

NEWS

EMBARGOED until 3:00 PM ET June 22

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Institute, former regulators Phyllis Borzi, Luis Aguilar and leading experts urge SEC to fix Form CRS; admit “investor confusion” is “information confusion”

White paper, proposed Form CRS and product cost disclosure urge ‘plain language describing concrete ideas’ to make disclosure understandable

Washington, D.C., April 22, 2021 – The Institute for the Fiduciary Standard today released a white paper and two proposed disclosures and urged the SEC to fix Form CRS.

Knut A Rostad, president of the Institute for the Fiduciary Standard said in statement, “2021 is a new era and the new administration and the SEC have large agendas. The SEC should make fixing disclosure to retail investors in Form CRS and Reg BI a priority. The current disclosures obscure and mislead retail investors, experts and investment professionals as to how broker-dealers and investment advisers differ. It is shameful. Fixing this disclosure does not require a Congressional Commission or a new study. It requires courage to tell investors the truth.”

The Institute is joined by several experts. (See their statements below):

Former SEC Commissioner Luis Aguilar

Former Assistant Secretary of the DOL Phyllis Borzi

Yale School of Management Senior Lecturer, Daylian Cain

Aron Szapiro, Morningstar

Alicia H. Munnell and Gal Wettstein, Center for Retirement Research at Boston College

Benjamin P. Edwards, Associate Professor of Law, William S. Boyd School of Law

Luis Aguilar, Former Securities & Exchange Commissioner, 2008-2015

“The Institute’s clarion call for clear and understandable disclosures is in keeping with the SEC’s long held belief in the importance of “full and fair disclosure” and the protection of investors. Disclosures that are vague and opaque fail to meet the needs of investors and create unnecessary confusion. Communicating in clear and easily understandable plain English is easily achievable. Disclosures should be clear as to whether an advisor is – or is not – a fiduciary and what that difference means. Investors deserve no less.”

Phyllis Borzi, Assistant Secretary, Department of Labor, 2009-2017

This new paper from the Institute for the Fiduciary Standard once again shines a light on the real problem facing investors: the disclosure that is supposed to enlighten and inform them about the differences between advisors and sales people does neither.

Instead of using clear, simple and understandable language to describe the differences between the various types of individuals who hold themselves out to investors as experts in financial or retirement planning, the disclosures the SEC has required as part of its Regulation BI package once again allows non-fiduciary sales agents to hide behind fiduciary-like terminology to continue to generate the "investor confusion" that the agency laments.

"Blaming the victim" by allowing the use of terminology that creates a false sense of comfort for investors and then hand-wringing about their obvious lack of understanding that results from this long-standing practice needs to be called out. I commend the Institute for this latest paper and the sample investor disclosure document it has proposed. Both go a long way towards helping investors begin to understand what's at stake and what to expect from individuals operating in the advice marketplace.

Dr. Daylian M. Cain, Senior Lecturer in Business Ethics at Yale School of Management and co-editor of Cambridge Press’ “Conflicts of Interest.”

Professor Cain comments on the SEC’s broadening the definition of conflicts of interest.

If this line (We benefit from the services we provide you) is taken by the SEC to define conflicts of interest (COIs), several problems are created. First, this broad definition makes COIs so vague that it undermines the importance of understanding the dangers of COIs. Ultimately, this definition would unintentionally include practically all commercial services as inherently conflicted. This definition blurs the lines between good business and what might potentially be bad business.

In this definition, uncertainty is created about the “services” being provided and the nature of the interests being disclosed. Are the “services” in line with the client’s interests, or do they conflict? For example, if one profits while maximally helping the client, the result is quite a different service than if one profits while harming the client. The latter strikes me as containing a conflict of interest, while the former might often be full alignment of interests. While there remain grey areas even in my example, the suggested definition of COIs overly muddles this distinction.

Aron Szapiro, Head of Policy Research, Morningstar, Inc.

We support the Institute’s proposals for fee disclosures. As we noted in our 2018 [comment letter](#) on “Regulation Best Interest,” Morningstar believes investors deserve clear, comparable, standardized disclosures listing advisory fees, commissions, loads, and any other relevant fees. For recommendations of a portfolio of mutual funds, brokers and RIAs should provide investors with the asset-weighted average expense ratio in addition to fund-specific expenses.

Alicia H. Munnell, Director and Gal Wettstein, PhD, Senior Research Economist; Center for Retirement Research at Boston College

Confusion surrounding how best to invest is common; the proliferation of financial advisors is evidence of the demand for such services. However, such confusion also leaves an opening for self-interested brokers to take advantage. Discerning advisors from brokers is a difficult proposition, and clear disclosures from each about their objectives and responsibilities would be beneficial – and the clearer the better. We support efforts to make such disclosures accessible for the people who need to rely on financial advisors, including the Institute for the Fiduciary Standard’s efforts to urge the SEC to revisit Form SRS and Reg BI disclosures. In this way consumers can be better informed about who is giving them well-intentioned advice, and who is trying to sell them a product.

Benjamin P. Edwards, Associate Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas

The SEC needs to reconsider form CRS and put retail investor disclosures into words ordinary humans understand. For far too long the brokerage industry has obscured conflicts from customers by using complex, technical language which most people do not comprehend. A roadmap of the investment advice landscape does little good if retail investors cannot readily use it to understand the terrain.

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Institute for the Fiduciary Standard

The Institute for the Fiduciary Standard formed in 2011 as a non-profit to research, advocate and educate investors, policymakers on the vital role of the fiduciary duties for investors and the capital markets. For more information, visit www.thefiduciaryinstitute.org.