



December 7, 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 and all Americans age 50 and older, and the Certified Financial Planner Board of Standards, Inc. (CFP Board), to deliver the results of a second round of recent usability testing of the proposed Customer Relationship Summary (CRS). Thank you for the opportunity to provide this information and to work with you on the CRS form.

We believe the results of this round of testing, much like our first round of testing, clearly indicate the need for the Commission to rethink, revise, and retest the content, language, and format of the CRS, as well as its underlying policy. During this testing we found multiple opportunities to amend the CRS and improve the experience of the retail investor. This is demonstrated in each phase of our testing. However, we also found that despite our best efforts we could not improve the overall clarity related to important issues. Most significant was the challenge with attempting to clarify the underlying best interest standard, which continued to cause confusion and ultimately rendered retail investors unable to make informed decisions about which type of account or service would be best for them.

Recognizing the important role the CRS plays in the Commission's proposed regulatory approach to Regulation Best Interest, our organizations hired Kleimann Communications Group, Inc. (Kleimann), a non-affiliated third party, for two separate research projects. The first project was concluded in September 2018 and the findings were filed with the Commission.¹ That research was centered on testing the combined Broker-Dealer and Investment Adviser services disclosure with typical consumers using the SEC's Dual Registrant Mock-up of Form CRS. As previously communicated, we found that overall participants had difficulty distinguishing the standards of conduct between different financial professionals, they did not understand how conflicts of interest could affect them, and they struggled with the language used on the form, especially with respect to fees and conflicts of interest.

¹ Letter from AARP, the Financial Planning Coalition, and the Consumer Federation of America to the SEC, dated Sept. 11, 2018, available at <https://www.sec.gov/comments/s7-08-18/s70818-4341455-173259.pdf>.

Now we write with the findings of our second round of research where Kleimann conducted supplementary usability testing and redesign of the CRS. The purpose of this round of research was to develop and test alternate language and design for a CRS used by the dually registered Investment Adviser and Broker-Dealer. Within that task, we set three overarching goals for the alternative CRS:

1. Enable retail investors to understand the basic services offered by an Investment Adviser, Broker-Dealer, and dual registrant and the terms under which those services are offered;
2. Enable retail investors to compare the services of an Investment Adviser and a Broker-Dealer; and
3. As a result of improved comprehension and comparability, to enable retail investors to make informed decisions about the types of accounts and services that are most appropriate for them.

Toward that end, we adopted alternative language and formatting based on lessons learned in our first round of research. These included shortening the document from four pages to the front and back of one page, reordering the topics, simplifying and clarifying the language, and adopting a question-and-answer format. The purpose of all these changes was to improve the usability of the CRS, reinforce the differences between the two types of accounts, and thereby facilitate a retail investor's ability to make an informed decision.

Testing of the revised CRS took the form of 18 one-on-one, 60-minute interviews in three geographically diverse sites: Denver, Colorado; Tulsa, Oklahoma; and St. Louis, Missouri. After each round of testing, we identified the major issues that presented problems during that round of testing. In some cases, we proposed a design or content modification to CRS as an experimental solution in the next round of testing. The goal was to evolve an alternate CRS that retail investors could use to better understand the differences between Broker-Dealer and Investment Adviser services.

Despite our extensive revisions, the inescapable conclusion of this second round of testing, like the previous round, was that many, if not most, investors failed to understand many of the key points illustrated in the CRS and, therefore, could not use it to make an informed choice of accounts. However, as we discuss further below, we believe this iterative testing demonstrates opportunities to further improve the CRS and its underlying rule so that retail investors can be informed and protected.

We hope this testing will be another step in a process of revision and retesting by the Commission to arrive at a further clarification of the rule and a final document that clearly conveys these important issues to retail investors. As we have in the past, we continue to 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 that regulatory package work as intended to support informed investor decision-making.

KEY TAKEAWAYS

The overall level of comprehension was poor, despite efforts to redesign (language and format).

The redesigned CRS provided participants with a somewhat better understanding than the Commission's originally proposed CRS, most notably in broad differences in the underlying investor relationship of Investment Adviser and Broker-Dealer accounts. On the other hand, participants continued to struggle to understand applicable legal obligations, conflicts of interest, and cost structure. The more technical or abstract the concept, the lower the level of comprehension.

Most participants did not understand disclosures regarding legal obligations.

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

In this round of testing, we found that, unlike with the Commission's CRS mock-up, participants understood that the two standards were the fiduciary standard for the Investment Adviser and best interest standard for the Broker-Dealer. However, participants struggled with defining these legal standards, especially when asked to define the best interest standard. Participants wondered whose best interest would be served, especially when it came to the brokerage account type, since the underlying relationship was a sales relationship. As further detailed in the accompanying report, this likely reflects, in part, our own difficulty in arriving at a clear description of a standard that the Commission has not itself clearly defined.

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

Participants struggled to define "conflicts of interest" although they had a vague and general intuitive sense that it would not be good for them. As we previously found, most participants were able to understand, based on the CRS, that conflicts of interest were present in both the brokerage and the advisory accounts. They understood, moreover,

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, and some did not even demonstrate that level of comprehension.

In addition, participants could not adequately explain what it meant to consent to a conflict. Some participants wondered to what they were giving consent, finding the definition and the timing unclear. Other participants mistakenly assumed that having to give consent implied that they would be giving explicit consent for any transaction that included a conflict of interest. Across testing, few participants knew what the word “mitigate” meant and, thus, were confused about how exactly conflicts of interest were to be handled, some even wondering if they would know if a conflict existed. Regardless of whether they saw the conflicts as a threat or simply as business as usual, they want their interests to come first.

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

Participants in the testing understood the need for brokers and 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. With few exceptions, participants understood the basic pay structure of a percentage based on the value of total assets under management (AUM) in Investment Adviser accounts or a commission based on each transaction completed in Broker-Dealer accounts. However, participants wanted examples of costs built into the CRS so they could identify dollar amounts that they may potentially pay. With regard to the hyperlinks provided in this section, participants wanted descriptions of those links to be more concrete in terms of what information they would find. While some were clearly interested in additional information, others admitted they would not follow the links because it was extra effort, they were uninterested, or the link did not itself suggest what would be there.

Conclusion

Each of these issues is discussed in greater detail in the attached report from Kleimann, which includes actual quotes from participants in the testing. Reading these quotes helps to reveal the extent to which they genuinely struggle to understand the topics discussed in 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, only one conclusion is possible based on our initial results: the CRS for dual registrant firms, as currently designed and drafted, does not support an informed decision between different types of accounts. While investors like the idea of a brief disclosure document for brokers and advisers, the disclosures as currently conceived do not achieve the intended result.

Although our testing identified serious problems with the proposed CRS disclosures, it also shows opportunities to strengthen the form and create better understanding from the form. The final CRS form resulting from our effort is not presented as a final or perfect product. Rather, we wanted to show that with explicit assumptions about the form's content, use, and readers, it is possible to solve some of the issues inherent in such an undertaking and identified in our previous round of testing. Ultimately, a strong and clear best interest standard, along with plain language and careful presentation, should facilitate clarity around key ideas, such as the best interest standard, the concept of consent, or the term "mitigate," which participants struggled to understand. We recognize that clarification of the standard is no easy task, but without such efforts at a policy level, improvements at a disclosure level will be modest.

As we have done before, we urge you not to move forward to finalize the Regulation Best Interest regulatory package until these issues have been resolved. Disclosure plays too central a role in the proposed approach for the Commission to dismiss evidence that the proposed disclosures do not fulfill their intended function. We look forward to working with the Commission to improve the final rule and forms to achieve a comprehensive, clear, and useful disclosure form that protects retail investors as they make crucial decisions that will impact their long-term financial security.

Sincerely,

AARP
CFP Board

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