



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

Submitted to AARP, Consumer Federation of America, and  
Financial Planning Coalition

# Final Report on Testing of Proposed Customer Relationship Summary Disclosures



**September 10, 2018**

Kleimann Communication Group, Inc.  
[www.kleimann.com](http://www.kleimann.com)



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# Section 1: Introduction

## Overview

The Securities and Exchange Commission (SEC) has proposed a Customer Relationship Summary (CRS) disclosure to be provided to retail investors as they are about to begin an engagement with a Broker-Dealer or Investment Adviser. The disclosure is intended to assist investors in making an informed choice between different types of providers and different types of accounts. Toward that end, it provides standardized information about six common areas relevant to that selection:

- Types of Relationships and Services,
- Our Obligations to You,
- Fees and Costs,
- Conflicts of Interest,
- Additional Information, and
- Key Questions to Ask.

The SEC has proposed three versions of the CRS: one for use with standalone Broker-Dealers, one for use with standalone Investment Advisers, and one for use by dual registrant firms that provide both Broker-Dealer Services and Investment Adviser Services. The SEC developed mockups of each of the three versions.

The SEC is seeking investor input on the proposed disclosures, through a formal comment process that ended August 7, through investor roundtables conducted by SEC officials, and potentially through investor testing conducted on behalf of the SEC.

AARP, Consumer Federation of America (CFA), and the Financial Planning Coalition (FPC), including CFP Board of Standards, all filed comments with the SEC as part of the formal comment process. As a supplement to their comment letters, and in order to better analyze the SEC proposal, the groups hired Kleimann Communication Group (Kleimann) as a non-affiliated third-party to test the combined Broker-Dealer Services and Investment Adviser Services disclosure with typical consumers during July 2018.

The overarching goal of the testing was to ascertain how well consumers understand three basic questions:

1. Does the investor understand the differences between Broker-Dealer Services and Investment Adviser Services?
2. Does the investor understand the difference in Standard of Care between the two types of services?

3. Does the investor understand that Broker-Dealers provide no on-going monitoring of the account?

To collect responses to these questions, we conducted three rounds of one-on-one interviews in three geographically diverse sites: Philadelphia, Pennsylvania; Calabasas, California; and St. Louis, Missouri. We interviewed five participants in Calabasas and St. Louis and six in Philadelphia.

## Our Approach

The one-on-one, 90-minute interviews took place in three geographically-diverse sites: Philadelphia, PA; Calabasas, CA; and St. Louis, MO. The goal was to establish what investors understood about the differences between Broker-Dealer Services and Investment Advisory Services based on their reading of the SEC's CRS mockup for dual registrant firms. We used a three-part interview structure with (1) an introduction, (2) a think-aloud section, and (3) structured questions.

## Methodology

**Goal and Research Questions.** Our overall goal was to assess whether participants understood three basic questions as a result of reviewing the CRS:

- Does the investor understand the differences between Broker-Dealer Services and Investment Adviser Services?
- Does the investor understand the difference in Standard of Care between the two types of services?
- Does the investor understand that Broker-Dealers provide no on-going monitoring of the account?

Within the context of the interview, our research questions were as follows:

1. What key differences between Broker-Dealer Services and Investment Adviser Services can participants articulate besides the primary fee structure?
2. Do participants notice the difference in phrasing between a "fiduciary standard" and a "best interest" standard? How do they explain the reason for the difference in phrasing?
3. How do participants define "their best interests"?
4. How do participants anticipate that a broker-dealer or investment adviser would determine their best interests?

5. How do participants explain the fees and their purposes for both types of accounts?
6. How do participants define a conflict of interest?
7. How do participants understand how each type of firm deals with a conflict of interest?

## How We Tested

With these questions in mind, we chose to use qualitative interviews and incorporated a think-aloud technique followed by specific questions. The goal of qualitative testing is not to develop statistical results; that is the scope of quantitative validation. In qualitative testing, we focus on how consumers interact with the disclosure, and a small sample size is typical. According to Robert Virzi, an experimental psychologist and usability expert, five participants uncover 80% of usability problems and ten participants uncover 90%.<sup>1</sup>

The 90-minute interview was divided into three parts: (1) an introduction in which we confirmed agreement to participate and confidentiality of the data; (2) a think-aloud; and (3) a structured interview.

- In the Introduction, we confirmed that participants had agreed to participate and had signed a confidentiality statement. We provided a brief overview of the topic, explained the structure of the interview, and introduced the think-loud technique. We also introduced a task: they must decide whether they want to use Broker-Dealer Services or Investment Advisory Services. To provide a context and cognitive frame for the participants to process the information as they read the disclosure, we provided them with a brief scenario. In this instance, the scenario stated:
  - You do not currently have any investment accounts.
  - You have \$10,000 or more to invest.
  - You have contacted an investment firm.
  - You receive the following notice and an engagement letter which requires you to indicate which service approach you will choose.
- In the second part, participants were asked to think-aloud through the entire CRS before we asked them specific questions. Typically, participants are quite savvy, anticipating the answers a moderator is eliciting and shaping answers to please the moderator. The think-aloud technique

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<sup>1</sup> Virzi, R. (1992). Refining the test phase of usability evaluation: How many subjects is enough? *Human Factors* 34, 457–486.

diffuses this tendency by having participants read through the disclosure and “talk out loud” about their comments on any aspect of the document as they encounter it—without commentary from the moderator other than encouragement to talk aloud. Participants may remark on parts that confuse them, that they particularly like, that they choose to not read. They can point out unknown words or phrasing that they think is particularly useful. They may comment on the layout and how it helps or doesn’t help them understand the content. Whatever they are commenting on, it is done without the explicit intervention of the moderator and provides their untainted, objective opinions about the materials.

- In the third part of the interview, we directed participants to each section of the CRS, so they could refer to it freely. We asked specific questions about each section of the disclosure that corresponded to our research questions. Some of these questions were direct: “Can you tell me what a fiduciary standard is?” Other questions were more open-ended: “What does ‘your best interest or the customer’s best interest’ mean to you?” This combination of question types allows us to elicit responses that can demonstrate two levels of cognitive skills. One is the ability to locate information within the disclosure (a fairly low-level cognitive skill). The other is the ability to integrate information and synthesize it into a rational evaluation (a more complex and higher-level cognitive skill). The higher cognitive skill set usually reflects a deeper understanding and comprehension of the material in the disclosure.

## What We Tested—Combined Version

For each round of testing, we focused on Version 3 of the CRS—the version for use by dual registrant firms that offer both Broker-Dealer Services and Investment Adviser Services. The disclosure presents information in six categories:

- Types of Relationships and Services,
- Our Obligations to You,
- Fees and Costs,
- Conflicts of Interest,
- Additional Information, and
- Key Questions to Ask.

The information is displayed in two columns, the first for Broker-Dealer

Broker-Dealer Services Brokerage Accounts	Investment Adviser Services Advisory Accounts
Which Type of Account is Right for You — Brokerage, Investment Advisory or Both?	
There are different ways you can get help with your investments. You should carefully consider which types of accounts and services are right for you.	
Depending on your needs and investment objectives, we can provide you with services in a brokerage account, investment advisory account, or both at the same time. This document gives you a summary of the types of services we provide and how you pay. Please ask us for more information. There are some suggested questions on page 4.	
<b>Broker-Dealer Services Brokerage Accounts</b>	<b>Investment Adviser Services Advisory Accounts</b>
Types of Relationships and Services. Our accounts and services fall into two categories.	
<ul style="list-style-type: none"> <li>If you open a brokerage account, you will pay us a <b>transaction-based fee</b>, generally referred to as a commission, every time you buy or sell an investment.</li> <li>You may select investments or we may recommend investments for your account, but the ultimate investment decision for your investment strategy and the purchase or sale of investments will be yours.</li> <li>We can offer you additional services to assist you in developing and executing your investment strategy and monitoring the performance of your account but you might pay more. We will deliver account statements to you each quarter in paper or electronically.</li> <li>We offer a limited selection of investments. Other firms could offer a wider range of choices, some of which might have lower costs.</li> </ul>	<ul style="list-style-type: none"> <li>If you open an advisory account, you will pay an on-going <b>asset-based fee</b> for our services. We will offer you advice on a regular basis. We will discuss your investment goals design with you a strategy to achieve your investment goals, and regularly monitor your account. We will contact you (by phone or e-mail) at least quarterly to discuss your portfolio.</li> <li>You can choose an account that allows us to buy and sell investments in your account without asking you in advance (a “<b>discretionary account</b>”) or we may give you advice and you decide what investments to buy and sell (a “<b>non-discretionary account</b>”).</li> <li>Our investment advice will cover a limited selection of investments. Other firms could provide advice on a wider range of choices, some of which might have lower costs.</li> </ul>
Our Obligations to You. We must abide by certain laws and regulations in our interactions with you.	
<ul style="list-style-type: none"> <li>We must act in your best interest and not place our interests ahead of yours when we recommend an investment or an investment strategy involving securities. When we provide any service to you, we must treat you fairly and comply with a number of specific obligations. Unless we agree otherwise, we are not required to</li> </ul>	<ul style="list-style-type: none"> <li>We are held to a fiduciary standard that covers our entire investment advisory relationship with you. For example, we are required to monitor your portfolio, investment strategy and investments on an ongoing basis.</li> <li>Our interests can conflict with your interests. We must eliminate these conflicts or tell you</li> </ul>

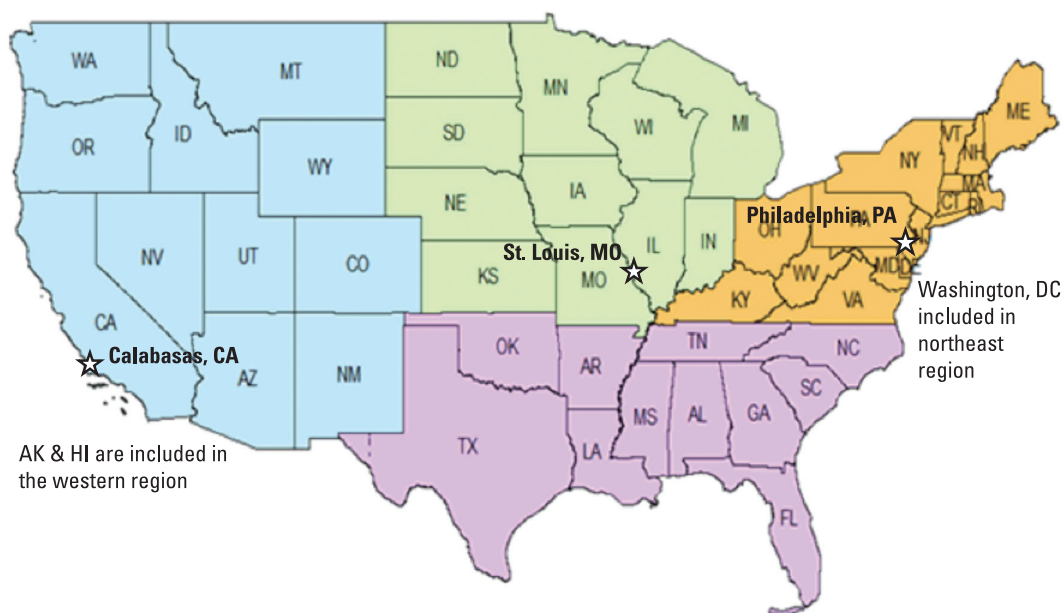
Services and the second column for Investment Adviser Services. In the testing, we removed the SEC header and footer that was in the proposed version. We did not redesign any other aspect of the CRS. (See Appendix A for the version used in testing at the three sites.)

Broker-Dealer Services Brokerage Accounts	Investment Adviser Services Advisory Accounts
<p><b>Investments</b></p> <ul style="list-style-type: none"> <li>The more transactions in your account, the more fees we charge you. We therefore have an incentive to encourage you to engage in transactions.</li> <li>From a cost perspective, you may prefer a transaction-based fee if you do not trade often or if you plan to buy and hold investments for longer periods of time.</li> </ul>	<ul style="list-style-type: none"> <li>We can buy investments from you, and sell them to you, from our own accounts ("acting as principal"), but only with <b>specific approval on each transaction</b>. We earn a profit on these trades, so we have an incentive to encourage you to trade.</li> </ul>
<p><b>Conflicts of Interest. We benefit from the services we provide to you.</b></p> <ul style="list-style-type: none"> <li>We can make extra money by selling you certain investments, such as [ ], either because they are managed by someone related to our firm or because they are offered by companies that pay our firm to offer their investments. Your financial professional also receives more money if you buy these investments.</li> <li>We have an incentive to offer or recommend certain investments, such as [ ], because the manager or sponsor of those investments shares with us revenue it earns on those investments.</li> </ul>	<ul style="list-style-type: none"> <li>We can make extra money by advising you to invest in certain investments, such as [ ], because they are managed by someone related to our firm. Your financial professional also receives more money if you buy these investments.</li> <li>We have an incentive to advise you to invest in certain investments, such as [ ], because the manager or sponsor of those investments shares with us revenue it earns on those investments.</li> </ul>

## Who and Where We Tested

In each city, we recruited five participants who represented a mix of demographics, such as age, education, gender, and income. Participants were also recruited for the type of account they currently have, such as 401k, IRA, or other. We disqualified any participant who had a family member employed in financial services. (See Appendix B. Demographics for a table of demographic characteristics of the 16 participants across the three sites.)

We included three geographically-diverse sites. We chose Philadelphia, PA as a large, mixed-income city in the Northeast Census Bureau region. We chose Calabasas, CA as a small, affluent suburb outside Los Angeles, CA in the Western Census Bureau region. Our last site was a middle-income suburb outside St. Louis, MO, a mid-sized city in the Midwest Census Bureau region.



## About This Report

We've organized our report according to the order of the six sections of the CRS. These sections are as follows:

- Types of Relationships and Services,
- Our Obligations to You,
- Fees and Costs,
- Conflicts of Interest,
- Additional Information, and
- Key Questions to Ask.

Each section has a brief summary followed by individual findings and supporting participant quotes.



## Section 2: Our Findings

Overall, participants had difficulty throughout the proposed Customer Relationship Summary (CRS) with sorting out the similarities and differences between the Broker-Dealer Services and Investment Adviser Services.

- Nearly all participants easily identified a key difference between the Brokerage Accounts and Advisory Accounts as the fee structure either being tied to transactions or to assets. Some further identified a key difference as who had the final approval on all transactions, seeing the Brokerage Account as giving them more control on making the final decision, and a few recognized that this option is also available for non-discretionary advisory accounts. Participants were quite mixed in their understanding about the advice and monitoring that was offered in the two accounts, some assuming that the advice and level of monitoring was the same.
- Most participants did not draw a parallel between the “best interest standard” of the Broker-Dealers and the “fiduciary standard” of Investment Advisers. Instead, they drew the parallel between “specific obligations” with Broker-Dealers and “fiduciary standards” with Investment Advisers. Most expected that the standards should be the same because both Accounts were in the same industry and would therefore be regulated the same. Few participants could define “fiduciary standard” or “a number of specific obligations.” In contrast, participants discussed “best interest” as relating to themselves, not to a regulatory standard. They said “best interest” was about maximizing their investment account and meeting their investment goals. A few participants read this section as presenting the Brokerage Account more favorably than the Advisory Account.
- Participants expected to pay for transactions in a Brokerage Account or the quarterly fee for an Advisory Account, but they were surprised by the proliferation of additional fees. Many were confused when terms they associated with the Brokerage Account appeared in the Advisory Account.
- Based on reading the CSR, most participants understood that both Brokerage Accounts and Advisory Accounts could have financial relationships with other companies that could be potential conflicts of interest with clients’ best interests. Few participants could articulate the difference in those relationships and the impact those relationships could have on them. Nearly all participants saw incentives as merely a well-established “way of doing business” and did not object as long as their interests were placed first.
- Most participants would skip the Additional Information section because they misunderstood the point of the section.

- Nearly all participants saw the Key Questions as essential. They felt the questions were straight-forward and raised important questions that they themselves might not have thought to ask. Many said that they would use the set of questions in their next exchange with their broker or adviser. Few thought the questions were fully addressed within the CRS.

## Types of Relationships and Services

Nearly all participants easily identified a key difference between the Brokerage Accounts and Advisory Accounts as the fee structure either being tied to transactions or to assets. Some further identified a key difference as who had the final approval on all transactions, seeing the Brokerage Account as giving them more control on making the final decision, and a few recognized that this option is also available for non-discretionary advisory accounts. Participants were quite mixed in their understanding about the advice and monitoring that was offered in the two accounts. Some participants assumed that the advice and level of monitoring was the same. Others assumed that the Investment Adviser Services would be more comprehensive because of the quarterly fee. A few understood that the two accounts charged different fees that could pay for similar services, but some were unclear if the services would be of the same quality.

### **Nearly all 16 participants focused primarily on the key difference between Brokerage Accounts and Advisory Accounts being the fee structure.**

Participants identified the primary difference between Brokerage Accounts and Advisory Accounts as whether they would be paying per transaction or an on-going asset-based fee.

*Well, the number one key difference is [that] one is transaction-fee based and one is asset-based fee. That, I think, is the number one difference between them. —Calabasas 002*

*I think the fees also being associated with them. One being a transaction-based, the other one being, again, the quarterly fee. —Calabasas 003*

*To me, the clear distinction is whether you're getting charged by a fee based on transactions, versus a quarterly fee. —Calabasas 001*

*The brokerage account's transaction-based; investment is asset-based. —St. Louis 004*

*I think the difference is one is based by transaction and one is just an ongoing fee on how much money you have and how much it keeps growing . . . —St. Louis 001*

*I understand that in the transaction-based fee in the first bullet that they get a commission every time you buy or sell. —Philadelphia 003*

*I'm (inaudible) good but asset-based tells me if I don't have much I don't pay much. —Philadelphia 002*

**For some participants, another key difference between the two accounts was who was making the final transaction decisions.**

Some participants preferred the Advisory Accounts so they could get advice and have others make investment decisions, sometimes as a recognition of their own lack of knowledge. Some participants saw decision-making as an issue of “power” and “control” and seemed to prefer the Brokerage Account, assuming that they would also receive advice and recommendations. Few recognized that non-discretionary advisory accounts also offer this option.

*. . . the broker dealer services don't advise you on anything. With this one, advisory, they are advising you if you want the advice and depending on the type of account you have, they will actually make decisions for you. —Calabasas 001*

*They are deciding and making the decisions for you as far as your investment versus the brokerage where you still have all control of it. —Calabasas 004*

*. . . That you have the power [with a brokerage account] . . . they can recommend something for you, but you ultimately have the power of choosing what you want. “You may select investments . . .” Yeah. So, you have the power. . . ultimately, they're going to recommend certain things, but you can ultimately choose for yourself. —Calabasas 003*

*. . . it sounds like [the brokerage account] wants to hear from you. They give you the facts and they say do you want to invest in this or not invest in this? . . . It seems like they would go to you and tell you these are your choices. What are you thinking? Do you want to invest in this? It has a higher yield or higher percentage rate and then they ask you what's your decision. —St. Louis 001*

*I like that they recommend [in Brokerage] but the ultimate decision is mine. —Philadelphia 005*

*Okay, they [non-discretionary advisory account] give you an option of whether they make moves on your behalf without asking you. Or they can give you advice, and you decide what investments to buy. So I like that option too. —Philadelphia 001*

**Some participants assumed that the client would get more services in an Advisory Account because of the quarterly fee.** They described these services as including more frequent phone calls as well as better quality and more frequent

monitoring of the account. Some participants viewed the on-going advice and decision-making of investment advisory services as a long-term relationship.

*I would assume that you have more access to getting advice if you have an advisory account. I am sure I can call them more often if I wanted to. . .*  
—St. Louis 003

*With the advisory account, more services are included because you are paying an ongoing fee. I think they are monitoring your account more.* —Calabasas 004

*The other—this one talks about offering advice on a regular—the advisory offers—about we would talk to you on a regular basis and monitor your account. This one doesn't say anything about that. . . This one says, "We will offer you advice on a regular basis. We will discuss your investment goals, design—." The brokerage account doesn't say anything like that. This one gives me more confidence that they know exactly what I need and what I'm looking for.*  
—Calabasas 002

*I think brokerage dealers are dealing more with the short term and advisers are dealing with more long-term accounts. With broker dealers it's about making money, making transaction fees and so it's about short term, not long term. I look at an advisory account as a relationship that, that fiduciary thing you were talking about, it's about long term.* —Calabasas 001

*With the advisory account, there were quarterly meetings. So they are monitoring it and having reports and updates for you quarterly. I don't remember what they offered [brokerage] . . . When I think about monitor portfolio, it is that they were hired to look at your investments to kind of sell or adjust stocks and funds. Looking at trading . . . at the information. They are managing your account. They are kind of looking to see if you're reaching your goals. . . Part of their job is to follow the stock market and then to adjust your plan accordingly.*  
—Philadelphia 006

*Well, on the advisory, they should really be keeping a close eye on it to make sure they're not losing, because they advised me to make these investments.*  
—Philadelphia 003

**Participants assumed that the level of advice and monitoring provided in the two accounts would be the same.** They defined "monitoring" as a constant looking at the market and their accounts and making sure that their accounts were making money.

*. . . I think they're [the services are] the same. Yes, I think they're the same.*  
—Calabasas 005

*. . . They're both saying the exact same thing. They offer advice on a regular basis, regularly monitor my account, contact by email. They're both basically doing the same thing. —Calabasas 005*

*I think the exact same advice. . . I would assume they [brokerage and investment advisory monitoring] would be pretty much the same. —St. Louis 003*

*Of course, they would have to [monitor]. . . If certain things are taking an upward or downward trend I need that information upfront, or if it looks like there is going to be a run on something I need to know. Most brokerage firms already know if something is a hot item or not, or is going to be a hot item, or shows an inclination for that, kind of certain tendencies, just that type of information. —Calabasas 001*

*They are constantly looking at your account and finding better options for it. —St. Louis 001*

*. . . I would hope it [the monitoring for both types of accounts] would be the same. This sounds like they are doing the same. —St. Louis 002*

*This monitors the performance. This monitors to see if you are achieving your investment goals, so it is the same. —Philadelphia 005*

**Other participants understood that the Advisory Account charged a quarterly fee that covers monitoring and that Brokerage Account charged extra.** These participants not only understood the difference in the charges, but also perceived a difference in the quality of the monitoring and what was being monitored.

*I think it was just the advisory account that includes the monitoring. —Calabasas 005*

*Well, the investment advisory you pay a yearly fee for it and then the brokerage, if you want the extra, you pay an additional fee for it. —St. Louis 002*

*I only got from the advisory account that it would. I don't really get a strong feeling even if they [brokerage] say somewhere in here that they will. I don't get a strong feeling that they would. And if they would, not with the thorough degree that the advisory account. —Calabasas 002*

*The investment advisory does. The brokerage can for an additional fee. . . . I think you could for additional services if you wanted them to monitor your account more or to make decisions. No, I think it just monitors that specific transaction that you did. I don't think [it monitors] the account overall. —Calabasas 004*

*When it talks about there are additional services offered for executing your investment strategy and monitoring your performance, so it sounds like for the broker to support you with that, but you may pay more. I'm not sure if it goes into more detail later about that. —Philadelphia 006*

## Our Obligations to You

Most participants did not draw a parallel between the “best interest standard” of the Broker-Dealers and the “fiduciary standard” of Investment Advisers. Rather, they drew a parallel between “specific obligations” with Broker-Dealers and “fiduciary standards” with Investment Advisers. The participants saw these two as similar regulatory obligations. Most expected, as a matter of logic, that the standards should be the same because both Accounts were in the same industry and would therefore be regulated the same. If they saw differences in language, they explained it as an issue of phrasing rather than substance. Few participants could define “fiduciary standard;” nor did they understand what it meant that brokers must comply with “a number of specific obligations” when providing services to customers. And most were unsure how they would find a definition. In contrast, participants discussed “best interest” as relating to themselves, not to a regulatory standard. They said “best interest” was about increasing the amount of money in their investment account and meeting their investment goals and strategy. They also understood that their “best interest” could change depending on their own life’s circumstances, including divorce and retirement. A few participants read this section as presenting the Brokerage Account more favorably than the Advisory Account.

**Most participants did not draw a parallel between the “best interest standard” of the Broker-Dealers and the “fiduciary standard” of Investment Advisers.** Instead, they drew the parallel between “specific obligations” with Broker-Dealers and “fiduciary standards” with Investment Advisers. The participants saw these as similar regulatory obligations. If they saw a difference in the phrasing, they explained the differences as simple wording differences or a giving of examples.

*Basically, with the brokerage they are obligated to have specific standard practices that they have to comply with handling my account fairly. They have to handle it a certain way. The same thing goes for the advisory. It is just worded differently. —Calabasas 004*

*. . . they actually are the same, but just they’re defining what a fiduciary standard is on the brokerage account. —Calabasas 003*

*In the brokerage account where it is saying “when we provide any service to you, we must treat you fairly and comply with the number of specific obligations.” The specific obligations . . . assuming it is the same as the fiduciary. —St. Louis 002*

*If I made an assumption with specific obligations [or fiduciary standards] that they must comply with, I would assume like firm to firm a lot of those will be the same. —St. Louis 003*

*"We must abide by certain laws." This isn't overly interesting to me because I'm assuming that if they are obligated to do it, everyone is. —Philadelphia 002*

**Most expected that Brokerage Accounts and Advisory Accounts being in the same industry should have the same regulatory standards.** These participants expected the Brokerage Accounts and the Advisory Accounts to have the same regulatory standards as a matter of logic, since they thought both Accounts were in the same type of industry. A few participants expressed some concerns that the difference in language in the CRS suggested a distinction between the two standards, but it did not make the difference explicit.

*"'We must abide by laws and regulations.' Well, I hope so. . . I'm not understanding why are there still two columns? The laws and regulations should be the same in both. There shouldn't be a difference. It should be legal and illegal to do the same things in both of these." —Philadelphia 004*

*They would probably be exactly the same. If it's an industry standard it would be standard across the board for everybody. —St. Louis 004*

*Presumably one would assume all sorts of legislation that covers this industry and how they can and cannot interact with a client. —St. Louis 003*

*If there is indeed a difference in the way the law treats a broker/dealer service versus the way the law views an investment adviser firm, that difference needs to be made clear, if there is, in fact, a difference—which I do not know from these statements. . . The fact that they used that phrase on one side and not on the other hints at the idea that perhaps these things are legislated differently. . . then I want that to be spelled out very clearly. —Philadelphia 004*

**Few participants could define "fiduciary standard."** Most participants had little or no working definition of the term beyond guessing it referred to some sort of legal monitoring or regulation. When we asked how they would find a definition of "fiduciary standard," participants stated a variety of approaches from searching on Google to going to the SEC website.

*Some of this investment jargon is a little bit . . . fiduciary standard. Might have to Google that. —Philadelphia 001*

*Well, first of all, I have no idea what their fiduciary standard is. —St. Louis 005*

*Specifically, no [I don't know what it means.] —St. Louis 004*

*I don't know what it means, so I can't [speculate on what it means].*  
—Calabasas 005

*What is the fiduciary standard is what most people don't know . . . Well, I am thinking that it is some type of a financial agreement obligation.* —St. Louis 002

*Well, one thing, "fiduciary standard." "We're held to a fiduciary standard." For a regular guy that punches a clock, I don't see that word often or anything.*  
—Philadelphia 001

*I think the fiduciary is their responsibility as an investor versus the best interest of the client. I'm not quite clear on all of that, to be honest.* —Philadelphia 006

**Some participants were also confused by the meaning of "specific obligations" brokers must meet when providing services to customers.** One participant equated this with a fiduciary standard.

*Well, specific obligation I wouldn't look up because that's telling me that somewhere there is rules that this company has to oblige, which is the fiduciary standard roles is what I am guessing. I am guessing that whenever you look that up, that's going to be the specific obligations that that brokerage is referring to. That's what I would assume.* —St. Louis 002

*. . . And comply with a number of specific obligations. Well, what are those obligations? And to whom do you have to report these obligations? . . . Here, there's too much loose language in the brokerage account. . . Well I would have to ask the question: What are the specific obligations? That doesn't mean anything to me, specific obligations. It's just language in a contract that doesn't have a meaning."* —Calabasas 002

**Most participants discussed "best interest" as relating to themselves, not to a regulatory standard.** They said best interest was about increasing the money in their account. Many also understood it would reflect their personal goals, life stage, appetite for risk, and even personal choice for types of investments.

*I should ultimately end up with more money, based on the decisions that they make.* —Philadelphia 002

*. . . the best interest would be making the most money for your money. So, that's my best interest to make the most money.* —St. Louis 001

*. . . a customer's best interest is that they are looking out for you, the customer, to make sure that what they're doing is taking care of you and not taking care of them. They're putting you first, putting the customer first, putting me as their customer first. . .* —Calabasas 002

*That you care about my account and if it is making money, not making money. You have an investment in my account just as much as I do. —Calabasas 004*

*. . . usually your best interest means, what is best for you. To get the maximum amount of your initial investment. For you, your family. Just to make sure that everything is okay for you. —Philadelphia 001*

*My best interest means what's best for me in my situation and my goal. —St. Louis 004*

*But the best interest of the client would be them looking at their goals and determining based on their level of risk they are willing to take, which are the best investments aligning with their goals. —Philadelphia 006*

*That my money is working as hard as it needs to work and earning the best rate of return. . . Not necessarily immediate. Long-term would enter into it as well. It would be interesting to know and it is not addressed here at all whether they have a social program, a program where your investments are made with a social aspect in mind that we don't invest in mercenaries and we don't invest in Putin. —Philadelphia 004*

**Most participants understood that their personal best interests could change and would differ from customer to customer.** Participants commented that individual goals, often affected by personal attributes, primarily would determine best interests. Nearly all understood that life's circumstances could also change these goals.

*I would assume that it depends on the person and probably what goals or such that they set maybe in an initial consultation or something like that. —St. Louis 003*

*My goals might be different from somebody else's. Somebody else might be happy having their account—stupid, but happy having their account remain . . . And I might want—now I need more money, so you need to work out and get this higher. So, my best interest could be different from your best interest. —Calabasas 002*

*Because they may handle their portfolios different than mine. They may trade or sell completely different than I do. They may handle their accounts differently. —Calabasas 004*

*I think that what could change is if you feel like you're running out of time or getting closer to retirement age—I think you can either be more or less aggressive than . . . you would want them to be. —St. Louis 001*

*A divorce could change it, one of your kids getting married could change it, somebody dying could change it, you have a job change or something like that.*  
—St. Louis 004

*So, if I'm trying to make it short term—a short term investment to make a lot of money real quick, then that would be good for me, then that would be a good investment for me. Or even long term too, if I had that kind of time, but at the age that I am now, I don't have that kind of time to be stringing money out for real long periods of time.* —Philadelphia 003

**A few participants said the Brokerage Account was presented more favorably than the Advisory Account.** A few participants interpreted the language of the first bullet in this section as encouraging participants to select the Brokerage Account over the Advisory Account.

*If I'm looking at my best interest, brokerage would be better for me.*  
—Calabasas 003

*So, the obligation sounds better on the brokerage account, because it sounds like they are working on your best interests and treating you fairly . . . In the brokerage accounts, it makes it seem like they are more for you . . .*  
—St. Louis 001

*[Moderator: Why is the phrasing different?] I don't know. Maybe they're trying to get you to push more people into a brokerage account because it's transaction-based.* —St. Louis 005

*Now I'm reading a little bit more. At least in my mind, if I was dealing with this service . . . it's swinging back to a brokerage account.* —Philadelphia 001

## Fees and Costs

Participants expected to pay for transactions in a Brokerage Account or the quarterly fee for an Advisory Account, but they were surprised by the proliferation of additional fees. Many were confused when terms they associated with the Brokerage Account appeared in the Advisory Account explanation of wrap fee programs. Participants also commented on the introduction of many new terms and wanted definitions to be provided in some way. Some participants were no longer sure after reading this section of the CRS whether a Brokerage Account or an Advisory Account would be more cost-effective for them. Some participants saw these fees merely as an opportunity to increase charges to the client.

**Nearly all participants were surprised by the types and number of fees beyond transaction and asset-based fees.** The participants saw the Fees and

Costs section as confusing in its content and use of terminology. They thought that it lacked definitive explanations of the various terms. They also were surprised by the number of additional fees for an account.

*Once you get down to fees and costs, it's time to stop with big sentences and start showing some figures—as an example, here is this. —St. Louis 003*

*I mean, some fees, yes, you know you're going to get other fees. I think that's excessive sometimes. —Calabasas 005*

*OK, but that's very confusing. They're saying up here asset-based fees . . . Then they go on here talking about other fees. —Calabasas 002*

*It seems like there are a lot of fees, from what's being said here. So, there is a transaction fee and then there can be markups, depending on the different types of investment you are buying . . . This is crazy, too many fees. Can I tell you the difference between them? Not really. —St. Louis 001*

*I mean I don't mind paying the fee to make the transaction . . . but not all these other fees involved in it. In fact, the surrender charges to sell that investment, that's too many fees. —Philadelphia 003*

*. . . it really is when you are reading that particular paragraph, but then you go to the next one and you have got another fee and you have got another fee and like all these fees are just coming down on you. —St. Louis 002*

*. . . I want transparency . . . I understand that it's somewhat complex . . . but what are the additional fees? Custodial fees, account maintenance fees, account activity fees. From an investment standpoint, I'd want to know how much it is going to cost me. —Philadelphia 006*

### **Participants were confused by the similarity of terms in the Brokerage Accounts and the Advisory Accounts.**

Although participants had thought they understood the difference in fee structure between the two accounts, they thought the fees in the Advisory Accounts now seemed similar to fees in the Brokerage Account. They specifically had difficulty with transaction fees appearing in wrap and non-wrap fee programs. Some then wondered if it would be less costly for them to go to a Brokerage Account.

*That's why I said it's confusing. "Some advisory accounts called wrap fee programs. The asset-based fee will include most transaction costs and custody services and, as a result, the wrap fees are typically higher." But I don't understand why it's most transaction costs and custody services. —Calabasas 002*

*They then kind of break it down into the wrap fee program, or what they're calling a non-wrap program . . . but it's not completely explained . . . Okay, is the wrap fee . . . I know what it's going to be, but how does that translate if I'm a non-wrap and these transactions start popping up and it costs me more? Is there a cap on them? Evidently not, once you're in the wrap fee program.*  
—St. Louis 005

*Because for the transaction you are still paying additional custodian fees, maintenance fees, and activity fees. I guess we would have to look at how much that would be with a brokerage account versus advisory. How much different are those fees between the two?* —Calabasas 004

*In one I'm going to pay a transaction-based fee and in the other one, I'm going to have on-going fees for the service, but you are not telling me what they are.*  
—Philadelphia 004

### **Other fees were simply confusing because of the new terminology.**

Participants were confused by the amount of new terminology, but clearly saw that there were costs associated with each type of account.

*One particular paragraph is kind of confusing because it says, "it includes most transaction cost and custody services," which I guess I don't technically know what custody services are.* —Philadelphia 002

*It's scary to hear things like this—a surrender charge, whoa what is that about?*  
—Calabasas 001

*So, again, it seems as though it has a mark-up, markdown . . . I think the initial one was with bonds, and then this is with mutual funds. My question is, I'm not really understanding why they're bringing up these terms.* —Calabasas 003

*It seems like they've got a lot of fees in here, wrap fees, mark-up, markdown.*  
—Philadelphia 003

**A few participants wanted to have the terms defined.** These participants suggested either a video to be sent before a meeting or said they would stop a meeting to have a clear set of definitions.

*. . . it's always good to know what these terms mean. Before this gets sent to me I need a video, something that gives general definition of terms, explaining what this means so that when I receive this information, this document it makes sense. What does that really mean?* —Calabasas 001

*It is just like, oh, keep it simple. I mean there has got to be a way to simplify this. Because to me, if I was reading this and sitting down with a broker or a firm to put my money in, I would say, you know what, I don't think so, you better write this on a board and tell me exactly what this means.* —St. Louis 002

*So, pretty much they are having in the long run the same, different kind of charges only named differently again . . . So, I think it is pretty much the same ones, they have three charges and it goes to the next page too. They probably wind up being the same amount of fees. —St. Louis 002*

**Some saw the multiple fees merely as an opportunity for firms to make additional money.** These participants understood that there would be a cost for transactions, but they saw the multiple fees as excessive and simply an opportunity to charge the customer.

*Yes, I've got a concern about how many different fees they've got here. They've got mark-up, markdown, surrender charges. The only one making money here is them. I mean I don't mind paying the fee to make the transaction . . . but not all these other fees involved in it. In fact, the surrender charges to sell that investment, that's too many fees. —Philadelphia 003*

*It sounds like to me the brokerage is going, "Okay, well, I have to charge this and I have to charge that. Okay, I charge you this transactional to make this, . . . but then again I also have to charge you this charge, . . . I have to charge you another fee because it is an annuity and not a stock, and then we have to charge you a fee because Joe is transferring the money for you . . . so we have to make this additional fee." That's what I am seeing on that. —St. Louis 003*

## Conflicts of Interest

Most participants understood that both Brokerage Accounts and Advisory Accounts could have financial relationships with other companies that could create potential conflicts of interest. They saw the source of the conflict as the receiving of payments in exchange for recommending investments with those companies. To the degree that they commented on differences in how conflicts were addressed, they commented on what they perceived as the obligation of Advisory Accounts to have the approval of their clients before making these transactions and the lack of the same obligation for Brokerage Accounts. This raised questions about how Brokerage Accounts could resolve conflicts of interest since some participants believed, based on the disclosure, that clients would not even know if a conflict existed in the Brokerage Account. However, participants also were unclear how a conflict would be resolved with Advisory Accounts once they were informed of the conflict.

Participants had difficulty explaining how the firms earned money from these relationships. Participants offered varied explanations with many of the explanations confused, although some considered the practice questionable, using words like "kickback" or "sleazy." However, often absent from these explanations was a

discussion of the negative impact that these practices would have on them. In fact, some participants even assumed that the practices disclosed would result in positive impacts, such as reduced costs to the client because the financial company would sell at a discount. Nearly all participants saw incentives as merely a well-established “way of doing business” and said they did not object as long as they were informed of the relationship and their interests were first.

**Most participants understood the financial relationship with other companies as the source of the conflict of interest with their own best interest.** Most participants indicated that both Brokerage Accounts and Advisory Accounts had financial arrangements with other companies. They understood that these arrangements resulted in both making more money if clients invested in products from those companies and that the Broker-Dealer and the Investment Adviser, therefore, had an incentive to recommend those products. They made no distinction between Brokerage Accounts and Advisory Accounts in this regard.

*I’m confused by this section because I thought they were listing the conflicts of interest that they’re not allowed to do. But now that I’m reading this section, it sounds like this is what they’re allowed to do. Wow! That’s a little concerning.*  
—Philadelphia 006

*Well, the companies that they are selling the stocks for, they pay them to sell their stocks. . . That’s where the conflict of interest comes in.* —St. Louis 002

*They can make more commission by selling you into certain investments. If you buy into the investment that they want you to then they get a higher yield from that.* —St. Louis 004

*It sounds like in both they are saying, sometimes we would be working with other people financially so it makes sense for us to suggest those companies that are suggesting you to do some kind of trade involved in those companies.*  
—St. Louis 003

*. . . they’re both conflicted with you ‘cause they want to sell you the investment account that’s going to give them the most profit.* —Calabasas 003

*. . . the investments are related to our firm and offered by companies that pay our firm to offer their investments . . .* —Calabasas 004

*. . . they both have the incentive, and they’re both trying to make extra money . . .* —Calabasas 005

*They are saying twice that they have an incentive to recommend certain investments.* —Philadelphia 002

*As far as them trying to sell me accounts, that maybe they're dealing with a firm or somebody that they're trying to sell me accounts from that particular firm. And they're going to make money off their firm as far as selling the account to me. They're going to make money off of me for buying the account and maybe later on selling the account. And so, they're making money both ways. Now . . . where the conflict comes in, who are you really working for? Are you working for me, or are you working for that particular firm? So, whose interest does he have? Whose best interest does he have?*  
—Philadelphia 003

**Most participants saw the primary difference between the two types of accounts as whether approval was required before moving forward with this type of trade.** Although the requirement to get pre-trade approval applies only to principal trades in Advisory Accounts, most participants thought that the Investment Adviser needed to contact the client to ask approval to invest with a firm with which they had a financial arrangement. Many participants commented that the Brokerage Account did not seem obliged to notify clients that their advice could include investment with firms that offered them an additional financial incentive.

*Well, there is a big difference. The brokerage, they are doing it without talking to you about it first, that's what I am reading. Where the other one, at least they advise you, hey, this is the good one that is coming down the pike now, would you want me to go lock you into this, it is not going to cost as much for me to roll it because it is in our umbrella to where that they are paying us to sell it to you. That's how I read that.* —St. Louis 002

*It seems like the advisory account has . . . it's got the clause in there, but only with your specific approval on each transaction, which is not on the brokerage account. It just says, "We can earn a profit," which . . . they say that on both, but evidently if you have an advisory account, what I'm kind of getting from this, although it's not specifically spelled out, is that they have to get your specific approval, and I'm assuming, but it doesn't say it, that they're telling you, "Hey, we can make more money on this if you'd buy this, but we have to tell you." But it's not really clear how much they are actually telling you that. . . . Well, it sounds like they would be a little different just because the brokerage says . . . evidently they don't have to get your specific approval on each transaction because it's not in there. But . . . so that's pretty much a negative on the brokerage account . . .*  
—St. Louis 005

*It looked like the only difference I saw was only with your specific approval on each transaction, it popped up as far as the difference . . . The only difference that I saw was that it looks like on the advisory account you have to approve those [transactions].* —St. Louis 003

*That's because under the advisory account they're going to ask me. It's obvious that they're going to talk to me and ask me, and if I don't approve, they won't do it. On the other [broker-dealer] side, it doesn't say that. They are acting as principals, it says, so they could just go ahead and do it without my permission.*  
—Calabasas 002

*Then they can ask for your approval, but I don't know whether . . . they're not mentioning whether you can deny them. So that's another point of action. 'Cause again, the word "approval" makes me assume that I have an option.*  
—Calabasas 003

*It is different wording . . . the brokerage firm is saying that they are doing that on their own, that they are acting as your primary person, they are taking care of it for you . . . Where the brokerage sounds like they are not even getting your approval, they are just doing it . . . So, why are they saying it back here and not up here . . . Because it sounds like the brokerage is saying, okay, we feel this is a better deal for you, we are going to go on and do it without your approval. But back here, we are here for you. And they are telling me, okay, they have a double standard there.* —St. Louis 002

*Brokerage accounts don't require approval. That doesn't surprise me as much because they are for the more independent investor anyway.*  
—Philadelphia 002

### **Most participants did not understand how conflicts would be resolved.**

Some were unsure if Brokerage Accounts could even resolve a conflict of interest. Since they read the disclosure as indicating that Brokerage Accounts were under no obligation to notify clients of a conflict, the participants were unsure how they would know that a conflict existed.

*If they ran into a conflict of interest, then what are they doing with my account instead? This is a conflict of interest so what is going to happen to my account? Where is it going to go now?* —Calabasas 004

*I don't know that brokerage accounts can [resolve a conflict] because they are telling you under the brokerage accounts that they can do all of this stuff without asking my permission. So, for them, there is no conflict of interest because they're not even talking to me about it. I don't even know about it. If I don't know about it, how can I say yea or nay?* —Calabasas 002

*Well, it seems like the advisory account is asking you for an approval, so that could be their conflict of interest there and as long as they get approval, you know. And the other one doesn't seem like they have to address those conflicts of interest.* —St. Louis 001

*. . . There are going to be a lot of times when the professional companies want to zig, and you're going to want to zag. So, I think in the end, it has to be some sort of compromise. . . . the company will come up with a happy medium that both the client and the company can agree with, as far as the conflict of interest [can be resolved] —Philadelphia 001*

*I get how the company's interest and mine could diverge, but I would like an example of how you share that information with me and how we decide that is okay. In the abstract it doesn't mean anything until we get to a concrete example. —Philadelphia 004*

**Participants had difficulty explaining how the firms earned money from these relationships.**

Participants offered varied explanations with many of the explanations confused, although some considered the practice questionable, using words like “kickback” or “sleazy.” However, often absent from these explanations was a discussion of the negative impact that these practices would have on them. In fact, some participants even assumed that the practices disclosed would result in positive impacts, such as reduced costs to the client because the financial company would sell at a discount.

*They are both saying pretty much the same thing, that they might lead you to investments to make more money from it and I don't like that. I feel like they both should be making investments as if it was their money and not how much money they can make . . . —St. Louis 001*

*They are making it off of the money in your account, transaction fees, it sounds like they have other incentives with other companies where someone might say, “Hey, could you try and get people to buy shares of my company and we will kick you back this or we will actually cut down the price for you to get it so you can get a little bit more profit?” —St. Louis 003*

*They're both sleazy . . . your financial professional [the broker] receives money if you buy them [investments from related companies]. The one on the advisory account side says they can make extra money by advising you into certain investments, because they're managed by someone related to their firm. And I don't like either of them . . . —Calabasas 002*

*. . . but I'm still a little confused on the advisory account. Yes, they need my specific approval on each transaction, but are they also telling me beforehand that “we can make extra profit on this because we get a kickback”?*  
—St. Louis 005

*They would offer it to you at a lesser charge for the transfer or for the transaction. It seems like it is a benefit for the consumer because you are getting a better deal. Well, you are not being charged as much for the transfer or the purchase of theirs as you would something that wasn't under their same umbrella . . . the fee would be less, I would think. —St. Louis 002*

**For many participants, incentives were merely a “way of doing business.”**

Participants saw the practices described as just another way of the firms getting paid, comparing it to other industries, like pharmaceuticals. But the element of being informed upfront was critical.

*Everybody’s got to make a living. —Calabasas 002*

*No, it’s not wrong, because that’s just the way . . . my understanding is that it’s just the way it works. It’s like doctors and the pharmaceutical companies. A pharmaceutical company can go to the doctor and maybe they have a product on the market that’s competitive to another product and on paper they both do the same thing. It’s a matter of say if you have to push a doctor and say okay, look here’s the deal I encourage you to prescribe this medication to my patients . . . I don’t see anything wrong if ultimately the patient is still getting the best treatment. I don’t see anything wrong with an investment vehicle where they go to the broker and say hey, we’ll give you this if you push our product through to your clients. —Calabasas 001*

*As long as I am making money, I am fine. It is the business. So, everybody is trying to hit a dollar. I more so care about you telling me how you are going to do it because feeling like I am getting lied to or have been not given as much of the truth as possible will probably bother me more than someone telling me, hey, I just made \$500 off of you. —St. Louis 003*

**Participants want their interests to come first.** Most participants did not take issue with the Accounts earning money from relationships with other companies—as long as the profit the Accounts made did not cost participants money.

*I know everything is about money but still, I just want to make sure it is in my best interests. —Philadelphia 005*

*. . . I don’t mind them having an incentive if it’s to my best interest too. If they’ve got my best interest at heart, then, as I said earlier, go ahead and earn as much as you can. But I don’t want you to sell me something or try and sell me something if my best interests are not at heart. If it doesn’t benefit my account and if it only benefits you, then I would take my business elsewhere. —Calabasas 002*

*If rule number one is give best investment advice on sound companies and if that company so happens to also fall in this category then I don’t care, fine, like get your money. But if this is a company that maybe you actually don’t, outside of your relationship, would not invest in or advise me to invest in then I would have a problem with that. —St. Louis 003*

*. . . if there's a certain account I want and it helps them, no, it doesn't bother me in that sense. But if it's something that's not really . . . if there's something that's better out there for me, but they're kind of selling you a different account that might not give you as much growth potential or minimizing loss, then that would kind of bother me. —Calabasas 003*

*But just as long as he's acting on my best interest, that's what I'm saying. Because if I'm paying him to be my adviser, I want him to act on my behalf more so than his behalf. —Philadelphia 003*

## Additional Information

Most participants would skip this section because they misunderstood the point of the section. Most of them thought that the investor.gov website would provide general information about investing, rather than specific information about the Broker-Dealer or Investment Adviser they were considering. They saw the SEC information as relevant only if they had a large issue or concern.

**Most participants would skip this section.** In general, participants would not read this section.

*I would probably skip through it to be honest. —Calabasas 004*

*I might not [read it.] I don't think so, yeah. —Calabasas 003*

*Probably not. Once I had made it through this, usually right here I probably wouldn't have gave [sic] it a good read. —Philadelphia 001*

*It's a government website that would tell you about their firm, their financial professionals that's what I would assume. It's investor.gov but let the government tell you about their firm and their financial professionals that doesn't make any sense. —St. Louis 004*

**Most thought the investor.gov would give them advice on investing or companies to use.** Few participants understood that these sites were for them to check out the disciplinary record of the Broker-Dealer or Investment Adviser they were considering.

*Probably companies to use. Probably different investment companies. Here you put in your zip code and they can show you some places near you where you could call and schedule appointments. —Philadelphia 005*

*And then I would say, there would probably be a menu where I can click on whatever question I have whether it be brokerage, advisory . . . it depends what's on the website. —Calabasas 005*

*Kind of basic information about how they're going to give you . . . investment strategies that they offer. Kind of like a reflection of what the program might be about. Of how they've done it in the past, and past history. —Calabasas 003*

*It's not prejudiced in any manner. It's just straight-forward information, they may rank how they perform. The ranking would be based on their performance. —Calabasas 001*

### **Most participants had a general idea of why they would call the SEC.**

Participants understood they could call the SEC to report problems, but also said that they would only report big issues.

*If you have a problem with the investor, you can go to this government agency and let them know. —St. Louis 001*

*It says if you have any problem with the document, account, or professional conduct. It is probably to protect you. Let me give an example: Like a customer service for Wall Street or something like that. —Philadelphia 005*

*I might not call the SEC unless it was a big issue with like . . . I mean, if we're looking at my scenario with \$10,000, and if I for whatever reason have a large, not necessarily lost, but a large fee associated with my account that I wasn't aware of. I mean, there's two sides, like whether I wasn't presented with information that that fee was associated with my account, I think that's when I would kind of reach out to the SEC. —Calabasas 003*

## **Key Questions to Ask**

Nearly all participants saw the Key Questions as useful. They felt the questions were straight-forward and raised important questions that they themselves might not have thought to ask. Many said that they would use the set of questions in their next exchange with their broker or adviser. Few thought the questions were fully addressed within the CRS.

**Almost all participants thought the Key Questions to Ask were useful.** Nearly all participants said the questions were helpful and were not necessarily questions they would have thought of on their own. Many said that they would use them when they spoke with their broker or adviser.

*I think those are probably pretty straight-forward questions, and as I was talking to the broker they would come to mind. Yes, those are relevant questions.*  
—Calabasas 001

*You see, these are all questions that I never would have thought of because these are things that I have never read before or thought of. I would want these questions to go with me next time I go in.* —St. Louis 002

*I don't know if I would think of all these questions myself but I think it's something that would make me feel better getting answered.* —Calabasas 004

*Right, because what they answer might lead to another question that, in black and white, you can't get. So, when you talk, when you have interaction and you talk backwards and forward, sometimes other things come up into your mind.*  
—Calabasas 002

**Most participants thought they should be answered in the disclosure but were not.** Few participants saw the questions fully answered within the CRS, although they had some of the same questions as they were reading it.

*Those are all pertinent questions, I think, and [some of them] would address questions I brought up as I was reading through this.* —St. Louis 005

*I mean unless you ask the question . . . it's not answered in here [the CRS].*  
—Calabasas 001

## Section 3: Conclusion

To begin, participants in our testing probably read the CRS in more depth than they would on their own. Despite that more in-depth reading, participants struggled throughout with sorting out the similarities and differences between the Broker-Dealer Services and Investment Adviser Services. Both the formatting and the language contributed to the confusion.

- Most participants tried to read the CRS by looking first at one column, usually the Broker-Dealer Services, and then at the second column, the Investment Advisory Services. However, when they turned to the second column, they then tried to match the bullets in the Investment Advisory Services column with the same bullet in the Broker-Dealer column. Sometimes this matching was relatively easy to do, as in the Types of Relationship and Services section because the bullets aligned almost exactly. They struggled and found the mis-aligned bullets confusing in subsequent sections.
- Participants also struggled with the language. At times, the language in the two columns was exactly the same, such as “Our interests can conflict with your interests.” Other times, participants saw language they thought was similar, but the phrasing was different, such as the “fiduciary standard” vs. “specific obligations.” They then drew a false parallel between these two, rather than the intended parallel between “fiduciary standard” and “best interest standard.” In either case, participants were unclear if differences in phrasing signaled a significant difference or merely a difference in phrasing. Sometimes the language in a sentence was exactly the same with the exception of a small difference—“could offer” vs. “could provide advice.” Such differences are quite nuanced and subtle for a participant to pick up within the context of the other information provided.

Furthermore, the topics were intertwined. For example, the topic of conflicts of interest was brought up in “Our Obligations to You” and then further discussed in “Conflicts of Interest” with an entire section on “Fees and Costs” separating them. For participants unfamiliar with many of these terms and concepts, they had difficulty building knowledge and relating one piece to another when it was separated by physical space.

Adding to this difficulty was that, as they moved through the columns, information seemed to get more complicated and confusing as to how the two services were different. For example, in Types of Relationships and Services, both services seem to allow the investor to “decide what investments to buy and sell” as an option. Participants struggled to grasp that similarity. And while the Brokerage Account was defined as using transaction-based fees and the Investment Advisory Account as using asset-based fees in the first section, in the Costs and Fees section, the Investment Adviser Services column also discusses transaction fees. This “contradictory” repetition was confusing to participants.

Some participants simply took information from the first bullet they read or from bolded words or phrases. They were unwilling or unable to deal with the confusion of the layout, the subtlety of language differences, or the complexity of the information.

We want to be clear. We understand that the topic is complex. It is intrinsically filled with concepts and vocabulary that are unfamiliar to many. We also understand that the document we were testing is an initial draft. That said, in our testing, we saw very few participants who were able to integrate and synthesize the information into a deep comprehension of the differences between the Broker-Dealer Services and the Investment Adviser Services. In fact, we saw few participants who were able to consistently comprehend the information within a single section.

We also want to be clear that this report is not a condemnation of the effort to provide retail investors with this information in a disclosure. Rather, we believe that this report is an important first step in an iterative process designed to improve the SEC's first published draft. This report helps to identify how typical investors read and misread, understand and misunderstand, and interpret and misinterpret efforts to communicate complex and technical concepts and information. We firmly believe that the results of our testing show that a usable document that communicates clearly and well with potential investors is a viable outcome.



## Appendix A: Investment Adviser and Broker-Dealer CRS

### Which Type of Account is Right for You — Brokerage, Investment Advisory or Both?

There are different ways you can get help with your investments. You should carefully consider which types of accounts and services are right for you.

**Depending on your needs and investment objectives, we can provide you with services in a brokerage account, investment advisory account, or both at the same time.** This document gives you a summary of the types of services we provide and how you pay. Please ask us for more information. There are some suggested questions on page 4.

<i><b>Broker-Dealer Services</b></i> <b>Brokerage Accounts</b>	<i><b>Investment Adviser Services</b></i> <b>Advisory Accounts</b>
<b>Types of Relationships and Services.</b> <i>Our accounts and services fall into two categories.</i>	
<ul style="list-style-type: none"> <li>If you open a brokerage account, you will pay us a <b>transaction-based fee</b>, generally referred to as a commission, every time you buy or sell an investment.</li> <li>You may select investments or we may recommend investments for your account, but the ultimate investment decision for your investment strategy and the purchase or sale of investments will be yours.</li> <li>We can offer you additional services to assist you in developing and executing your investment strategy and monitoring the performance of your account but you might pay more. We will deliver account statements to you each quarter in paper or electronically.</li> <li>We offer a limited selection of investments. Other firms could offer a wider range of choices, some of which might have lower costs.</li> </ul>	<ul style="list-style-type: none"> <li>If you open an advisory account, you will pay an on-going <b>asset-based fee</b> for our services.</li> <li>We will offer you advice on a regular basis. We will discuss your investment goals design with you a strategy to achieve your investment goals, and regularly monitor your account. We will contact you (by phone or e-mail) at least quarterly to discuss your portfolio.</li> <li>You can choose an account that allows us to buy and sell investments in your account without asking you in advance (a <b>"discretionary account"</b>) or we may give you advice and you decide what investments to buy and sell (a <b>"non-discretionary account"</b>).</li> <li>Our investment advice will cover a limited selection of investments. Other firms could provide advice on a wider range of choices, some of which might have lower costs.</li> </ul>
<b>Our Obligations to You.</b> <i>We must abide by certain laws and regulations in our interactions with you.</i>	
<ul style="list-style-type: none"> <li>We must act in your best interest and not place our interests ahead of yours when we recommend an investment or an investment strategy involving securities. When we provide any service to you, we must treat you fairly and comply with a number of specific obligations. Unless we agree otherwise, we are not required to</li> </ul>	<ul style="list-style-type: none"> <li>We are held to a fiduciary standard that covers our entire investment advisory relationship with you. For example, we are required to monitor your portfolio, investment strategy and investments on an ongoing basis.</li> <li>Our interests can conflict with your interests. We must eliminate these conflicts or tell you</li> </ul>

<b>Broker-Dealer Services</b> <b>Brokerage Accounts</b>	<b>Investment Adviser Services</b> <b>Advisory Accounts</b>
<p>monitor your portfolio or investments on an ongoing basis.</p> <ul style="list-style-type: none"> <li>• Our interests can conflict with your interests. When we provide recommendations, we must eliminate these conflicts or tell you about them and in some cases reduce them.</li> </ul>	<p>about them in a way you can understand, so that you can decide whether or not to agree to them.</p>
<b>Fees and Costs.</b> <i>Fees and costs affect the value of your account over time. Please ask your financial professional to give you personalized information on the fees and costs that you will pay.</i>	
<ul style="list-style-type: none"> <li>• <b>Transaction-based fees.</b> You will pay us a fee every time you buy or sell an investment. This fee, commonly referred to as a commission, is based on the specific transaction and not the value of your account.  With stocks or exchange-traded funds, this fee is usually a separate commission. With other investments, such as bonds, this fee might be part of the price you pay for the investment (called a “<b>mark-up</b>” or “<b>mark down</b>”). With mutual funds, this fee (typically called a “<b>load</b>”) reduces the value of your investment.</li> <li>• Some investments (such as mutual funds and variable annuities) impose additional fees that will reduce the value of your investment over time. Also, with certain investments such as variable annuities, you may have to pay fees such as “<b>surrender charges</b>” to sell the investment.</li> <li>• Our fees vary and are negotiable. The amount you pay will depend, for example, on how much you buy or sell, what type of investment you buy or sell, and what kind of account you have with us.</li> <li>• We charge you additional fees, such as custodian fees, account maintenance fees, and account inactivity fees.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Asset-based fees.</b> You will pay an on-going fee at the end of each quarter based on the value of the cash and investments in your advisory account.  The amount paid to our firm and your financial professional generally does not vary based on the type of investments we select on your behalf. The asset-based fee reduces the value of your account and will be deducted from your account.  For some advisory accounts, called <b>wrap fee programs</b>, the asset-based fee will include most transaction costs and custody services, and as a result wrap fees are typically higher than non-wrap advisory fees.</li> <li>• Some investments (such as mutual funds and variable annuities) impose additional fees that will reduce the value of your investment over time. Also, with certain investments such as variable annuities, you may have to pay fees such as “<b>surrender charges</b>” to sell the investment.</li> <li>• Our fees vary and are negotiable. The amount you pay will depend, for example, on the services you receive and the amount of assets in your account.</li> <li>• For accounts not part of the wrap fee program, you will pay a transaction fee when</li> </ul>

<b>Broker-Dealer Services</b> <b>Brokerage Accounts</b>	<b>Investment Adviser Services</b> <b>Advisory Accounts</b>
<ul style="list-style-type: none"> <li>• The more transactions in your account, the more fees we charge you. We therefore have an incentive to encourage you to engage in transactions.</li> <li>• From a cost perspective, you may prefer a transaction-based fee if you do not trade often or if you plan to buy and hold investments for longer periods of time.</li> </ul>	<p>we buy and sell an investment for you. You will also pay fees to a broker-dealer or bank that will hold your assets (called “<b>custody</b>”).</p> <p>Although transaction fees are usually included in the wrap program fee, sometimes you will pay an additional transaction fee (for investments bought and sold outside the wrap fee program).</p> <ul style="list-style-type: none"> <li>• The more assets you have in the advisory account, including cash, the more you will pay us. We therefore have an incentive to increase the assets in your account in order to increase our fees. You pay our fee quarterly even if you do not buy or sell.</li> <li>• Paying for a wrap fee program could cost more than separately paying for advice and for transactions if there are infrequent trades in your account.</li> <li>• An asset-based fee may cost more than a transaction-based fee, but you may prefer an asset-based fee if you want continuing advice or want someone to make investment decisions for you. You may prefer a wrap fee program if you prefer the certainty of a quarterly fee regardless of the number of transactions you have.</li> </ul>
<b>Conflicts of Interest.</b> <i>We benefit from the services we provide to you.</i>	
<ul style="list-style-type: none"> <li>• We can make extra money by selling you certain investments, such as [___], either because they are managed by someone related to our firm or because they are offered by companies that pay our firm to offer their investments. Your financial professional also receives more money if you buy these investments.</li> <li>• We have an incentive to offer or recommend certain investments, such as [___], because the manager or sponsor of those investments shares with us revenue it earns on those</li> </ul>	<ul style="list-style-type: none"> <li>• We can make extra money by advising you to invest in certain investments, such as [___], because they are managed by someone related to our firm. Your financial professional also receives more money if you buy these investments.</li> <li>• We have an incentive to advise you to invest in certain investments, such as [___], because the manager or sponsor of those investments shares with us revenue it earns on those investments.</li> </ul>

<b>Broker-Dealer Services Brokerage Accounts</b>	<b>Investment Adviser Services Advisory Accounts</b>
<p>investments.</p> <ul style="list-style-type: none"> <li>We can buy investments from you, and sell investments to you, from our own accounts (called “<b>acting as principal</b>”). We can earn a profit on these trades, so we have an incentive to encourage you to trade with us.</li> </ul>	<ul style="list-style-type: none"> <li>We can buy investments from you, and sell investments to you, from our own accounts (called “<b>acting as principal</b>”), <b>but only with your specific approval on each transaction</b>. We can earn a profit on these trades, so we have an incentive to encourage you to trade with us.</li> </ul>
<p><b>Additional Information.</b> We encourage you to seek out additional information.</p> <ul style="list-style-type: none"> <li>We have legal and disciplinary events. Visit <a href="http://Investor.gov">Investor.gov</a> for a free and simple search tool to research our firm and our financial professionals.</li> <li>For additional information about our brokers and services, visit <a href="http://Investor.gov">Investor.gov</a> or <a href="http://BrokerCheck.Finra.org">BrokerCheck</a> (BrokerCheck.Finra.org), our website (SampleFirm.com), and your account agreement. For additional information on advisory services, see our Form ADV brochure on IAPD, on <a href="http://Investor.gov">Investor.gov</a>, or on our website (SAMPLEFirm.com/FormADV) and any brochure supplement your financial professional provides.</li> <li>To report a problem to the SEC, visit <a href="http://Investor.gov">Investor.gov</a> or call the SEC’s toll-free investor assistance line at (800) 732-0330. To report a problem to FINRA, [ ]. If you have a problem with your investments, account or financial professional, contact us in writing at [ ].</li> </ul>	
<p><b>Key Questions to Ask.</b> Ask our financial professionals these key questions about our investment services and accounts.</p> <ol style="list-style-type: none"> <li>Given my financial situation, why should I choose an advisory account? Why should I choose a brokerage account?</li> <li>Do the math for me. How much would I expect to pay per year for an advisory account? How much for a typical brokerage account? What would make those fees more or less? What services will I receive for those fees?</li> <li>What additional costs should I expect in connection with my account?</li> <li>Tell me how you and your firm make money in connection with my account. Do you or your firm receive any payments from anyone besides me in connection with my investments?</li> <li>What are the most common conflicts of interest in your advisory and brokerage accounts? Explain how you will address those conflicts when providing services to my account.</li> <li>How will you choose investments to recommend for my account?</li> <li>How often will you monitor my account’s performance and offer investment advice?</li> <li>Do you or your firm have a disciplinary history? For what type of conduct?</li> <li>What is your relevant experience, including your licenses, education, and other qualifications? Please explain what the abbreviations in your licenses are and what they mean.</li> <li>Who is the primary contact person for my account, and is he or she a representative of an investment adviser or a broker-dealer? What can you tell me about his or her legal obligations to me? If I have concerns about how this person is treating me, who can I talk to?</li> </ol>	



## Appendix B: Demographics

		One-On-One Interviews			Total
		PA	CA	MO	
Gender	Male	3	2	2	7
	Female	3	3	3	9
Age	20–29		1		1
	30–39	1	1	1	3
	40–49	1	1	1	3
	50–64	3	1	2	6
	65+	1	1	1	3
Education Level	High School		1	1	2
	Some College	2		2	4
	College graduate	3	4	1	8
	Advanced degree	1		1	2
Income	Less than \$49,999	2	2	2	6
	\$50,000–99,000	3	1	2	6
	\$100,000–149,999		2	1	3
	Over \$150,000	1			1
Race	Asian		1		1
	African American	3	1	1	5
	Native Hawaiian or other Pacific Islander				0
	White	3	2	3	8
	Hispanic		1	1	2
Have retirement or investment account	Yes	6	5	5	16
	No				0
Current Investment (some participants have multiple accounts)	401 K Account	3		1	4
	IRA Account	4	5	2	11
	Other Investment Account	2	1	4	7
Account Decision Status (some participants have multiple accounts)	Makes own investment decisions	3	1	1	5
	Receives Advice	4	4	5	13
Current Investment Payment Method (some participants have multiple accounts)	By Transaction	4	2	1	7
	A percentage fee on the assets they manage	3	3	3	9
	Another way	1		1	2



## Appendix C: About Kleimann Communication Group

Since 1997, Kleimann Communication Group, a woman-owned small business, has been a national leader in the development of award-winning, plain language forms, disclosures, consumer tools, and education materials to help consumers understand complex topics and make informed decisions. We specialize in projects involving both design and testing and in solving unusually complex or challenging communication problems with multiple stakeholders and complex legal/regulatory requirements and constraints. Our iterative design/test process uses a human-centered methodology and results in products that address consumer, industry, and statutory needs in sophisticated and innovative ways. Kleimann's principals are frequently speakers in issues of financial literacy and the use of plain language. For example, in June 2018, Dr. Susan Kleimann spoke at the Securities and Exchange Commission Investor Advisory Committee on the topic of "Effective Disclosure and Design."

We have completed major redesign and testing projects with national impact:

- The model Financial Privacy Disclosure for Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller General, Securities and Exchange Commission
- The Loan Estimate (English and Spanish) to replace the Good Faith Estimate for the Consumer Financial Protection Bureau
- The Closing Disclosure (English and Spanish) to replace the HUD-1 for the Consumer Financial Protection Bureau
- The Health Insurance Portability and Accountability Act (HIPAA) notice to adapt it to the Affordable Care Act requirements for the Department of Health and Human Services
- The Uniform Residential Loan Application (English and Spanish) for Fannie Mae and Freddie Mac

