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Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Investor Testing of Form CRS Relationship Summary

Dear Ms. Countryman:

CFA Institute[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC") on the November 2018 research report titled "Investor Testing of Form CRS Relationship Summary ("Report" or "RAND Report") prepared for the SEC by the RAND Corporation ("RAND"). CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education and competencies for investment professionals, and on issues of fairness, transparency and accountability of global financial markets.

Executive Summary

We strongly support efforts by the SEC to conduct investor testing that will contribute to a CRS format and content that helps investors understand important differences between investment service providers. While the RAND Report is useful in identifying sections of the CRS that received positive and negative reactions from survey participants, however, we believe additional testing that focuses on investor *comprehension* is needed.

To that end, we reiterate our call for the SEC to engage those who are expert in creating information vehicles for consumers and who will test not only comprehension but also solicit feedback on alternatives (in terms of format and content). Only through such a thorough analysis will a final version of the CRS stand to meet its intended objective as a valuable tool to help investors choose service providers that best meet their investing needs.

[1] CFA Institute is a global, not-for-profit professional association of nearly 171,400 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 164,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 154 member societies in 77 countries and territories.

Discussion

<u>General Comments</u>

We appreciate the SEC outreach to investors to gauge their informational needs in connection with the SEC's proposal for a best-interest standard for broker-dealers through Regulation Best Interest ("Reg. BI"). In large part, this relates to the use of a Customer Relationship Summary ("CRS") by both broker-dealers and investment advisers that purports to help investors understand the distinctions in the respective obligations for these service providers.

The RAND Report is a positive step in assessing perceptions on the use of a summary relationship document modeled on CRS. Using a survey respondent group patterned on the RAND American Life Panel ("ALP") and including respondents with a range of educational and investing levels, the Report arguably provides a reasonable "snapshot" of current and future American investors.[2] We also commend the research conducted by the SEC's Office of Investor Advocate and RAND involving the same ALP pool, resulting in the report released in October 2018 titled, "The Retail Market for Investment Advice" ("OIAD Report"). Together, these reports provide meaningful insights into the challenges of creating an information summary document like the CRS.

In our comments to the SEC on proposed Regulation BI[3] we noted that we could not fully evaluate the proposal without knowing how investors interpreted the CRS disclosures. The CRS' importance was heightened by the Commission's intention to use the CRS to provide basic information to investors about the different legal and regulatory requirements imposed on different service providers. The purpose of the CRS, therefore, is to eliminate investor confusion arising from Reg. BI. We appreciate the commissioning of the RAND Report as a step to gauge investor perceptions.

But there is a meaningful difference between perception and comprehensive understanding. The RAND Report is clear that its survey was not designed to measure objective comprehension. While it notes what parts of the CRS, as presented, respondents thought would be helpful, it does not indicate whether or not investors *understood* the information. Nor did it provide respondents with alternatives that could have allowed them to express preferences for certain formats or language. In all of these respects, the Report did not go far enough to provide the kinds of information needed to produce an effective and informative CRS.

We remain concerned about investors' actual understanding of the CRS and how to apply it to their financial needs. For example, we believe that investors will not understand that proposed Reg BI will, among other things, apply only at the time of the broker-dealer's recommendation

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[2] We understand that some of those responding to the survey are not active investors. For ease of reference in this letter, we generally to the entire groups of respondents as "investors," "potential investors," or "respondents."
[3] See: http://www.cfainstitute.org/-/media/documents/comment-letter/2015-2019/20180807-3.ashx, for response to Reg. BI. See: http://www.cfainstitute.org/-/media/documents/comment-letter/2015-2019/20180807-1.ashx, for our response to proposed Form CRS.

and does not extend beyond that precise time. To ensure this kind of understanding, therefore, we reiterate our suggestion that the SEC conduct additional testing as to whether investors understand a) the different services and obligations of the two primary investment service providers; b) the basic differences between fiduciary and best-interest standards in terms of legal obligations; c) the potential conflicts of interests associated with each; and d) how fees are calculated and charged by each, among other topics. We also reiterate our encouragement that the Commission engage firms with consumer communications expertise[4] as part of this testing, all with the goal of determining which version has the highest investor comprehension.

When contemplating revisions to the Reg. BI proposal and to the CRS, we encourage the SEC to consider the questions, concerns, and lack of understanding raised in the RAND Report's survey and interviews. This Report clearly shows the value a relationship summary can serve in helping investors make more-informed decisions about investment accounts and services. But it also provides important information on how many investors lack basic understanding of how the investment management process works, reasonable expectations for investment returns, and how a best-interest standard differs from a fiduciary one.

We hope the Report's recognition that many investors will not understand the distinctions between broker-dealer and investment adviser standards of care will impress upon the SEC the need to not only revise CRS' language, but also the underlying approach in Reg. BI. Even though the respondents to the surveys—1,816 ALP members—represent a range of education, sophistication, and investment acumen, a substantial number exhibited confusion about fees, costs, conflicts, and standards of care to raise substantial questions about the value of CRS, as drafted.

We are concerned that the inherent confusion in Reg. BI's complicated rules ultimately will be reflected in the CRS. Unless the SEC provides greater clarity about the defining edges of Reg. BI, we should not expect investors to understand a document that purports to summarize that standard.

We are hopeful these reports, the various focus groups the SEC has held, the results of industry testing, and the substantive comments received on the Reg. BI package of proposals will contribute to a revised and improved CRS that provides clarity and meaningful understanding for investors who are expected to rely upon it to inform their choices.

We believe the results of this study provide the SEC with an opportunity when finalizing CRS to provide Main Street investors with basic information that will allow them to make more informed decisions when choosing their financial providers. Respondents in this Study noted that the proposed CRS section on fees and costs was extremely important, but difficult to understand

4 We specifically note and support the consumer testing performed by Kleimann Communications Group, Inc. and referred to in the 11 September 2018 letter to Chairman Clayton from AARP, Consumer Federation of America, and the Financial Planning Coalition, and the 7 December 2018 letter to Chairman Clayton from AARP and the Certified Financial Planner Board of standards, Inc, (noting findings of investor confusion about applicable standards of care, among other difficulties with comprehension of CRS content).

and lacking in detail. In most marketplaces, consumers use actual prices of a product or service when making decisions whether to purchase. In contrast, the CRS avoids providing this information even though it purports to be the document on which investors should rely when comparing financial providers.

In keeping with the needs of the marketplace, we urge the SEC to require providers to note their most recent actual fees in the CRS or to provide a hyperlink to where the relevant fees are located. Requiring this information gives investors/consumers an important factor to weigh when considering their providers' services. It also serves to encourage a dialogue between investors and providers in cases where fees raise questions in the investor's mind.

Scope

As noted above, the biggest shortcoming of the RAND Report is that it aimed not to objectively assess respondents' comprehension of the information provided, but instead to get information about their preferences, attitudes, and opinions. Thus, while certain findings may help improve a future iteration of CRS, the Report is not dispositive of the value to consumers and the range of changes that may be needed because it does not provide research on the scope and depth of the respondents' understanding of the subject matter.

Nevertheless, the Report still uncovered a high degree of confusion on the part of investors. In particular, respondents found certain sections difficult to read or did not understand certain terms used in the CRS, including "fiduciary" when used in the section titled "Our Obligations to You." We find this especially noteworthy, given that this is a pivotal concept in the section that is supposed to clarify the differences in standards of conduct for broker-dealers and for investment advisers. Respondents also struggled with understanding other terms such as "markup," "markdown," "load," "surrender charges," "wrap fee," and "custody," and asked for definitions of "transaction-based fee," "asset-based fee," "discretionary account," and "non-discretionary account." Taken together, it is clear that the level of familiarity with terms used in the CRS assumes a level of understanding not reflected in the general population.

The Report's findings do provide value in what it conveyed about format: respondents reacted positively to the length of certain sections, the side-by-side comparison of the different professionals, and the use of hyperlinks. Overall, they thought a document like the CRS would be useful. While helpful, the RAND Report addresses only part of the investor experience, and the SEC needs more information in order to meaningfully revise the CRS.

Specific Areas Addressed by the RAND Report

Usefulness

It is noteworthy that more than 80% of respondents indicated that a relationship summary like the CRS would help them compare accounts offered by a particular firm, as well as by different firms. An even greater majority, 90%, said it would help them make more informed decisions about accounts and services. A majority indicated the section on types of relationships and services was one of the most informative parts of the CRS that would help them decide what types of investment accounts and services were best for them.

These findings are particularly important given that more than 50% indicated they had never reviewed a Form ADV or broker account opening agreement, and 20% didn't know if they had. Given that the CRS may be the main summary document that prospective/ongoing investors receive and review, ensuring the integrity and clarity of its message becomes even more important.

Fees and Costs

While a large majority of respondents found this section to be the most informative, they also found it to be the most difficult to understand. Less than 40% thought it was just right and 36% found this section difficult or very difficult to understand. Respondents also noted that the number of various *types* of fees was overwhelming. Nevertheless, they also asked for more details and information, with 90% indicating they would click on a hyperlink to get additional information on fees.

Respondents' reactions to this section of CRS is not surprising as it lacks the details of what investors can actually expect to pay. The vague language used about the fee issue (e.g., fees may vary, fees may be negotiable) prevent investors from having any real understanding of how much they may pay their financial professional. Instead, CRS disclosure focuses on the types of fees that may be charged, rather than the amounts.

Investors need quantifiable fees. We encourage the SEC to revise CRS requirements so that investors will be provided estimates of actual costs, based on the most recently available data, either placed within the CRS itself or through hyperlinks. This way, investors will have basic information to help navigate the maze of varying and negotiable fees while encouraging them to ask questions about aspects they find confusing. Survey respondents noted their discomfort with having fees that may vary and be negotiable. As one survey respondent said, "you know, if you're price comparing, if you're on Amazon, if you're on anything, you're going to be looking at the specific price you're paying."

Conflicts of Interest

Despite their appreciation for a summary akin to the CRS, it is disconcerting that respondents found the section on conflicts of interest to be one of the least informative and second-most difficult to understand (after fees and costs). Some also thought this section conflicted with the section called, "Our Obligations to You." This is particularly relevant given that conflicts of interest disclosures are central to understanding the distinctions between what investment advisers and broker-dealers can do without violating their respective standards of conduct. That respondents found the proposed CRS discussion lacking points to a basic defect in the current CRS drafting and something that needs to be addressed.

We also think this indicates more than a drafting challenge. Proposed Reg. BI is not clear about what kind of conflicts must be mitigated or when. This, in turn, contributes to a lack of clarity in the CRS. Clearer regulations on how broker-dealers must address conflicts of interest, therefore, should translate into a more understandable CRS.

To accurately alert investors as to potential conflicts of interest, the CRS needs to address the relationship between broker-dealers and their firms. The CRS needs clear and direct language that explains brokers' sales roles and their effect on conflicts, compensation, and standards of conduct. And it needs to include language that clearly and simply distinguishes a best-interest standard from a fiduciary one, including a listing of the key differences.

Format

In our Reg BI letter, we recommended that the CRS provide a side-by-side comparison format so investors would have a useful way to note similarities/discrepancies of the two service providers[5]. The RAND Report noted that 85% of respondents supported this format. We encourage the SEC to retain this approach.

We also recommend that the SEC adopt the preference of a majority of respondents (nearly 60%) for a question-and-answer format.

Timing of Delivery

It is important that investors receive the CRS as early as possible when considering what type of service provider best suits their needs. Otherwise, they may choose a service provider and service level without having received all the information needed to make such decisions. In some cases, a delay in delivery of such materials will lead investors to remain with their current providers, despite later receiving information later that their choices were not the best.

The Report shows respondents favor early delivery of these materials, with 70% favoring receiving the CRS at the outset of the relationship. Nearly the same percentage wanted to be informed of material changes and being provided with an updated CRS showing the highlighted changes. Respondents were split on whether to receive updated versions whenever there are material changes.

We support providing investors with information about their services providers as early as possible. While Report respondents supported CRS delivery at the outset of the relationship, the survey did not offer them a choice to ask for it even earlier. Investors need basic information about possible service providers if they are to make informed decisions, and they need that information before making a decision (even passively). Receiving the CRS at the first meeting with a provider, on the other hand, is unlikely to provide much help to the investor, given the

[5] Reg BI Letter, page 5.

limited amount of time they will have to review its pertinent information before having to decide on working with a service provider.

Consequently, we urge the Commission to require broker-dealers to post their CRSs on their websites. This would enable prospective clients who express interest in working with a broker to receive links to those websites (or hardcopies) at the earliest possible time. Investors should be able to access this information at their convenience and without having to provide detailed information. At the same time, we recognize that survey respondents expressed a preference for paper copies of the CRS. The Commission should ensure these types of potential clients also receive their hard copies prior to meeting with the service provider.

Findings from OIAD Report

While not focused specifically on the CRS, the OIAD Report provides data relevant to constructing a useful and meaningful CRS. In particular, the OIAD research confirms that understanding the differences between broker-dealers and investment advisers continues to pose challenges for many potential investors. This confusion is reminiscent of similar confusion memorialized in the study conducted in 2007 by RAND. In fact, with respect to knowledge of the roles of financial professionals, the OIAD Report notes, "Contrary to our prior expectation, this subsample of respondents seemed less informed about the marketplace for professional advice in 2018 than they were in 2007."

Although the focus groups and survey on which the OIAD Report is based occurred prior to the release of the proposed package of Reg. BI proposals, its data reveal much about the expectations and perceptions of American retail investors. A number of these expectations and misperceptions were not adequately addressed by the SEC proposals, including the proposed CRS. For the CRS to be useful to its intended audience, therefore, it must address the basic confusion individuals have about the duties, obligations, and operations of financial services providers. We are concerned that the CRS version proposed last April will further confuse investors, rather than clarify for them, the service and loyalty differences they can expect from investment advisers and broker-dealers.

The SEC must recognize this persistent gap in understanding if the CRS is to successfully educate investors and enable them to make informed decisions about possible service providers. As currently drafted, the CRS is, at best, too nuanced to help average investors in the ways intended, particularly with respect to understanding differences in obligations and service stemming from the respective standards.

Continuous Monitoring

Those participating in the OIAD focus groups and pre-survey responses indicated they believed a financial professional operating under a best-interest standard would provide on-going monitoring of clients' accounts. Three-quarters of survey respondents said such on-going monitoring of their accounts by financial professionals was important or extremely important.

Moreover, the survey responses as to what services would be provided by someone with a best-interest standard reinforce the earlier focus group/presurvey sentiments, wherein 68.9% thought this would include account monitoring on an on-going basis.

The fact that the proposed best-interest standard for broker-dealers does not require this ongoing duty points to a clear disconnect between the proposed standard and what consumers would expect of those operating under such a standard.

Personal Attention

This survey also indicated respondent confusion as to the degree of care they would receive by those acting under a best-interest standard. Seventy-one percent of respondents expected a financial professional operating under a best-interest standard to take into account their "personal financial situations." These results highlight another inconsistency between the proposed best-interest standard and investor expectations.

Conclusion

We appreciate and support continued research and testing on what investors need to understand the differences between broker-dealers and investment advisers, and the standards of care applicable to each. We believe the findings in both the RAND Report and the OIAD Report indicate much work is needed before this is accomplished. We encourage continued investor outreach and collaboration with experts in consumer communications to better test the comprehension of investor understanding and to recommend presentation formats that will best be understood by investors.

Should you have any questions about our positions, please do not hesitate to contact Kurt Schacht, CFA, kurt.schacht@cfainstitute.org, or Linda Rittenhouse at linda.rittenhouse@cfainstitute.org, 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

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