



PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION

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December 7, 2018

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

RE: File Nos. S7-08-18; S7-09-18 and S7-07-18; *Comments on RAND Corporation's Testing of Form CRS Relationship Summary*

Dear Mr. Fields:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules which govern the conduct of those who provide advice to investors.

PIABA submitted a comment letter in response to the Notice of Proposed Rulemaking regarding Regulation Best Interest ("Rule"), issued by the Securities and Exchange Commission on May 9, 2018. Although PIABA strongly supports the Commission's efforts to heighten the standard of conduct required of brokers when they make investment recommendations to their customers, we expressed concerns about the efficacy of the proposed Client Relationship Summary ("CRS") form, and its role in discharging a broker's disclosure obligation under the proposed Rule.¹ I write in relation to the recently released RAND Corporation report on investor testing of the CRS.²

¹ The proposed Rule provides that a broker's required disclosure relating to the scope and circumstances of its relationship with the customer would be made through the CRS form, provided to customers at the opening of a new account. 17 CFR Part 240, 249, 275 and 279, Release No. 34-83063 (April 18, 2018).

² Angela A. Hung, et al., Investor Testing of Form CRS Relationship Summary, Prepared for United States Securities and Exchange Commission, RAND Corporation ("Report"), November 2018, <https://www.sec.gov/comments/s7-07-18/s70718-4628415-176399.pdf>.

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The RAND report confirms the validity of PIABA's concerns about whether the CRS form can or will provide effective disclosure to retail investors, whether such a form will be lost in the voluminous written materials which retail investors typically receive when making a securities transaction, and whether investors will be able to reasonably understand and synthesize the information on the form. PIABA continues to believe that retail investors will rely on what their trusted advisors tell them and will expect their advisor/broker to explain the form to them. In short, PIABA continues to believe that the CRS form is far less likely to be a valuable resource for the investor than to be used by the brokerage firms to protect themselves. Indeed, it appears that several respondents to the survey expressed that exact opinion.³

The RAND report provides compelling evidence in support of the concerns PIABA raised in its comment letter about efficacy and limits of disclosure. The report confirms previous surveys and studies that show investors (even those with some investment experience) do not have a meaningful understanding of the differences between brokerage and advisory accounts, or the differences between the standards governing investment advice. Importantly, the report also illustrates that written disclosure is largely ineffective in helping retail investors understand these differences. In fact, the responses to specific questions about the disclosures reveal that a significant number of participants did not understand important sections of the form, and still had a general misunderstanding of the different standards governing investment accounts and financial professionals. The RAND report also reflects that many of the participants were unable to synthesize and apply the information.⁴

For example, almost one-quarter of respondents described the "Types of Relationships and Services" and "Our Obligations to You" sections as "difficult" or "very difficult" to understand.⁵ The responses were even higher for the "Fees and Costs" and "Conflicts of Interest" sections, with approximately 35 percent of respondents describing these sections as "difficult" or "very difficult" to understand.⁶ Disturbingly, RAND's interviews with live participants revealed a far greater level of misunderstanding than self-reported in the written surveys. Interview participants found a number of the financial terms confusing, and many did not understand the term "fiduciary."⁷ Although some participants appeared to understand discrete sections of the CRS forms when reviewing it, questioning at the end of the interviews revealed that they did not synthesize the information sufficiently to apply it.⁸ For example, one individual was able to differentiate the fees related to advisory and brokerage accounts, but incorrectly believed an advisor had a greater incentive to encourage frequent trading.⁹ Still other participants in the interviews misunderstood the differences between account types and financial professionals from the very beginning and throughout the

³ See Report, at 42.

⁴ *Id.* at 47-48.

⁵ *Id.* at 11-13.

⁶ *Id.* at 11; 14-16.

⁷ *Id.* at 41.

⁸ *Id.* at 45.

⁹ *Id.*

interview process.¹⁰ For example, one individual was unable to answer what kind of investor would be better off with a brokerage account versus an advisory account.

PIABA has serious concerns as to whether any form seeking to disclose the type of information covered in the CRS form can provide effective disclosure to investors, particularly those with limited prior investment experience. In our experience, investors are often overwhelmed with the volume of paperwork when opening an account, thereby diminishing the effectiveness of any written disclosure. Instead of carefully reading through the paperwork, investors typically rely on what their brokers tell them and sign or initial where indicated. This is borne out by the RAND report, which reflects that more than half of all respondents had never reviewed an investment advisor's Form ADV or a brokerage firm's account opening agreement, and another 20% of respondents did not know if they had ever done so.¹¹ Investors trust their financial professionals because they believe (often incorrectly) that the financial professional will place the investor's financial interest before his or her own.

In conclusion, the RAND report reinforces PIABA's concern that the CRS form will not sufficiently protect investors, and that it will only serve to protect the financial industry. The RAND report confirms PIABA's view that a broker's obligation of disclosure cannot be sufficiently discharged with documents because many investors do not realize that their brokers are not already verbally providing them with the necessary information, or have difficulty understanding the documents. The RAND report also supports our view that a "one size fits all" document is not sufficient to satisfy the disclosure obligation. As the RAND report reflects, the level of understanding varied widely among the participants. That is even more likely to occur when such a form is presented across the entire retail marketplace, as opposed to a limited group of people who agreed to participate in the SEC's survey.

Accordingly, PIABA continues to believe that the standard for disclosure should go further than handing an investor an additional boilerplate document. Rather, the broker should be required to make reasonable efforts to talk to the investor about the relationship, the fees, and the recommendations, in a manner that is understandable to the investor. Additionally, brokers should be held to high standards of conduct, which match the expectations that have been created as a result of the firms' own marketing.

PIABA thanks the SEC for the opportunity to comment further on this important issue.

Very truly yours,



Christine Lazaro
PIABA President

¹⁰ *Id.* at 45-46.

¹¹ *Id.* at 32.