

May 21, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090

Dear Chairman Clayton:

We write as organizations with very different perspectives but a shared interest in working to strengthen protections for the millions of Americans who turn to financial professionals for help with their investments. Some of us have been working on this issue for more than a decade, while others have come to it more recently, but we all are gratified that the Securities and Exchange Commission has finally begun to make progress on this investor protection priority. Our immediate reason for writing is to request that the Commission delay the comment deadline for its sweeping “Best Interest” regulatory proposal, as well as the proposed Customer Relationship Summary, until 90 days after testing results for the proposed Form CRS disclosures are made public.

A fundamental premise of the Commission’s proposed regulatory approach is that a summary disclosure document can be developed that will enable investors to better understand the differences between brokerage accounts and advisory accounts, including the standards of conduct that apply, and make an informed choice among the available accounts and services. Until testing verifies that this is a reasonable assumption – including with regard to the least financially sophisticated investors most in need of enhanced protections – we cannot fairly evaluate the Commission’s proposal to maintain separate and unequal standards for securities professionals that the Commission has deemed to be providing essentially the same service, investment advice, through different business models.

Getting the results of the disclosure testing before the end of the comment deadline is particularly important given that past testing has shown how difficult it is to convey even the most basic concepts in a way that investors understand. Among other things, the Commission will need to test:

- whether investors understand the differences between sales recommendations offered by brokers and the advice offered by investment advisers;
- whether they understand what the requirement to act in the customer’s best interest means and how that differs from a fiduciary duty;
- whether they understand the implications of the fact that brokers do not typically have an ongoing duty of care;
- whether the information provided on costs and fees is meaningful;
- whether the discussion of conflicts of interests helps investors to understand how those conflicts might influence the recommendations or advice they receive; and
- when investors would need to receive the disclosures in order to incorporate them into their selection of providers.

If testing shows that the proposed summary disclosures do not provide the necessary clarity, that would have enormous implications for the broader regulatory package. The Commission would then need to do more to help investors distinguish brokers from advisers (for example, through much tighter restrictions on titles and marketing practices), dramatically improve its proposed disclosures, further minimize differences between the standard that applies to brokers' recommendations and investment advisers' advice, or some combination of the three. In short, information gained through testing will prove important to how we comment not only upon specific aspects of the CRS, but upon the fundamental adequacy of Regulation BI. And until we know whether an effective disclosure document can be developed, any comment on the overall proposed regulatory approach will necessarily be merely speculative.

We applaud you for committing to testing the proposed disclosures. We urge you to take the additional step of delaying the comment deadline until 90 days after the results of that testing are made public so that you can receive fully informed comment on an issue of paramount importance to millions of working Americans and retirees.

Thank you for your attention to our concerns.

Respectfully submitted,

AARP
AFL-CIO
AFSCME
Alliance for Retired Americans
Allied Progress
AFR Education Fund
Center for American Progress
Center for Economic Justice
Consumer Federation of America
CFA Institute
CFP Board of Standards
The Committee for the Fiduciary Standard
Consumer Action
Financial Planning Association
Fund Democracy
Lynn Turner, former SEC Chief Accountant
NAACP
National Association of Personal Financial Advisors
National Committee to Preserve Social Security and Medicare
National Employment Law Project
North American Securities Administrators Association
Public Investors Arbitration Bar Association (PIABA)
Public Citizen
U.S. PIRG