August 7, 2018

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

RE: Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles
File No. S7-08-18, Release No. 34-83063; IA-4888

Dear Mr. Fields:

The Financial Planning Coalition ("Coalition")[1] – comprised of Certified Financial Planner Board of Standards[2] ("CFP Board"), the Financial Planning Association®[3] ("FPA"), and the National Association of Personal Financial Advisors[4] ("NAPFA") – appreciates this opportunity to comment on proposed "Form CRS Relationship Summary" and related rule proposals. In addition to this comment letter, the Coalition simultaneously is submitting comment letters addressing (i) the proposed IA Interpretative Guidance[5] and (ii) the proposed Regulation Best Interest,[6] respectively.

[1] The Financial Planning Coalition is a collaboration of 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. See, http://financialplanningcoalition.com

[2] CFP Board is a non-profit certification and standard-setting organization, which sets competency and ethical standards for more than 81,000 CERTIFIED FINANCIAL PLANNER™ professionals throughout the country. CFP® professionals voluntarily agree to comply with CFP Board's rigorous standards including education, examination, experience and ethics, and subject themselves to disciplinary oversight of CFP Board.

[3] FPA® is the largest membership organization for CFP® professionals and those who support the financial planning process in the U.S. with 23,000 members nationwide. With a national network of 88 chapters and state councils, FPA® represents tens of thousands of financial planners, educators and allied professionals involved in all facets of providing financial planning services. FPA® works in alliance with academic leaders, legislative and regulatory bodies, financial services firms and consumer interest organizations to represent its members.

[4] NAPFA is the nation's leading organization of fee-only comprehensive financial planning advisors with more than 3,000 members nationwide. NAPFA members are highly trained professionals who adhere to high professional standards. Each NAPFA advisor annually must sign and renew a Fiduciary Oath and subscribe to NAPFA's Code of Ethics.

5 Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers, 83 FR 21203 (May 9, 2018) available at https://www.sec.gov/rules/proposed/2018/ia-4889.pdf

[6] Proposed Regulation Best Interest, 83 FR 21574 (May 9, 2018), https://www.sec.gov/rules/proposed/2018/34-83062.pdf.

Released as a package, these three proposals are intended to: (i) raise the standard of conduct for broker-dealers; (ii) reaffirm the fiduciary obligation of investment advisers; (iii) enhance investor understanding by requiring both broker-dealers and investment advisers to deliver a relationship summary document to retail investors; and (iv) reduce investor confusion by restricting the use of certain titles by broker-dealers.

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 relationships and services being offered by broker-dealers and investment advisers, the costs associated with those services, and the standards of conduct that apply. The expectation is that, based on this information, investors will be in a position to make an informed choice among available accounts and services.

The Commission announced[7] that it planned to test the proposed disclosure document with investors to ensure that it satisfies its intended purpose. It was our understanding that, in addition to holding roundtable discussions with the public on proposed Form CRS, the Commission would engage disclosure experts to thoroughly test its effectiveness. Because proposed Form CRS is the critical disclosure component of the three-part rulemaking package, the Coalition was encouraged that the Commission planned to test the effectiveness of the proposed disclosures. We also asked the Commission to publicly release the test results during the comment period.

Indeed, each of the three Coalition organizations signed a May 21, 2018 letter to Chairman Clayton requesting that the comment deadline be delayed until 90 days after testing results for the proposed Form CRS disclosures were made public. That letter presented a series of questions that we hoped adequate testing would answer, including:

- whether investors understand the differences between sales recommendations offered by broker-dealers and advice offered by investment advisers;

- whether investors understand what the requirement to act in the customer's best interest means and how that differs from a fiduciary duty;

- whether investors understand the implications of the fact that broker-dealers do not typically have an ongoing duty of care;

- whether the information provided on investor costs and fees is meaningful;

- whether the discussion of conflicts of interest helps investors understand how those conflicts might influence the recommendations or advice they receive; and

- at what point in time would investors need to receive the disclosures in order to incorporate them into their selection of a financial professional.

We were disappointed that we did not receive a response to our letter, nor has the Commission provided any additional details on their expert testing of the disclosure document. At this point, the public does not know if testing is underway or planned, if or when the results of

[7] SEC Press Release, SEC Chairman Clayton Invites Main Street Investors to 'Tell Us' About Their Investor Experience, https://www.sec.gov/news/press-release/2018-125

such tests will be publicly available, or whether there will be an additional comment period following any public release of test results.

While we appreciate that the Chairman, Commissioners and relevant staff are taking the time to hold roundtable sessions with investors to get input on proposed Form CRS,[8] these informal sessions lack the rigor necessary to produce objective and reliable data concerning the effectiveness of the proposed disclosures. Because the Coalition believes that "cognitive usability testing" to determine the effectiveness of the proposed disclosures is essential, we have joined with other organizations to engage an independent expert to conduct such testing on our behalf. We plan to submit the test results to the Commission, in a supplement to this comment letter, within 45 days after the comment letter deadline. While we recognize that our submission will fall outside the formal comment period on the regulatory proposal, we are relying on the Chairman's repeated assurances that the Commission will continue to accept and consider comments received after the comment deadline has passed, as has traditionally been the Commission's practice.

Given the critical role of Form CRS in this three-part rulemaking, the Commission's Investor Advisory Committee ("IAC") invited comments on the proposed disclosures during its June 14, 2018 meeting.[9] Witnesses represented a variety of perspectives. While there was general support for the concept of a disclosure document that would help investors better understand the relationships and services offered by broker-dealers and investment advisers, there was near unanimous agreement among witnesses that the proposed Form CRS needs significant revision if it is to serve its intended purpose.

Based on the discussion at the IAC meeting, it is expected that that some commenters will submit their own disclosure prototypes or choose to highlight specific strengths and weaknesses of the proposed Form CRS. The Coalition, however, will first evaluate the results from the independent disclosure test described above, and then will offer the Commission our views on specific aspects of the proposed disclosure document.

The Limits of Disclosure

While the role of disclosure in federal securities laws is indisputable, the SEC also enjoys broad authority to regulate broker-dealers and investment advisers. As such, the Commission must strike a balance in determining how much responsibility is appropriate to place on investors to understand the services provided by, and standards of professional conduct applicable to, the financial professionals with whom they do business. Reg BI and Form CRS, in our view, place too great a burden on investors to recognize and understand the implications of basic investment concepts that are fundamental to their relationships with the financial professionals on whom they rely; namely, the important distinction between "best interest" and "fiduciary," and how that distinction affects investors.

Although the Coalition agrees that disclosures can be a useful and important tool for investors, relying primarily on disclosures is inconsistent with the SEC's mission of investor protection and contradicts substantial prior research demonstrating that disclosures alone are ineffective. A number of well-publicized studies have been conducted over the years that have

[8]See, SEC Staff Memorandum dated July 31, 2018, "Roundtable on June 13,2018 Regarding Standards of Conduct for Investment Professionals, available at https://www.sec.gov/comments/s7-07-18/s70718-4144932-172001.pdf

[9] An archived webcast is available at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=061418iac. Select prepared remarks available at https://www.sec.gov/spotlight/investor-advisory-committee.shtml.

explored whether investors can distinguish between the services offered by broker-dealers and investment advisers and can understand the different legal standards that apply to the recommendations they receive. These studies have concluded that investors do not understand these distinctions or their implications.[10]

If investors are confused, it is with good reason. Broker-dealers have been permitted to rebrand themselves as "advisors", offer extensive advisory services, and market their services, all while exempt from a fiduciary standard of conduct appropriate to that role. As the following data shows, many investors blindly assume and earnestly expect that **any** financial professional they work must act in the investor's best interest.

- A 2017 survey by Financial Engines[11] found that 93% of Americans think it is important that all financial advisors who provide retirement advice should be legally required to put their clients' best interest first. A 2016 survey by Financial Engines had similar results.

- A 2013 AARP survey of retirement investors[12] found more than nine in ten (93%) respondents favored requiring retirement advice to be in their sole interest, and fewer than four in ten (36%) respondents indicated they would trust the advice from an adviser who is not required by law to provide advice that is in their best interest.

- A 2017 survey by Personal Capital[13] found that nearly half of Americans (46%) believe all financial advisors are required by law to always act in their client's best interests, and nearly a third (31%) are unsure.

- A recent survey by Jefferson National[14] found that nearly six in ten investors (59%) incorrectly believe that all financial advisers are already required by law to put their clients' best interests first. While investors are confused about these differences, they are not indifferent to them. The Jefferson National survey found, for example, *that nearly half of investors (48%) say they would stop working with their financial adviser if they learned the adviser is not required by law to serve their clients' best interests*.

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[10] See, e.g., (i) Siegel and Gale, LLC, and Gelb Consulting Group, Inc., *Results of Investor Focus Group Interviews About Proposed Brokerage Account Disclosures: Report to the Securities and Exchange Commission,* March 10, 2005, http://bit.ly/2wXS33l; (ii) Angela A. Hung, et al., *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*. Santa Monica, CA: RAND Corporation, 2008, available at http://bit.ly/1OrrZ3v;(iii) Press Release, CFA, AARP, North American Securities Administrators Association, CFP Board of Standards, Financial Planning Association, Investment Adviser Association, and National Association of Personal Financial Advisors, *"Survey: Vast Majority of U.S. Investors Support Clear "Fiduciary Standard" for Financial Professionals, Widespread Confusion Seen Linked to Current SEC Rules*," September 15, 2010, available at http://bit.ly/2xb1vED; and (iv) Jeremy Burke and Angela A. Hung, Trust and Financial Advice, RAND Working Paper, January 2015, at 14, available at http://bit.ly/2j3GHZC.

[11] In Whose Best Interest: A Financial Engines Survey on the Conflict of Interest Rule, https://financialengines.com/docs/financial-engines-best-interest-report-2-041817.pdf

[12] AARP Report dated September 2013, "Fiduciary Duty and Investment Advice: Attitudes of 401(k) and 403(b) Participants,", available at http://www.aarp.org/research/topics/economics/info-2014/fiduciary-duty-andinvestment-advice---attitudes-of-401-k--and-4.html

[13] , 2017 Personal Capital Financial Trust Report, available at http://bit.ly/2rUJOpU.

[14] Jefferson National Press Release dated June 27, 2017, , "Third Annual Advisor Authority Study Shows Investors and Advisors Aligned on Importance of Fiduciary Standard--Regardless of DOL Fiduciary Rule," available at http://prn.to/2va.

We also offer for your consideration the results of a recent focus group jointly sponsored by AARP and CFP Board.[15] The organizations sought to better understand how investors make decisions about working with a financial professional and their expectations in terms of the obligations and responsibilities of the financial professionals they chose. Because of the limited sample size, the focus group results described below are intended to provide insightful anecdotal evidence about (i) how the investors chose their financial advisors; and (ii) the investors' expectations regarding the professional obligations owed to them by their financial advisors.

CFP Board and AARP engaged a professional recruiting firm which identified six New York City area investors, diverse across age, gender, ethnicity and amount of investable assets. Importantly, each participant was a college graduate with a household income of $150,000 or more, factors which generally suggest an above-average degree of financial literacy. The results, unfortunately, were no surprise to us. When choosing their financial professional, the participants apparently did little, if any, due diligence or "homework." One participant retained a former student; another a childhood friend. Others relied primarily on recommendations from friends. Each participant unambiguously expected and trusted their financial professional to work in their best interest. When asked if they would ask their financial professional if he or she is a fiduciary, each participant answered no – a unanimous outcome – primarily because each participant felt too uncomfortable or intimidated to ask such a question. At the same time, the investors trusted their financial advisor and believed the advisor would work in their best interest.

The survey results and comments from focus group participants illustrate investors' reliance, quite possibly to their financial detriment, on the assumption that their financial professional either voluntarily acts, or is legally required to act, in their best interest. Although the Coalition is committed to enhancing investors' trust in the financial professionals they choose, that investor trust should be based on the standards of conduct applicable to the financial professional, and not on apparently reasonable, but potentially misguided, assumptions.

In our view, the most important investment decision many investors will make is to choose the person they will work with to guide their financial decision-making. Investors typically are not aware of, nor do they understand, the obligations financial professionals have to them, and assume it is a fiduciary obligation. Investors often erroneously believe that a "best interest" obligation is fully synonymous with a fiduciary obligation. The Coalition's business experience, underscored by thorough and objective surveys and market research, clearly indicates that investors generally (i) are not aware of, or do not ask, the questions that are critical to understanding their relationships with their financial professionals, or (ii) do not understand the implications of the investment recommendations they receive. Thus we conclude, regrettably, that while it is helpful to provide investors with questions to ask financial professionals, as Form CRS does, very few ever will ask.

Finally, we are not aware of any evidence to support the view that investors will read yet another disclosure document. Since the proposed rule would permit Form CRS disclosures to be delivered "at the time the retail investor first engages the [financial professional's] services," many investors will already have decided with whom to work and what kind of account they will open before ever receiving the disclosures. How will investors, many of whom believe "best interest" is synonymous with fiduciary, distinguish between the "best interest" advice of a broker and the "fiduciary" advice of an investment adviser?

[15] November 7, 2017, video at https://laivideo.hubs.vidyard.com/watch/UvrhkfS27SRhc3EpEfNmio

These are among the basic questions about proposed Form CRS that remain unanswered. These are significant hurdles to overcome and cause the Coalition to be skeptical about the central role disclosure plays in the proposed regulatory approach of this package.

Restrictions on Titles

As noted earlier in this comment letter, a fundamental objective of the Commission's package of proposals is to address the considerable investor confusion that exists today regarding the different standards of conduct that apply to investment advisers and broker-dealers. Allowing certain financial professionals to market themselves in a way that suggests a "relationship of trust and confidence" while disclaiming fiduciary responsibility to such clients is the primary contributor to investor confusion and investor harm.

To address this investor confusion, the Commission proposes to restrict the use of the titles "adviser" or "advisor" to registered investment advisers. The Coalition believes this is a limited step in the right direction but that the limited restriction on titles and the narrow application of the standards significantly limits its effectiveness. As such, we recommend that the restrictions extend to marketing and other communications where brokers hold themselves out to the public. The utility of this provision also is limited in that it applies only to stand-alone brokers. As such, dual registrants will continue to market themselves as "advisors" even if they are they acting in a broker-dealer capacity. This so-called "hat-switching" during the course of a relationship is confusing to investors and should not be permitted. A firm's dual registration status, as both a broker-dealer and investment adviser, should not be the basis upon which representatives of the firm hold themselves out to the public as "advisors." A firm's representatives should be required to have business cards and marketing materials that reflect their actual capacity. They should not be permitted to change capacities ("hat switch") over the course of dealing with a client.

At the same time, the Coalition encourages the SEC to help consumers identify competent and ethical financial planners. The current landscape encourages financial service professionals to offer financial planning services with dubious certifications and/or designations[1] Indeed, the use of titles has created such confusion that the SEC's Office of Investor Education and Advocacy has, in conjunction with the North American Securities Administrators Association (NASAA), issued an investor bulletin that cautions "do not rely solely on a title to determine whether a financial professional has the expertise that you need – find out what the title means and what the financial professional did to obtain it."[16] But this is not easily determined – the SEC/NASAA bulletin goes on to suggest a litany of questions that an investor should ask his financial professional as well as multiple web sites that the investor should consult.[17] While this advice may be potentially helpful to some investors, as noted above, most will not even ask the most basic questions of their financial professionals, let alone engage in independent research to attempt to learn what their titles really mean.

In fact, industry research shows that over 100,000[18] financial service providers, spurred by economic incentives, incorrectly self-identify as members of a financial planning practice, but

[16] https://www.sec.gov/files/ib_making_sense.pdf.

[17] *Id.*

[18] Consumers Are Confused and Harmed: The Case for Regulation of Financial Planners, a report of the Financial Planning Coalition, available at http://financialplanningcoalition.com/wp-content/uploads/2014/06/Financial-Planning-Coalition-Regulatory-Standards-White-Paper-Final.pdf . The 100,000 number is derived from data produced by CERULLI ASSOCIATES, CERULLI QUANTITATIVE UPDATE: ADVISOR METRICS, 2013.

do not actually offer financial planning services. As a result, consumers who want and expect financial planning advice are being harmed because they are receiving narrowly focused advice, single product solutions or advice that is not in their best interest. Furthermore, consumers are confused by the titles financial service providers use and they are not able to identify persons qualified to provide financial planning services.

As such, the Coalition suggests that the SEC clarify which certifications or professional designations may be used for financial planners. The Coalition proposes to limit designations to only those that are granted by accredited certifying bodies and, at a minimum, include rigorous ethical and professional standards, thorough education and examination requirements to first obtain the designation, and ongoing continuing education requirements to maintain the certification. For example, CFP Board, which offers the CFP® certification, is accredited by the National Commission for Certifying Agencies (NCCA). The NCCA standards require demonstration of a valid and reliable process for development, implementation, maintenance, and governance of certification programs. The CFP® certification is one of only six financial services designations accredited by NCCA. The CFP® certification requires substantial educational and professional experience, a rigorous exam designed to test for competencies in financial planning, continuing education which meets CFP Board's requirements, and high professional and ethical standards enforced through a disciplinary process with publicly available sanctions, including documented revocation of the CFP® certification. Notably, CFP® professionals operate across a variety of business models and are obligated to provide financial planning services under a fiduciary standard of conduct.

Furthermore, the SEC should include "holding out" language, meaning that anyone who implies to provide financial planning services who are not certified or licensed with an accredited designation would be restricted from representing themselves to the public as financial planners. This will help consumers identify competent and ethical financial planners.

The Coalition supports the goal of helping investors understand the type of financial professional they are dealing with and what they should expect from their relationship. We have significant concerns, however, regarding the efficacy of Form CRS as proposed and believe that the form may exacerbate the investor confusion it is intended to address. We also note that disclosure is not a substitute for an effective regulatory scheme. Finally, we will file a supplement to this comment after we receive the results of the expert testing we are participating in and described earlier in this letter.

The Coalition appreciates the opportunity to comment on this rule proposal, as well as the other proposals in the Commission's complete package. If you have any questions regarding this comment letter, the corresponding comment letters or the Coalition, please contact Maureen Thompson, Vice President of Public Policy, CFP Board of Standards, at (202) 379-2281 or mthompson@cfpboard.org.

Sincerely,

Kevin R. Keller, CAE	Lauren Schadle, CAE	Geoffrey Brown, CAE
Chief Executive Officer	Executive Director/CEO	Chief Executive Officer
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