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Independent Testing Shows SEC's Proposed Customer Relationship Summary Form May Add to Investor Confusion

Changes to Content, Language and Format are Needed to Enable Investors to Make an Informed Choice Between Brokerage and Advisory Accounts

WASHINGTON, DC—Investors are confused – and may even be misled – by disclosures proposed by the Securities and Exchange Commission (SEC) to help investors choose an investment professional, according to independent testing conducted by Kleimann Communications Group on behalf of AARP, Consumer Federation of America (CFA), and the Financial Planning Coalition.

The research focuses on the Customer Relationship Summary (CRS) form, which is a central component of the SEC's proposed "Regulation Best Interest" rulemaking package. The CRS is intended to clear up investor confusion regarding key differences between broker-dealers and investment advisers, including differences in the legal standards that apply.

In addition to AARP and CFA, the groups submitting the **results** to the Commission Tuesday include Financial Planning Coalition partners CFP Board, Financial Planning Association (FPA) and National Association of Personal Financial Advisors (NAPFA). "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," the groups wrote in a **letter** sent to SEC Chairman Jay Clayton and members of the Commission.

The groups called on the SEC to commit to undertaking a rigorous process to revise and retest the CRS and to delay final adoption of its "Regulation Best Interest" regulatory package until it can be certain that the disclosures that form the centerpiece of that regulatory package work as intended to support informed investor decision-making.

Recognizing the important role that disclosure plays in the SEC's proposed regulatory approach, the groups commissioned independent disclosure design experts, Kleimann Communications Group, to conduct usability testing of the CRS, using a mockup of the version for dual registrant firms developed by the SEC. The testing consisted of 90-minute, one-on-one interviews with typical investors in three demographically diverse locations.

Key Findings

- **Did not understand legal disclosures:** Participants did not understand disclosures regarding the differing legal obligations that apply to brokerage and advisory accounts. Most participants assumed the standards would be the same despite the different language used to describe them.
 - *"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
 - *"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
- **Did not understand the term 'fiduciary standard':** Most participants had little or no understanding of the term "fiduciary duty." They were more comfortable with the term "best interests," although their actual understanding of its meaning was mixed. 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.
 - *"Well, first of all, I have no idea what their fiduciary standard is."* —St. Louis 005
 - *"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
- **Think different standards meant best interest advice:** Based on their understanding of the term "best interest," some participants viewed the CRS as portraying brokerage accounts in a more favorable light than advisory accounts.
 - *"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
- **Did not understand critical distinctions between different payment models, fees, and associated services:** Participants struggled to articulate a clear distinction regarding the nature of

services offered as part of 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. But many could not translate that understanding into a determination of which model was the best match for them.

- *“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
- *“... 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
- **Could not figure out which type of fees might cost more** : Participants were deeply confused by disclosures regarding fees and costs. Both the content and the terminology in this section left participants confused and overwhelmed. They did not feel that the information provided enabled them to determine which account would cost them more.
 - *“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
 - *“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
- **People thought conflicts would not impact them** : Most participants understood that conflicts of interest were present in both the brokerage and the advisory accounts and that these conflicts took the form of payments that created incentives to recommend certain products. However, few made a connection between the conflicts described and the possibility that they could result in recommendations that were not in their best interests.
 - *“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
 - *“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
- Overwhelmingly, investors want and expect advice that’s in their best interest, regardless of any conflicts of interest.
 - *“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

In short, despite favorable testing conditions that required participants to read the documents more carefully than most would on their own, 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.

Despite these serious shortcomings identified by the testing, the groups wrote in their letter that they “share the conclusion expressed by Kleimann Communications that 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,” they added.

“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 forms,” added AARP Executive Vice President **Nancy LeMond**. “AARP’s volunteers were present across the country at all of the SEC’s roundtables this summer and they shared their concerns with Chairman Clayton directly as did over 10,000 consumers who submitted comments to the SEC via AARP.”

CFA’s Director of Investor Protection **Barbara Roper** said “Measured by the standard the Commission itself has identified—does the CRS, as currently designed and drafted, reduce investor confusion and enable informed choice—the answer from our testing is clearly no, it does not. The good news here is that the CRS could be fixed, if the SEC has the will to fix it.”

The formal comment period on the SEC’s regulatory proposal ended August 7. The groups alerted the SEC in their comment letters that they were conducting the usability testing and would submit it as soon as it was available. In keeping with SEC practice, they expect the report to be made part of the public rulemaking record.

About the Financial Planning Coalition

The Financial Planning Coalition is a collaboration of Certified Financial Planner Board of Standards (CFP Board), the Financial Planning Association® (FPA®) and the National Association of Personal Financial Advisors (NAPFA) – the leading national organizations representing the development and advancement of the financial planning profession. Together, the Coalition seeks to educate policymakers about the financial planning profession, to advocate for policy measures that ensure financial planning services are delivered in the best interests of the public, and to enable the public to identify trustworthy financial advisers.

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About the Consumer Federation of America

The Consumer Federation of America (CFA) 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.

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About AARP

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families with a focus on health security, financial stability and personal fulfillment. AARP also works for individuals in the marketplace by sparking new solutions and allowing carefully chosen, high-quality products and services to carry the AARP name. As a trusted source for news and information, AARP produces the nation's largest circulation publications, AARP The Magazine and AARP Bulletin. To learn more, visit www.aarp.org or follow @AARP and @AARPadvocates on social media.

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