information section. Most indicated that they would simply skip this section. None had a clear idea of the information that would be provided at Investor.gov.

Participants liked the Key Questions section, but wanted the questions to be answered within the document. This suggests that adopting a question-and-answer format for the document might contribute to a better understanding of the issues presented.

Conclusion

Each of these issues is discussed in greater detail in the attached report from Kleimann Communications Group, and a close reading of the participants' quotes reveals the extent to which they genuinely struggled to understand the CRS. Too often, that struggle leads, not just to a lack of understanding, but to a misunderstanding of the information presented.

While more testing is needed, we found that the CRS as currently designed and drafted, does not support an informed decision between different types of accounts. Moreover, while some of the problems identified may be specific to the CRS for dual registrants, others are equally relevant to the CRS versions for standalone brokerage and advisory firms.

In this regard, our findings are similar to much of the feedback the Commission has received both in comments on the rule proposal and from investors in its recent roundtables. While investors like the idea of a brief disclosure document for broker-dealers and investment advisers, the disclosures as currently conceived do not achieve the intended result.

Although our testing identified serious problems with the proposed CRS disclosures, we share the conclusion expressed by Kleimann Communications in its report that, despite the current draft's shortcomings, "a usable document that communicates clearly and well with potential investors is a viable outcome." We offer these testing results as a first step of an iterative process designed to arrive at a final disclosure document that truly works to support an informed choice by investors between different types of accounts and different types of service providers.

We urge the Commission to reexamine the CRS and postpone steps to finalize the Regulation Best Interest regulatory package until the issues identified with the CRS have been resolved. Disclosure plays too central a role in the proposed approach for the Commission to dismiss evidence that its proposed disclosure does not fulfill its intended function. Investors will be best served if the Commission takes the time to get this right.

We look forward to working with the Commission to ensure that investors are able to make informed choices about the types of financial professional they prefer to work with and the type of account that best suits their needs.

Respectfully submitted,

AARP
Consumer Federation of America
Financial Planning Coalition

cc: Commissioner Kara M. Stein
Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Peirce