



## Consumer Federation of America

December 7, 2018

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. S7-08-18, Form CRS Relationship Summary

Dear Secretary Fields:

We are writing on behalf of the Consumer Federation of America<sup>1</sup> in response to the recently published RAND Corporation report on investor testing of the proposed Customer Relationship Summary (Form CRS).<sup>2</sup> We are among the organizations that had previously called on the Commission to conduct independent usability test of Form CRS, and to provide an opportunity for public comment on that testing before finalizing its Regulation Best Interest (Reg BI) regulatory package,<sup>3</sup> so we greatly appreciate that the Commission has taken this step. The results of that research – and, in particular, the significant discrepancy between the survey results, which document investor opinion, and the findings from the in-depth interviews, which test investor comprehension – highlight just how vitally important such testing is to a determination of whether the disclosures actually support informed investor decision-making. The inescapable conclusion from the RAND Study is that, as currently conceived, the CRS does not meet this standard, and all of the positive survey results and investor feedback in the world cannot outweigh that basic failure.

The in-depth interviews included in the RAND Study confirm what our previous testing<sup>4</sup> has shown: even after a careful reading of the CRS, many, if not most, investors fail to understand key information that would help them determine whether a brokerage or advisory account would best suit their needs. In particular, most do not understand key differences between the fiduciary standard for investment advisers and the best interest standard for broker-

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<sup>1</sup> The Consumer Federation of America is a non-profit association of nearly 300 consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.

<sup>2</sup> Angela A. Hung et. al., *Investor Testing of Form CRS Relationship Summary*, prepared by the RAND Corporation for the Securities and Exchange Commission, Nov. 2018, <https://bit.ly/2QxcRfj> (“RAND 2018”).

<sup>3</sup> See, e.g., Letter from AARP and 23 other organizations and individuals to SEC Chairman Jay Clayton, May 21, 2018, <https://bit.ly/2Jkc7ay>.

<sup>4</sup> See Letter from AARP, CFA, and the Financial Planning Coalition to SEC Chairman Jay Clayton, September 12, 2018, <https://bit.ly/2CXfz6W>.

dealers, nor do they understand the harmful impact that conflicts of interest can have on the recommendations they receive. These findings deal a critical blow to the Commission's proposed regulatory approach under Reg BI, where brokers and advisers are subject to different standards of conduct, requirements to minimize conflicts lack substance, and the Commission has placed the burden on investors to understand those differences and limitations.

The RAND Study, like the previous testing we were involved in with AARP and the Financial Planning Coalition, suggests that significant changes will be needed to the design, content, and language of the proposed CRS if it is to fulfill its intended regulatory function. We therefore reiterate our call for the Commission: 1) to make this report the start, not the end, of an iterative process of testing and revision needed to develop a disclosure that works as intended; and 2) to delay finalization of Reg BI until that process is completed. If the Commission *cannot* develop a disclosure that enables investors to understand key features of brokerage and advisory accounts, and then make an informed choice about which type of relationship is best for them, it cannot reasonably move forward with a regulatory approach it knows to be fundamentally inadequate. Instead, it must consider how the entire Reg BI regulatory package could be revised to be less dependent on disclosure to protect investors. We are frankly skeptical that the Commission will be able to develop disclosures that enable even financially unsophisticated investors to understand the nature and limitations of investor protections that apply to the advice and recommendations they receive. That is an important reason why we have consistently urged the Commission to minimize the central importance of the disclosures by adopting a strong fiduciary standard, backed by meaningful limits on conflicts, for broker-dealers and investment advisers alike.

The remainder of this letter presents our more detailed comments on the RAND Study and its policy implications.

**1) Most investors do not have a good understanding of key differences between broker-dealers and investment advisers. CRS does not solve that problem.**

For many years, research has shown that investors do not understand the differences between broker-dealers and investment advisers and struggle to distinguish between them. A decade ago, for example, RAND Corporation concluded in research conducted on behalf of the Commission that most investors, including those who had employed financial professionals for years, “do not have a clear understanding of the boundaries between investment advisers and broker-dealers.”<sup>5</sup> The October 2018 focus group study conducted jointly by RAND Corporation and the SEC's Office of Investor Advocates confirmed that this lack of understanding persists today.<sup>6</sup> Moreover, just as in the 2008 study, researchers in 2018 found that presenting participants with fact sheets describing key differences between broker-dealers and investment advisers did little to dispel that confusion.<sup>7</sup> This is the challenge the Commission faces when it

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<sup>5</sup> Angela A. Hung, et al., *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*. Santa Monica, CA: RAND Corporation, 2008, <http://bit.ly/1OrrZ3v>.

<sup>6</sup> Brian Scholl, Office of the Investor Advocate, and Angela A. Hung, RAND Corporation, *The Retail Market for Investment Advice*, October 2018, at 25, <https://bit.ly/2PwCPz8>.

<sup>7</sup> *Id.* at 25-26 (“Some participants indicated that they were aware of the two categories; however, regardless of their awareness, some participants were unable to distinguish between the two definitions offered or indicated that the

seeks to develop a disclosure that will enable investors to make an informed choice between different types of investment accounts and service providers.

The latest RAND Study provides further evidence to support this finding. Just as in the focus group and survey research conducted by RAND and the Office of Investor Advocate,<sup>8</sup> participants in the latest RAND Study's in-depth interviews were disproportionately likely to believe their financial professional is an investment adviser. Specifically, when asked about the type of financial service provider they use or used, none reported that his or her financial service provider is a broker, seven reported that the financial service provider is an investment adviser, four reported that the financial service provider is dually registered, and four reported that they do not know.<sup>9</sup> Given the predominance of dual registrant firms, this is almost certainly an inaccurate count, reflecting the tendency of investors to view *all* financial professionals as advisers, including broker-dealers and dual registrants, based on titles they use and how they describe their services. The large number who don't know is, in and of itself, a serious concern. In some ways, however, investors who don't know pose less of a concern than those who think they do know, but are mistaken, as appears to be the case for at least some of the interview participants.

Consistent with the earlier research, which found that providing descriptions of brokerage and advisory services did little to dispel investor confusion, RAND's in-depth interviews regarding CRS found that participants struggled to understand key differences between brokers and advisers even after carefully reviewing CRS disclosures intended to elucidate those differences. Specifically, with regard to the "Types of Services and Relationships" section, the study states that participants "had a general understanding that this section describes two different types of services or accounts that a client would choose," but the study doesn't provide any evidence that most participants understood the nature or significance of those differences.<sup>10</sup> For example, it doesn't provide any evidence that most participants understood the fundamental difference between sales recommendations and advice or had a clear idea of the scope and nature of services they would receive in each type of account. To the degree that evidence to that effect may have come out in the interviews, it is not presented here.<sup>11</sup>

Instead, the study suggests that, while some participants were able to identify some differences between brokerage and advisory accounts, others demonstrated significant misunderstanding.<sup>12</sup> The report states, moreover, that this misunderstanding took two forms. In some cases, participants "seemed to misunderstand the differences between account types and

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two roles sounded similar.... Although some participants demonstrated a basic understanding of IAs and BDs, other participants appear not to have understood the distinctions.").

<sup>8</sup> RAND OIA Study at 25. (Reporting on the focus groups: "A large majority of respondents (11 out of 16) reported that their financial professional is an IA." The report goes on to note that six of those were actually working with a dual registrant, and "only one respondent unambiguously provided the actual type of their professional's current overall registration status.") RAND OIA at 53 (Reporting on the survey results: "The majority (54.4 percent) report that their primary financial professional is an IA, with only a small proportion (5.8 percent) reporting that the professional is a BD. About one-third of these respondents (33.9 percent) reported that their individual financial professional is both an IA and BD, while about another six percent indicated "don't know" or "other".")

<sup>9</sup> RAND 2018 at 37.

<sup>10</sup> *Id.* at 39.

<sup>11</sup> *See infra* on limitations of the study at 6-7.

<sup>12</sup> *Id.* at 45.

financial professionals from the beginning, never fully grasping it.”<sup>13</sup> In other cases, people “understood discrete sections of the Relationship Summary, but when questioned at the end of the interviews, they did not appear to have synthesized the information and be able to apply it.” For example, an individual who appeared to understand information about costs and fees when reviewing that section of the CRS, when asked at the end of the interview about which type of financial professional has an incentive to encourage investors to buy and sell securities frequently, incorrectly answered that “there’s probably more incentive on the advisory account.”<sup>14</sup> That suggests that, even for relatively astute readers of the disclosure, the CRS as currently conceived does not achieve its intended regulatory function of supporting an informed choice of financial professional.

## **2) Many investors do not appear to understand brokers’ and advisers’ legal obligations or how they relate to conflicts, even after reading the CRS.**

An important function of the CRS is to help investors understand differences in the legal standards that apply to brokerage and advisory accounts. Here again, however, the RAND Study’s in-depth interviews suggest that many, if not most, investors struggle to understand what protections they are entitled to and how that varies between different types of accounts. For example, RAND found that some participants felt “that both the ‘Brokerage Account’ and ‘Advisory Account’ columns in the Relationship Summary were essentially conveying the same message.”<sup>15</sup> That suggests that investors are missing or misunderstanding the importance of differences in the two standards, such as the lack of ongoing monitoring in brokerage accounts. In addition, many participants did not understand the meaning of the word fiduciary, an essential concept in this regard. According to the report, “Some participants had never heard of the word, whereas others had heard it but did not know what it meant in this context.”<sup>16</sup>

Participants seemed particularly confused about how the CRS disclosures on legal obligations relate to disclosures on conflicts of interest. As the report explains, “Many participants expressed confusion over how to reconcile ‘Conflicts of Interest’ section with the earlier ‘Our Obligations to You’ section.”<sup>17</sup> For example, the report quotes one participant as saying about the legal obligations: “So, on the right, uh, um, my understanding of the word fiduciary is that the company would have to act in my best interest, which makes me question the second bullet point, which says that their interest and my interest could conflict.”<sup>18</sup> Responding to the conflicts section, one participant is quoted as saying, “. . . to me right away, I’d be like, hmm, like, what about that section where you said like, your obligations to me? Like this seems very contradicting.”<sup>19</sup> A different participant is quoted as saying, “I don’t know, it seems . . . It seems to go against, uh . . . ‘Our Obligations to You,’ statement . . . where they’re saying, you know, ‘We have your best interests at heart,’ and then you start reading this, and . . . they’re

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> RAND 2018 at 41.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 44.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

saying, ‘Well, we don’t actually have your best interests at heart. We’re kinda . . . doing things so that we get paid.’”<sup>20</sup>

The good news here is that at least some participants seem to be connecting these two intimately related topics. The bad news is that they express confusion, rather than clarity, over how conflicts would be handled under the different standards and how the standards would work to ensure their interests are protected. Worse, some participants may be misled by the disclosures into expecting protections the standards do not provide. Confused by the disclosure regarding brokers’ obligation to reduce conflicts, for example, one participant reportedly said, “So that just made me a little confused at first and skeptical, and then I started to compare and contrast with the advisory account. Um, and really liked the way it was worded to say that they were gonna eliminate them.”<sup>21</sup> In reality, however, the Commission does not require firms to eliminate conflicts of interest in advisory accounts, and most dual registrant firms do not.

The RAND interviews also lend credence to academic research suggesting conflict disclosure can actually result in investor harm by causing investors to let down their guard about the potentially harmful impact of conflicts of interest. According to the report, some participants viewed the conflict disclosures in CRS as a reassuring sign that the firm was being “transparent or honest.”<sup>22</sup> This suggests the disclosures may not serve to put investors on their guard against self-interested recommendations. Because the conflict disclosures are generally the same for the brokerage and advisory accounts in the model tested, we do not know how investors would react to disclosures that showed very different levels of conflict – for example, between a fee-only adviser that receives no third-party payments and that offers no proprietary products and a broker-dealer who receives the typical range of differential compensation, third-party payments, and other harmful incentives. That would provide a much better test of whether investors can use the disclosures to understand the nature and extent of conflicts present in the different business models.

### **3) Investors do not appear to understand important differences in monitoring obligations for brokers and advisers based on the CRS disclosures.**

One of the key differences between the legal obligations of broker-dealers and investment advisers involves their obligation to monitor customer accounts. Under Reg BI, even brokers in long-term customer relationships in which they provide periodic recommendations would have no obligation to monitor the account to ensure that their prior recommendations remain on track and continue to meet the customer’s needs. Ideally, the Commission would fix this gaping hole in Reg BI’s protections. If it fails to do so, however, it is critically important that CRS make this difference in legal obligations much clearer to investors. The RAND Study interviews suggest that this topic is currently not well understood. The study found that participants varied in their understanding, with some participants “unclear on how a financial professional would monitor an account.”<sup>23</sup> The study provides no evidence that participants understood the role monitoring

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 41.

<sup>22</sup> *Id.* at 43-44.

<sup>23</sup> *Id.* at 46.

plays in ensuring their investments continue to perform as intended and be appropriate for their needs. Again, as noted above, if that evidence exists in the interviews, it is not presented here.

#### **4) Investors are confused and overwhelmed by CRS fee disclosures.**

The RAND Study makes clear that many of the investors they interviewed were confused by the terminology in the fee section. According to the report, “Words that participants flagged include ‘markup,’ ‘markdown,’ ‘load,’ ‘surrender charges,’ ‘wrap fee,’ and ‘custody.’”<sup>24</sup> Investors who do not grasp the basic terminology of the fee section are unlikely to grasp the import of these disclosures. Moreover, even though participants valued the fee information, including in some cases wanting greater detail, many were also reportedly overwhelmed by both the volume and complexity of the information provided. As with other sections tested, the study gives no indication that most participants were able to use the information provided to determine which type of account would be better for them.<sup>25</sup> As discussed above, it provides one example of an investors who appeared to understand the fee information while reading this section but could not accurately answer a question related to fees and conflicts after having reviewed the document as a whole.

#### **5) The testing included in this study, while welcome, is quite limited.**

While we appreciate that the Commission included some usability testing as part of the RAND Study, in the form of in-depth interviews, the information provided is quite limited. Most of the findings presented are general, suggesting that investors understand they have a choice, but not whether they understand the details needed to make that choice. Only a smattering of quotes are presented to illustrate the findings. For example, the study reports that participants could understand from the “Types of Relationships and Services” section that the CRS describes “describes two different types of services or accounts that a client would choose.” But it doesn’t indicate whether they actually understood the different nature of those accounts and services. Perhaps that information is available in the transcripts of the interviews, but it is not presented here. The same is true to a greater or lesser extent in other sections of the in-depth interview findings, as noted above.

In order to allow for a more thorough assessment of the report findings, we urge the Commission to release the full transcripts of the in-depth interviews.<sup>26</sup> This is not in any way intended as a criticism of the report, which of necessity presents a general overview of the findings. However, we know from our own experience with testing of this type how useful a careful review of the interviews can be to gaining a true understanding of investors’ comprehension and struggles. Releasing the transcripts would allow us and others who want to dig into the data to attain a more detailed understanding of participants’ actual level of

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<sup>24</sup> *Id.* at 43.

<sup>25</sup> This failure to understand the information provided is a serious problem. As we have noted in our previous comment letter, however, a separate concern is that the information provided is potentially deceptive – emphasizing the potentially high cost of ongoing fees but ignoring both the ongoing fees associated with some brokerage recommendations (e.g., C shares) and the high costs associated with many investments favored by some brokers (e.g., non-traded REITS, variable annuities, structured products).

<sup>26</sup> Based on our own experience with such testing, we are confident that transcripts of the interviews could be presented without any personally identifying information.

comprehension of the issues disclosed than is possible from a review of the report's overview of those interviews.

The report is also limited in terms of the scope of its coverage. The RAND Study's in-depth interviews, like our own prior testing, focused exclusively on the CRS for dual registrants. What we don't know, because they have not been adequately tested, is whether other versions of the form for standalone firms are more (or less) effective in drawing investors' attention to, and promoting their understanding of, important distinctions between brokerage and advisory accounts. Given the general lack of comparative information on these standalone forms, there are good reasons to believe they will present a different set of communication challenges that are currently not well understood.

For this reason, we urge the Commission to conduct similar usability testing of these other versions of the CRS before finalizing its regulatory package. Based on the evidence collected to date, the Commission cannot reasonably conclude that the CRS, in any of its forms, will enable investors to make an informed choice among different types of accounts and different types of providers. To move forward without at least exploring the effectiveness of these other forms would be to abrogate the Commission's responsibility to engage in evidence-based rulemaking.

**6) The study highlights the risk of relying on surveys and informal investor input to assess disclosure effectiveness.**

One thing that jumps out from the RAND Study is the stark contrast between the generally favorable survey results with regard to the usefulness of the CRS disclosures and the much more negative findings of the in-depth interviews. For example, asked to rate the ease or difficulty of understanding each section:

- 77.8% of survey respondents rated the "Types of Relationships and Services" section either very easy to understand (7.9%), easy to understand (24.4%), or just right (45.5%).<sup>27</sup> But findings from the in-depth interviews provide no evidence that participants actually understood fundamental differences between the two types of accounts based on the CRS disclosures.
- 77.0% rated the "Our Obligations to You" section as very easy (8.8%), easy (22.3%), or just right (39.2%),<sup>28</sup> even though most participants in the in-depth survey didn't understand the meaning of fiduciary and some viewed the two standards as essentially the same.
- Participants in the in-depth interviews expressed a high level of confusion regarding both the "Fees and Costs" section and the "Conflicts of Interest" section of CRS, but roughly two-thirds of survey respondents rated each of these sections as either very easy, easy, or just right.<sup>29</sup>

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<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

This is a serious concern, since investors who think they understand something they do not may be at even greater risk than investors who fully grasp the limits of their own understanding.

The disparity between investors' difficulty ratings for various sections of the CRS and actual understanding of the information disclosed highlights the risk of relying on surveys and informal investor input as a reliable indicator of disclosure effectiveness. While we appreciate the extent of the Commission's investor outreach on this project, the input received does not get to the fundamental challenge facing the Commission. The ultimate question the Commission must answer before moving forward with its regulatory package is not whether investors like the CRS, or even whether they think it would be useful to them in selecting a financial professional. The real question is whether investors understand the disclosures provided and can use the information to determine which type of account or service provider would best meet their needs. If the disclosures fail that basic test, and results from the in-depth interviews suggest that they do, then the Commission must rethink its entire regulatory approach. For this reason, Commission resources can and should be put to better use conducting additional usability testing and using the results of that testing to refine its proposed disclosure.

**7) Even the largely “positive” survey findings suggest significant work is needed to ensure the CRS works for all investors.**

As we have previously noted, it is not enough for the CRS to help a majority of investors make a more informed choice among different types of accounts and different types of service providers, a standard the current version fails to achieve. Given the central role the CRS plays in the Commission's proposed regulatory approach, the disclosures must be designed to ensure that even financially unsophisticated investors – those who do not have a good grasp of elementary investing concepts or the basic differences between brokers and advisers – can use them to make an informed choice between different types of accounts and different types of service providers. Like the in-depth interviews, the survey results suggest that the CRS falls far short of achieving that goal.

Although survey respondents gave the CRS a high overall rating on usefulness,<sup>30</sup> and a majority of survey respondents rated each of the CRS sections as generally understandable (very easy, easy, or just right), significant minorities rated each section as either difficult or very difficult to understand. The percentage rating a key section of the CRS as either difficult or very difficult ranged from 22.3% for the “Types of Relationships and Services” to 33.4% for the “Conflicts of Interest” section and 35.5% for the “Fees and Costs” section. So even if the Commission assumed (wrongly) that the survey results provided an accurate barometer of investor understanding of the CRS, it would still have to acknowledge that a significant portion of investors were not being well-served by the disclosures as currently conceived. Worse, these would likely be the least financially sophisticated investors most in need of robust protections. The Commission cannot reasonably ignore evidence that the very investors who are most in need of enhanced protections will not benefit significantly from the CRS disclosures.

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<sup>30</sup> *Id.* at 29.

**8) The findings of this study have important implications not just for the CRS itself, but also for the Commission’s proposed approach to the standard of conduct.**

For many years, we have urged the Commission to raise the standard of conduct that applies to brokers’ recommendations and strengthen its enforcement of the Advisers Act fiduciary duty, identifying this as the most important step the Commission could take to improve protections for retail investors. We advocated this approach in part because we viewed it as the best way to ensure that regulatory protections match investors’ reasonable expectations. We also believed, and continue to believe, that a strong fiduciary duty backed by meaningful restrictions on conflicts of interest is the appropriate standard for those who market themselves, and are relied on by customers, as trusted advisers. But we had a further reason for advocating this approach. Previous research had shown how challenging it is to develop a pre-engagement disclosure for broker-dealers and investment advisers that clearly conveys basic differences in the nature of services provided. We saw no reason to believe the Commission would be able to develop a disclosure that not only made those differences understandable, but also clearly conveyed differences in the legal obligations that would apply, such that investors would be able to make an informed choice based on those disclosures. While we have long supported pre-engagement disclosure, we have seen it as a supplement to, not a replacement for, a strong, uniform fiduciary standard backed by restrictions on conflicts of interest likely to undermine compliance with that standard.

In its Reg BI regulatory package, the Commission chose to put its faith in disclosure despite all the past research arguing against such an approach. Instead of adopting a strong, uniform fiduciary standard for brokers and advisers, it has chosen to maintain different standards, neither of which is adequate to protect investors. For example, the Commission makes clear in its rule release that Reg BI is *not* a fiduciary standard. Similarly, it has failed to define “best interest,” but it has made clear that it does not require recommending the best of the reasonably available investments. It has indicated that brokers would be prohibited from placing their interests ahead of customers’ interests, but this prong of the standard doesn’t even make it into the safe harbor that satisfies compliance. Like the best interest standard itself, the obligation under Reg BI to “mitigate” conflicts is vague and undefined and doesn’t even clearly prohibit firms from artificially creating conflicts they would then have to mitigate. In adopting this approach, the Commission has rejected the language identified by Congress as the appropriate standard for brokers and advisers, missing the opportunity not only to strengthen the standard for broker-dealers but to adopt an explicit best interest standard for advisers that would support more rigorous enforcement than the Commission has, to date, been willing to provide. The result, as the proposed Advisers Act guidance makes clear, is that the Commission’s claim to require investment advisers to do what is best for clients and to prohibit them from subordinating clients’ interests to their own are essentially meaningless.

Under the Commission’s bifurcated regulatory approach, and in light of these glaring shortcomings in the underlying standards, CRS must bear the weight not only of informing investors about differences in the services provided by broker-dealers and investment advisers, but also informing them about differences in and limitations of the legal obligations that apply and alerting them to potentially harmful conflicts of interest. The RAND Study, like our own

prior testing, makes clear that CRS simply is not adequate to bear the regulatory weight assigned to it.

This has important policy implications. First, the Commission cannot reasonably move forward with its Form CRS regulatory proposal as currently conceived. And simply deferring to industry to allow each firm to come up with its own approach, as some have suggested, would only make the problem worse. Second, the Commission cannot reasonably move forward with a regulatory approach that maintains separate, and inadequate, standards of conduct for broker-dealers and investment advisers on the assumption that disclosure will enable investors to protect themselves and make an informed choice. There are a variety of steps that the Commission should consider to strengthen its regulatory approach. For example:

- The Commission should adopt a strong and uniform fiduciary standard for broker-dealers and investment advisers alike, based on the language in Section 913(g) of the Dodd-Frank Act, so that investors do not have to rely on disclosures to understand differences in and limitations of those standards. This is essential in light of the evidence that investors simply do not understand these complex issues and may under-estimate their significance. The Commission should back that standard with meaningful restrictions on conflicts of interest for broker-dealers and investment advisers alike, with an eye toward reining in practices that encourage and reward advice that is not in customers' best interests.
- If instead the Commission continues to rely on the basic approach in Reg BI, the Commission should at the very least make clear that policies and procedures to mitigate conflicts of interest need to be reasonably designed to prevent the broker from placing their interests ahead of the customer's interests. Similarly, the Commission should give meaning to the requirement for investment advisers to "avoid" conflicts of interest. In both cases, brokers and advisers should be prohibited from artificially creating conflicts that undermine compliance with the standard. This is essential in light of evidence that investors are particularly confused by disclosures related to conflicts, often do not grasp conflicts' potentially harmful impact, and do not understand how conflicts would be addressed under the respective standards of conduct.
- To the degree that the Commission continues to rely on disclosures to reduce investor confusion, it should at an absolute minimum undertake a thorough process of revision and retesting of CRS to develop a disclosure that investors can understand. This should include not only additional testing of and revisions to the form for dual registrants, but separate testing of the standalone forms to determine what, if any, additional disclosure problems emerge when disclosures are provided without the comparative context of the dual form.
- In addition, if the Commission insists on maintaining separate standards for broker-dealers and investment advisers, it must do more than it has so far proposed to clarify the distinctions between them. The proposed restriction on use of the title "adviser/advisor" should be extended to other titles that similarly imply the individual or firm is providing advice rather than sales recommendations. Also, the restriction should be extended to marketing practices that portray the broker's services as primarily advisory in nature or the relationship as one of trust and confidence. Because this poses special challenges in the context of dual registrant firms, the Commission should test its proposed disclosures to ensure they are adequate to alert investors when their dual registrant switches hats. If

testing shows, as we expect it would, that the disclosures are not adequate, that would be one more reason for the Commission to adopt a strong, uniform standard.

## 9) Conclusion

Brokerage industry lobbyists who once argued that a uniform standard was essential to alleviate investor confusion now argue that the Commission's regulatory approach, while imperfect, is good enough and should be adopted without further delay. We disagree. Not only has the Commission *not* proposed the uniform standard that was supposed to be a key benefit of SEC rulemaking, and *not* proposed a standard for broker-dealers or investment advisers that lives up to the best interest or fiduciary label, the Commission has proposed a disclosure document to alleviate investor confusion and promote informed decision-making that, quite simply, doesn't work. Investors deserve better. If it is to fulfill its investor protection mandate, the Commission must commit to making the changes necessary to deliver a regulatory policy that is workable for even the least financially sophisticated investors. This is not it.

Respectfully submitted,



Barbara Roper  
Director of Investor Protection



Micah Hauptman  
Financial Services Counsel

cc: The Honorable Jay Clayton, Chairman  
The Honorable Kara M. Stein, Commissioner  
The Honorable Robert J. Jackson, Jr., Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner