



February 15, 2019

Via Electronic Filing

Brent J. Fields
Secretary
Security and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: Form CRS Relationship Summary, SEC Rel. No. 34-83063; File No. S7-08-18

Dear Secretary Fields:

Consumer Reports (CR) appreciates the opportunity to comment on the recently published RAND Corporation (RAND) report on investor testing of the Securities and Exchange Commission's (SEC) proposed Client Relationship Summary, Form CRS Relationship Summary. Form CRS would require broker-dealers and investment advisers to disclose to retail investors their standard of conduct, fees, and conflicts of interest.

We commend the SEC's continuing efforts to develop disclosure forms that would provide investors with the information needed to make informed investment choices. The SEC's commission of the RAND study is a step in the right direction in assessing whether Form CRS meets its intended goals. The study reinforces our concern that Form CRS does not provide investors with meaningful plain English disclosures and lends support for our view that Regulation Best Interest fails to improve the quality of advice for investors.

To provide effective and meaningful investor protections, the SEC must retest Form CRS for comprehension and useability, and publish the results of the testing for public comment. The SEC must also make significant changes to the content (i.e., some participants expressed that they did not understand a variety of critical differences between brokerage and advisory services) and design (i.e., some participants thought the disclosures were too long) of the form. Investors must be able to read, comprehend and use Form CRS disclosures before making investment choices.

Moreover, the RAND study demonstrates the flaws in the underlying proposed Regulation Best Interest. As argued in our October 2018 comments, the proposed Regulation Best Interest falls short of providing a clear, strong, and uniform fiduciary standard of conduct for brokers and advisers who provide retail investors with personalized investment advice. This flaw cannot be resolved with a well-drafted Form CRS. Instead, the SEC must use the results of the study to inform its consideration of the rule and craft a best interest standard that applies to all professionals providing investment advice.

Background

CR supports efforts to raise investors' understanding, and reduce the complexity of information needed to make investments. Complicated and confusing disclosures can lead financially unsophisticated investors to make less than optimal decisions, especially for complex retail investments. In our October 19 comment, we noted that there is mounting evidence that the proposed Form CRS would increase investor confusion and the potential for investors to make costly mistakes rather than provide the clarity that the SEC intends. Clear, unambiguous disclosures that are understandable to the average investor is paramount to retail investors' ability to make informed decisions about their investment choices. We cautioned, however, that heavy reliance on disclosures that purport to implement an apparent flawed best interest standard, will do little to strengthen investor protections. We urged the SEC to test the usability of the proposed disclosures to determine whether the disclosures would function as intended and whether investors would understand their options and the different requirements applicable to different types of investment professionals under the proposed Regulation Best Interest.

The SEC's Office of the Investor Advocates commissioned the RAND Corporation to conduct a nationwide survey and qualitative interview of investors to gather feedback on Form CRS disclosures. The survey was designed to collect information on the opinions, preferences, attitudes, and level of self-assessed comprehension with regard to Form CRS. The RAND interviews were conducted to obtain further insight into the reasoning and beliefs behind individual attitudes toward Form CRS.

Discussion

The purpose of Form CRS is to allow investors to make informed decisions when choosing an investment professional and the type of account preferred, by providing them with clear information to understand the differences and key characteristics of the professional and the type of services provided. Research shows that many retail investors cannot distinguish between advisers and broker-dealers, the different legal obligations that they owe to their clients, or how those legal obligations may affect their conduct. For example, many retail investors do not understand the various conflicts of interest that arise and how those conflicts may influence investment recommendations. Importantly, many retail investors also lack an understanding of how different professionals are compensated for their services.

The RAND study, confirms these findings. The study also reinforces our concerns that Form CRS as currently drafted does not provide investors, especially financially unsophisticated investors, with sufficient information, in easy to understand language, to make informed decisions about their investment choices.

Among other things, survey participants found portions of the disclosures to be "difficult" or "very difficult" to understand. These findings are largely based on participants' subjective self-assessment of their understanding of the form rather than objective testing of whether the participants understood the disclosures and be able to make informed decisions based on the information included in them. Objective testing of investors' comprehension is paramount in assessing the usability of Form CRS and its effectiveness in helping investors make informed choices. Research shows that "comprehension is much more than being able to identify a word or find something in a disclosure. It is really about being able to integrate that information and be able to apply it to yourself so that you understand not merely the technical meaning of something, but the implied meaning." It is important to evaluate whether participants can apply the information from the disclosure, not just whether they understand the words.

As noted in our previous comment, Form CRS should be short, simple, with well-defined terms that can be easily understood by the average investor. Legalese and technical jargon should never be used. As currently proposed, Form CRS is too complicated for the average investor to read, understand and use. Below is a sampling of some of the study's findings.

- **“Our Obligation to You” section:** Notably, many interviewed participants did not understand the meaning of “fiduciary.” Some participants had never heard of the word, while others had heard of it but did not know what it means. Others thought that a fiduciary standard implies acting in an investor’s best interest, and were later confused by a statement elsewhere in the disclosures regarding possible conflicts.
- **“Types of Relationships” section:** Twenty-two percent of the survey respondents described the “Types of Relationship and Services” section as being “difficult or “very difficult” to understand. Many interview participants did not understand a variety of critical differences between brokerage and advisory services and in some cases, believe the brokerage account provides them with stronger protections than advisory accounts. According to the participants, several phrases needed further definition, including “transaction-based fee,” “asset-based fee,” “discretionary account” and “non-discretionary account.”
- **“Fees and Costs” section:** Survey results show that 36 percent of the survey respondents found the “Fees and Costs” section to be “difficult “or “very difficult” to understand in its current form. Participants interviewed generally found the section to be important, but found the section to be overwhelming and some had difficulty with the language used in the section, identifying words such as “markup”, “markdown”, “wrap fee”, “surrender of charges”, and “custody” as needing further clarification.
- **“Conflicts of Interest” section:** The “Conflict of Interest” section is also challenging for investors to understand. More than one-third of survey respondents found the section to be “difficult” or “very difficult” to understand. Many interview participants struggled with how to reconcile the information in the “Conflict of Interest” section with the information in the “Our Obligation to You” section.

In addition to the apparent flaws identified by RAND, the study supports our position that Form CRS should be given to investors at the first interaction with the investor before the investor selects a financial professional and well in advance of a recommendation being made. Giving investors the disclosure upfront before they make decisions facilitates informed choices about the financial professional they choose to engage, the account preferred, the fees and other costs that may be incurred, and the standard of conduct owed to the investor. According to the RAND study, “70 percent of respondents reportedly would prefer to receive Form CRS at the outset of the relationship (i.e., before or at the time of engagement). Also, nearly 70 percent of respondents would like to be informed of material changes to Form CRS via “a complete updated Relationship Summary with the changes highlighted.”

As to the design and format of Form CRS, over half of the participants found the form to be too long. Two-thirds of the participants are likely to use hyperlinks to additional information on financial professionals, services, fees, and conflicts of interest. Sixty percent of the participants prefer a “Question and Answer” format over the form’s current format.

Finally, the SEC's proposed Regulation Best Interest falls short of providing a clear, strong uniform fiduciary standard of conduct for brokers and advisers who provide retail investors with personalized investment advice. We have long argued in favor of a strong uniform best interest standard that applies to all professionals providing investment advice. As authorized by Section 913(g) of Dodd-Frank, the standard of conduct for broker-dealers should be the same as and no less stringent than the Investment Advisers Act standard. We have also made clear the need for firms to rein in harmful incentives that encourage and reward advice that is not in investors' best interest. And, as aforementioned, a flawed rule will result in flawed disclosures. We caution against placing too much reliance on disclosure to protect investors. Heavy dependence on "enhanced" disclosures based on a flawed rule will do little to create a safe market for investment advice and to protect investors from conflicts of interests.

Recommendations

- A clear strong uniform standard of conduct for all financial professionals as authorized by Section 913 (g) is required to protect investors. Among other things, the SEC must explicitly require firms to adopt and implement written policies to ensure that certain practices such as sales quotas, sales contest, bonuses, and steering are prohibited, or in limited circumstances, mitigated. The SEC must also prohibit the use of titles that improperly suggest an advisory-type relationship and restrict misleading marketing of titles.
- The SEC must not only change the substance of the proposed standard but also revise and re-test Form CRS disclosures. Most importantly, the SEC must commission a study to specifically test whether investors comprehend the information conveyed in the disclosures. The SEC must also continue to publish the results of its testing for public comment before the form is made final. Revising the rule, re-testing and publishing test results would help evaluate whether the disclosures convey information in a way that average or financially unsophisticated investors can understand and use it to make informed choices.
- Should the SEC refuse to adopt a uniform fiduciary standard under Section 913(g), among other things, it must clarify the difference in the nature of the services between an investment broker and an adviser. Opting not to provide this important information in a simple understandable disclosure will perpetuate the harm that investors currently face.

Conclusion

Form CRS purports to disclose information that helps investors make informed choices among different types of financial professionals and investment accounts. The RAND study provides valuable, yet troubling, insight into the apparent flaws of Form CRS, but it fails to assess whether investors truly can comprehend the disclosures and could use the information provided to make informed choices. In its current form, Form CRS is not likely to be understood by average investors, especially financially unsophisticated investors. Moreover, the Best Interest proposal falls short of providing a true uniform fiduciary standard for brokers and advisers and, it does not adequately address the conflicts of interest that may compromise broker-dealers' investment advice. Disclosures based on a flawed rule will do little to create a safe market for investment advice and to protect investors from conflicts of interests. The SEC must develop

disclosures based on a strong, enforceable best interest standard, and redesign and test Form CRS for investor comprehension.

Respectfully submitted,

A handwritten signature in black ink that reads "Pamela Banks". The signature is written in a cursive, flowing style.

Pamela Banks
Senior Policy Counsel
Consumer Reports