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"Investor Confusion" over how advisers differ from brokers stymies regulatory disclosure, experts say

Since the SEC RAND Report of 2008, "investor confusion" has been a central story on retail investor regulation and disclosure. The SEC has struggled to clear up this "confusion". Some experts and pundits fault investors. We disagree and fault bad language – words and terms that are unclear. Blaming investors for vague or convoluted language is wrong. It is shameful. Plain language describing concrete ideas can improve investor understanding and protections.

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Introduction and Summary

The 2019 SEC broker and adviser rulemaking package[1] was fully enforceable June 30, 2020. Regulation Best Interest (Reg BI) seeks to set out a new standard for brokers.[2] Form CRS seeks to express what this standard and the investment adviser standard mean.[3] SEC commissioners, industry participants and investor advocates expressed starkly different views of Reg BI.[4] These differences are basic and include how broker-dealer product distribution and sales differs from investment adviser fiduciary advice. When the rule was proposed, Commissioner Stein said Reg BI just "maintains the status quo" and Commissioner Peirce described it as "suitability plus"[5].

The SEC commissioned the RAND Corporation to research investor perceptions of brokers and advisers; RAND produced major reports in 2008 and 2018. The main conclusion in both reports is that "investor confusion" on the differences and obligations of brokers and advisers is rampant. RAND 2008 noted, the "growing complexity" of the market explained investor confusion. The implicit message for many: investors are mainly at fault. This view is now "conventional wisdom."

[1] U.S. SEC (June 5, 2019) Regulation Best Interest: The Broker-Dealer Standard of Conduct. *Final Rule*, https://www.sec.gov/rules/final/2019/34-86031.pdf

[2] SEC Press Release on Reg BI and Form CRS, https://www.sec.gov/news/press-release/2019-89 ("Regulation Best Interest will enhance the broker-dealer standard of conduct")

[3] Ibid, ("Form CRS . . . provide[s] retail investors with simple, easy to understand information")

[4] See generally, "Transcripts from Investor Roundtables" under **Background Materials**, https://www.sec.gov/regulation-best-interest

[5] https://www.sec.gov/news/public-statement/statement-peirce-041818; https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818

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This paper takes a fresh look at research on investor confusion. We conclude that the conventional wisdom is flawed and offer a different view. While we agree there is much investor confusion over brokers and advisers, we disagree that the "complexity" of the market or investors themselves are mainly at fault. Instead, confusing industry messaging and the lack of clarity and omissions in SEC disclosure itself stand out.

The implications of this view are significant for the SEC's 2019 rulemaking. It reflects concerns raised by Commissioners Stein and Peirce, asking what Form CRS should seek to accomplish. We review research on Form CRS and offer a revised Form. We also offer a 'Product Cost Disclosure' to provide investors the specific cost data they want which should be provided at the point of sale.

Background

RAND Corporation 2008's Report on Investor Perspectives[6]

The SEC commissioned the 2008 RAND Report to examine adviser and broker marketing and to "evaluate investors' understanding of the differences between investment advisers' and broker-dealers" services and obligations. RAND conducted a household survey and focus groups.

On investor understandings of broker-dealers and investment advisers, RAND reports that due to the "growing complexity" of the market "we were not surprised to find that many survey respondents and focus group participants did not understand key distinctions" that distinguish the duties, titles or services of brokers and advisers. RAND's conclusion was clear: The roles of BDs and IAs are "confusing to most survey respondents and focus participants."

RAND showed focus group participants advertisements from investment advisers and broker-dealers. The adviser ad stressed planning and the firm's expertise and experience in philanthropy and asset management. The broker ad stressed the importance of the relationship built on trust and the expertise of its "financial consultants" and its research tools to identify stocks and mutual funds.

RAND also showed focus group participants "fact sheets" about brokers and advisers. RAND reports, "Even after being presented with fact sheets, participants were confused by the different titles."

That confusion should have been expected. Brokers had for many years stopped describing themselves as sales representatives or sales brokers and instead adopted the titles and language historically used by investment advisers. Brokers called themselves financial advisers or planners or something akin. By 2008 it was very difficult for investors to know the truth and distinguish brokers and advisers.

[6] Hung et al. (2008) "Investor and Industry Perspectives on Investment Advisers and Broker-Dealers." *RAND Corporation*, Link

RAND 2018 Testing of Form CRS[7]

This 2018 RAND Report was commissioned to conduct a nationwide survey and qualitative interviews of individuals to gain feedback on a CRS Form. The CRS Form outlined differences in duties, roles, and services. The findings revealed significant numbers of investors found the descriptions "difficult" to understand. In-depth interviews revealed further misunderstandings of basic differences between brokers and fiduciary advice.

RAND / Office of Investor Advocate, (OIAD) 2018: The Retail Market for Investment Advice[8]

The research sought to determine "how well investors understood the retail market for investment advice" and to identify policy options. The problem is that "trends" since the early 1990s have blurred the boundaries between" BDs and IAs. Focus groups and a national survey were conducted.
Key findings indicated that investors in the focus groups failed to understand the differences between IAs and BDs as "participants understanding of the types of financial services and professionals was low". To its credit, OIAD affirmed its disclosure describing broker and adviser differences had failed and that "More effective ways of communicating to investors the differences", are needed. Survey results "Suggest some degree of confusion, or at least ambiguity" in the marketplace.

Institute for the Fiduciary Standard September 2018 Paper on SEC Investor Roundtables and January 2019 Paper Reveal Investor Confusion are Better Called "Information Confusion"

The SEC held six "roundtables" of investors in June and July of 2018 to get feedback on the proposed Form CRS. The Institute reviewed the roundtable transcripts and reported on investor comments of dissatisfaction over the confusing or unclear language.[9]

The SEC's proposed 4-page disclosure seeks to address investor confusion by communicating important information about how brokers and advisers differ. In addition to identifying specific investor concerns from all six roundtables, the Institute also further reviewed the transcript of the July 12 Washington DC Roundtable for a sense of investors' general views. This was the largest of the six roundtables with 38 investors attending. We found that of the 17 investors who are recorded speaking at the roundtable, seven expressed dissatisfactions.

This means they did not understand something about Form CRS; or believed others would not understand something in it; or were dissatisfied with its' language (i.e. use of the undefined term 'best interest' or the unexplained and purposeful omission of the word 'fiduciary')

This dialogue in Miami includes a senior SEC staff member, two investors and Chairman Clayton.

[7] Hung et al. (2018) "Investor Testing of Form CRS Relationship Summary." *RAND Corporation*, Link
[8] SEC OIAD (October 12, 2018) The Retail Market for Investment Advice, Link
[9] Rostad and Fogarty (September 17, 2018) "SEC Investor Roundtables Reveal Investors Often Do Not Understand Form CRS," *The Institute for the Fiduciary Standard*, https://thefiduciaryinstitute.org/2018/09/17/sec-investor-roundtables-reveal-investors-often-do-not-understand-form-crs/

"This is supposed to be a very plain English document. It was written by lawyers."
SEC's Lourdes Gonzalez, at pg. 55

"But if you had to have this, this is not clear. This is not well written…[T]his is the sort of thing where my brain shuts down. Maybe it's age… I am a lawyer… And a professional writer.
Investor Thirteen, at pgs. 55-56

"It is not clear. It is poorly written. I mean, we are college graduates but we are also professional writers and educators. Can't understand it. … I think people, if they are given an idea of the actual monetary amount of the fee, sort of like a concrete example. When they're talking to an adviser, you can hand them this. This doesn't mean much to them." **Investor Eight, at pgs. 55-57**

"What we are finding out through these town halls is if you handed this to your lawyer, oh, this makes a lot of sense." **Chairman Clayton, at pg. 56**

Form CRS fails to address investor confusion. It fails to effectively communicate key distinctions, such as their respective duties, obligations, compensation, and the scope of conflicts of interest. Its language is written by lawyers and, as Chairman Clayton seems to suggest, for lawyers. Does this mean the form was not meant to be understood by investors?

Yet, even those investors, who have advanced technical degrees in law or finance, expressed difficulty comprehending the disclosure. These roundtable discussions provide a significant basis to conclude that "Investor confusion" is a misnomer and should be rebranded "Information confusion."[10]

The SEC's Reg BI is meant, in part, to remedy "investor confusion" according to SEC Chairman Jay Clayton.[11] Contrary to conventional wisdom, many investors do understand the industry messaging is confusing. The SEC OIAD's 2018 RAND Study shows that investors expect an advisor to: Receive compensation from clients directly; represent their interests, not the interests of others; avoid higher compensation costs and recommend "lowest cost" products, other things equal; and explain any payments that may impair their objectivity.

The report shows this quantitatively. Investors believe that an advisor who is required by law to meet a 'best interest' standard will help them choose the lowest cost products, other things equal (73% agree vs. 11% disagree); will disclose payments they receive that may influence them (59% agree vs. 15% disagree); will avoid high comp when a similar, less costly product is available (61% agree vs. 19% disagree).[12] Furthermore, by a margin of 51% to 22%, investors thought it was important or extremely important for a financial professional to receive all of his/her compensation from them directly.[13]

[10] The Institute developed this idea in a January 2019 paper addressing the conventional wisdom of "investor confusion."
[11] In, for example, the November 7, 2018 Remarks to the SEC Investor Advisory Committee, at https://www.sec.gov/news/public-statement/statement-clayton-110718 ("I am very pleased with the progress we have made in achieving the goals of our proposals to address investor confusion…")
[12] *Supra note 7*, at p. 72.
[13] Ibid, at p. 65.

Investors are unambiguous: they expect their interests to come first. What they find difficult to comprehend is what it means for them when their broker or advisor has a conflict. That is how the conflict is reconciled with the essential nature of the relationship they want and expect from a financial professional. This reconciliation is made more complicated than necessary by obfuscating messaging from the broker-dealer industry and the top-down approach from the SEC that 'conflicts are okay.'

Kleimann Report on Development and Testing of Model Client Relationship Summary December 2018

Introduction

The RAND Reports, SEC Roundtables and the OIAD report set the stage for a next step in analyzing specific disclosure. Two reports in 2018 by the Kleimann Communications Group, Inc. did so.

The December 5, 2018, Kleimann Communications Group, Inc. report[14] ("The report") followed a September Kleiman report[15] which tested different Form CRS versions. Both reports were commissioned by AARP and CFP Board. The September report found significant consumer misunderstandings and confusion over the "similarities and differences," "different standards," and the "differences in relationships," between BDs and IAs. Also, consumers "did not understand how conflicts of interest could negatively affect them" and "had difficulty understanding some vocabulary."

The December report used these findings to "develop and test alternative language and design". Key assumptions in the new language included: keep the "topics and content" consistent with the SEC's parameters; have investors "receive it" before making a decision; keep the form "as short as possible". Eighteen one-on-one, sixty-minute interviews in Denver, Tulsa and St. Louis were conducted.

Findings

The report highlighted findings on five questions:

- What kind of basic services do we provide?
- How do pay for our services?
- How does our relationship work?
- What is our legal obligation to you?
- What is a financial conflict of interest? How do we handle conflicts?

For each of these topics, descriptions for investment advisers and broker-dealers were provided:

[14] Kleimann Communications Group (December 5, 2018) Report on Development and Testing of Model Client Relationship Summary, Report Link
[15] Kleimann Communications Group (September 10, 2018) Final Report on Testing of Proposed Customer Relationship Summary Disclosures, Report Link

What kind of basic services do we provide?

Investment Adviser Services INVESTMENT ADVISER AND MANAGEMENT
This is an advisory relationship.
Broker-Dealer Services SALES RECOMMENDATIONS AND TRADING
This is a sales relationship.

Kleimann added the words "sales" to replace the word "brokerage".
The form "Provided participants with significantly better understanding" than the prior SEC Form CRS. Participants "clearly understood" adviser accounts as "advisory" and broker accounts as "sales." As two participants said:

> *"I'm going to have a relationship with this Adviser … The other one (BD) is more I'd be dealing with a salesperson who is trying to sell me specific investments …" Denver 003*
> *"The investment adviser has a more one-on-one [relationship], just based on the Relationship of trust they give you, rather than the other one (Broker-Dealer) that is more sales-based." Tulsa 005*

Using clear and plain words matter. This may be the first time that adviser and brokerage services are described by the words "advisory" and "sales."

- Key point: Investors understand the difference between advice and sales.

How do you pay for our services?

The **Investment Adviser Services** header is *FEES* and the text is, "You pay ongoing fees for advice and based on a percentage of the value of the assets in your account."
The **Broker-Dealer Services** header is *COMMISSIONS AND OTHER FEES* and the text is: **"**You pay a commission or other sales fee for each transaction **i**n your account."

Kleimann added the word "commission" to replace the term "transaction-based".

Participants generally understood the different AUM and commission compensation structures. Yet, participants raised questions regarding "additional fees" and were bothered "since these fees were neither defined nor explained in terms of when they would be charged or in effect."

> *"Wow, what else am I paying for? I don't know …" St Louis 001*
> *"You may pay additional fees" does not tell me how much I'm expecting to pay." St Louis 002*

> *"In fees versus commissions, both would be better if "they were more detailed" so I could see what I pay." Denver 003 … "Fees are always tricky because …. "You never know what percentage wise that comes out to be." Denver 001*

St. Louis participants wanted fees to be listed within Form CRS and were unhappy not knowing what the actual fees would be.

- Key point: Investors appear to understand the word "commission"; they also want to know *what* fees they pay -- and not just the types of fees they pay.

How does our relationship work?

The **Investment Adviser Services** text is, "We have an ongoing advisory relationship of trust and confidence with you."
The **Broker-Dealer Services,** text is, "We have a sales-based transactional relationship with you."

Again, as in "basic services", ***Kleimann added*** the word "sales" to replace the word "brokerage." Also, the advisor relationship "of trust and confidence" is added.

Denver participants viewed the relationship with the adviser as important. They saw brokers as "requiring investors to have more knowledge and do more work, in part because they were skeptical of the sales motivation ... they were unsure of the motivation behind the recommendations. They said the fundamental "sales relationship" shaded their opinions throughout all aspects of their interactions."

> *"I'd feel kind of just like it was a sales pitch and I was on my own. I wouldn't feel like I had any help." Denver 002 … "There's more pressure when I see a commission because they would get a commission based on the size of the transaction." Denver 004*

Overall, across all three sites, participants saw advisers as providing various services and the relationship "as one of trust." While the broker relationship "was characterized as being based on a sales relationship. Many participants were less comfortable with that relationship, unsure if interactions would be grounded in the sales aspect …. Generally, participants had positive attitudes towards the Investment Adviser accounts and somewhat negative attitudes towards the Broker-Dealer accounts."

- Key point: Investors know the difference between advice and sales.

What is our legal obligation to you?

The **Investment Adviser Services text, "**By law, we must follow the highest legal standard of conduct, called a fiduciary standard."
The **Broker-Dealer Services text, "**By law, we must follow a best interest standard."

Kleimann added the definition of fiduciary as "the highest legal standard".

Participants "struggled with definitions" of both fiduciary and best interest. This difficulty reflects "subject matter experts involved in the project struggled to develop a clear description of standard that remains largely undefined in terms of its concrete obligations." Yet, participants also viewed "fiduciary" as advisers having more requirements and accountability. The report here concludes:

> *"Our subject matter experts struggled the most with developing this section, and our results show that more needs to be done. Across the three sites, participants responded positively and strongly to the use of the phrases "highest legal standard" and "fiduciary standard." Although they could not define either phrase, they surmised it required a high level of conduct for Investment Adviser accounts. Most understood that the standard would apply to all advice supplied about an Investment Adviser account...*
>
> *In contrast, participants had far more difficulty with the best interest standard. Few were able to offer a definition and nearly all perceived it as a lower standard than that of the Investment Adviser account. Most understood that the standard applied only when making sales recommendations.*
> *... there remained an undercurrent of distrust in nearly all of the statements about the Broker-Dealer accounts, especially when participants raised the underlying sales relationship.*

- Key point: Even SEC commissioners publicly noted "best interest" has no clear meaning; this cripples the rulemaking and makes meaningful disclosure all but impossible.

What is a financial conflict of interest? How do we handle conflicts?

The **Investment Adviser Services text is,** "Sometimes our interests conflict with yours. This means that advice that results in extra income is not the best for you."
The Broker-Dealer Services text is "Sometimes our interests conflict with yours. This means a sales recommendation that results in extra income for us is not best for you."

This is Kleimann language. Participants "grappled with the definition" of a conflict of interest though they generally sensed that conflicts were not "good for them." They also struggled with the idea of "consenting" to a conflict and "mitigating" a conflict. Here are some quotes.

> *"A financial conflict of interest would be telling me to do something (that) they personally or their company would be making money off of the deal that I might not be aware of." Denver 003 … "If its highly profitable for someone else but it's a high risk for me, I think." Denver 004 …"There are better options for me to buy, but these guys are going to do better with the stiffer ones." St Louis 003*

Further, Kleimann noted "Some participants legitimately wondered to what they were giving consent ... Other participants mistakenly assumed that having to give consent implied that they would be giving "real time"… Across sites, few participants knew what the word "mitigate" meant ….

- Key point. Explaining conflicts of interest is difficult when conflicts' different harms and frequency for IAs and BDs is not described or when broker-dealers do not disclose their sales relationship. This language muted any differences and did not succeed.

Discussion of Kleimann Report

The Kleimann Report offers evidence that plain language disclosure describing concrete ideas is understandable to investors. The findings are initial and modest, but they are clear.

Kleimann made important headway. Some clear differences between advisers and brokers were set out:

- *"Investment adviser and management … this is an advisory relationship* contrasts with *"Sales recommendations and trading … this is a "sales relationship*";
- *"Fees .. you pay ongoing fees for advice …"* contrasts with *"Commissions and other fees … you pay a commission or other fees for each transaction";*
- *"We have an ongoing advisory relationship of trust and confidence with you"* contrasts with *"We have a sales-based transactional relationship with you."*
- ***"**By law, we must follow the highest legal standard of conduct, called a fiduciary standard"* contrasts with ***"**By law, we must follow a best interest standard."*

While Kleimann makes progress, more work is needed on compensation, legal duties, and conflicts. The lesson is that plain language and concrete ideas work.

Lack of clarity. Kleimann highlights the difficulty of crafting meaningful and understandable disclosure when a "fundamental lack of clarity around key ideas" exists. "Best interest", "consent" and "mitigate" are noted as lacking definition or not being understood. The report states:

> *"We, our subject matter experts, and our participants struggled with understanding and expressing these ideas cogently and explicitly."*
> *The key point? "Clear writing is rooted in clear thinking. Without such efforts at a policy level, our results" will be modest.*

Plain language, concrete ideas. The report demonstrates the positive impact of using plain language to describe concrete ideas. This is evident on the topics of 'basic services' and the 'relationship'.

In the April 2018 SEC Form CRS disclosure describing the "types of relationships and services", brokers services were described as "brokerage accounts." "Transaction-based fee" described how brokers were paid. This language failed. In the Kleimann revised disclosure, language was changed. "This is an advisory relationship" for advisers. "This is a sales relationship" for brokers.

The word *sales.* In this revised disclosure, the terms "sales" describe brokers and "advisory" describes advisers. Increased participant understanding at all sites followed. The impact in Denver, with this "clear distinction … participants express a strong preference for advice … " For participants in Tulsa, it "Helped them understand a distinction they could not understand before."

Participants from all three sites saw advisers in relationships "of trust" while the 'broker as a "sales relationship." Many participants were reported "less comfortable" with that relationship and, generally, "Participants had positive attitudes towards the Investment Adviser accounts and somewhat negative attitudes towards the Broker-Dealer account.

The SEC and Conflicts

The challenge Kleimann faced with conflicts of interest reflects the SEC's effort to change the meaning of conflicts in recent years. That is to transform how conflicts are viewed, from being well-defined, inherently harmful and requiring avoidance to being vaguely defined, inevitable, and thus unavoidable and acceptable. Conventional views in history and law have been ditched. New views wrongly claim that firms whose purpose and primary duty is sales and trading, are much the same as firms whose purpose and only duty is advising clients as legal fiduciaries.

Conventional views of conflicts. Conventional views of conflicts in federal securities regulation are evident in 1940. Then, conflicts "separated" IAs from BDs in securities regulation, as noted by the "framers" of Investment Advisers Act of 1940. They stressed the difference between "legitimate advisory organizations" and conflicted sales organizations of "tipsters and touts." They noted the importance of fee-only advice and advisers not engaging in other businesses. The Supreme Court affirmed fiduciary duties of advisers in 1963.[16]

These conventional views were reflected in rulemaking and underscored how IAs and BDs differ. Securities attorney Michael Koffler writes, "Broker-dealers act for their own account or as agents of the issuer, principal underwriter, syndicate members or wholesaler… (and are) contractually obligated . . . to distribute the very securities that they provide advice and recommendations on to investors." IAs "exist solely to provide investment advice to their clients."[17]

As recently as 2012 a senior SEC regulator said that conflicts "Can be thought of as viruses that threaten the organization's well-being… if not eliminated or neutralized even the simplest virus is a mortal threat to the body."[18]

New views of conflicts. These views prevailed for decades. Yet, by the 1990s change was afoot as BDs were allowed to describe their sales and trading services as "trusted advice". SEC Chair Schapiro went so far as to note in 2009 that the "two industries are merging to the point of, in some cases, relative indistinguishability."[19]

SEC efforts to minimize conflicts took on new meaning in the 2010's. Conflict disclosure instead of conflict avoidance was central. In 2014 and 2015 three SEC cases are illustrative. In each an IA failed to disclose conflicts -- compensation received through a BD. In each case the breach was deemed a failure of disclosure and in two, not a breach of fiduciary duty.

In the case of Total Wealth Management, the firm and CEO "breached fiduciary duties to clients and investors through a fraudulent scheme to collect and conceal their receipt of undisclosed revenue sharing fees."[20] Advisers of the Robare Group failed to disclose compensation through agreements

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[16] Rostad, K. & Fogarty, D. (April 15, 2020) New SEC and CFP Board Standards Stating June 20th Abandon Longstanding Principles that Treat Sales and Advice Differently. *Institute for the Fiduciary Standard*, available at https://thefiduciaryinstitute.org/2020/04/15/sec-cfp-board-standards-abandon-advisers-act-principle-that-treats-sales-and-advice-differently/

[17] Ibid, at p. 3

[18] Ibid, at p. 4

[19] Ibid, at p. 3

[20] U.S. SEC (April 15, 2014), In the Matter of Total Wealth Management Inc., Securities Act of 1933 Release No. 9575. Available at https://www.sec.gov/litigation/admin/2014/33-9575.pdf

made with a registered broker-dealer and the conflicts arising from said agreement.[21] Similarly, the Shelton Financial Group failed to "disclose compensation received through an arrangement with a broker-dealer and conflicts arising from said compensation."[22]

Julie M. Riewe, Co-Chief, Asset Management Unit (AMU) SEC, Division of Enforcement, explained "To fulfill their obligations as fiduciaries, and to avoid enforcement action, advisers must identify, and then address those conflicts..... Only through complete and timely disclosure can advisers, as fiduciaries, discharge their obligation to put their clients' and investors' interests ahead of their own."[23] The message is clear. Avoiding conflicts is not required, much less even recommended. Disclosure is the remedy, to put the client's interests first, the ONLY remedy.

The SEC effort to transform the meaning of conflicts puts into context Form CRS and Reg BI disclosure language and themes. The Kleimann Report stated that participants "struggled with a definition" of conflicts even though they also sensed that conflicts were not in their best interest. The introductory definition provided, was identical for IAs and BDs. That is "Sometimes our interests conflict with yours" and this means that the resulting advice or recommendation "results in extra income for us" that is "not the best for you."

'Discussion and Conclusions

In 2008, RAND put "investor confusion" at the center of the retail investor regulation and disclosure agenda and blamed market "complexities". It's now conventional wisdom. Implicitly, today 'investor confusion means investors are at fault' for not knowing how IAs and BDs differ. Yet, the illogic of blaming investors for not knowing how different IAs and BDs are when the SEC offers disclosure stressing their similarities is hard to ignore.

Institute papers challenged this "wisdom". The Kleimann Report offered fresh research and contrarian idea that unclear SEC language and ideas are at fault. Reforming Form CRS and Reg BI disclosure can advance investor protection and financial literacy. Here are three ways.

First, reforming disclosure would provide investors a clearer understanding of IAs and BDs. This includes how their roles, obligations, compensation, and conflicts of interest compare and contrast. Key factors that have legal and practical implications for investors would be apparent. This starts with the roles and purposes of IAs and BDs, such as described here:

IAs are fiduciaries and in advisor relationships of trust and confidence with clients; their purpose is to provide investment advice as fiduciaries in the best interest of their clients. IAs are typically paid only by clients for their advice. BDs' purpose is to trade securities for themselves or others. They are paid to trade and sell investments. BDs are not paid to advise their customers. When hired by issuers such as mutual funds, BDs are paid only if they make a sale.

[21] U.S. SEC (September 2, 2014) In the Matter of The Robare Group Ltd., Securities Exchange Act of 1934 Release No. 72950. Available at https://www.sec.gov/litigation/admin/2014/34-72950.pdf
[22] U.S. SEC (January 13, 2015) In the Matter of Shelton Financial Group, Inc., Investment Adviser Act of 1940 Release No. 3993 Available at https://www.sec.gov/litigation/admin/2015/ia-3993.pdf
[23] U.S. SEC (July 12, 2019) Commission Interpretation Regarding Standard of Conduct for Investment Advisors, available at https://www.sec.gov/rules/interp/2019/ia-5248.pdf

These basic facts help clarify the roles and purposes of IAs and BDs.

Second, reforming disclosure would enhance investor understanding and reduce investor confusion by avoiding language that is unclear or is misleading. Here are two examples of such language:

Unclear language. Kleimann found some language in the proposed Form CRS which is not understood. Investors do not understand *best interest*, *conflicts of interest* and *mitigate*, language the SEC used. Investors do understand *sales, advice, commissions* and *highest legal standard* -- language not used.

Misleading language. SEC language in the final Form CRS of June 2019 is misleading. The Standard of Conduct language for both IAs and BDs is mandated. They are *identical*:
"*When we provide you with a recommendation,* we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you." (Note: This text is for a BD; an IA must say, "When we act as your investment adviser….")

Finally, reforming disclosure can address the ambiguous or dubious regulatory language that confuses investors and experts alike. Examples abound; here are three.

First, the "best interest" label is placed on BD conduct even though the term has no accepted meaning. Not just among investors, but also among "experts." Even SEC Commissioners could not agree on what it means. Further, the term "best interest" is closely associated with legal definitions of fiduciary conduct, while the SEC states that the new broker standard is not a fiduciary standard.

Second, conflicts are defined broadly and vaguely. In the proposed Form CRS headline conflicts mean *"We benefit from the services we provide you"*. This appears to include the mere act of doing business, which would mean conflicts of interest are the same as "business interest." Further, in the final Form CRS language, as noted above, the Conduct of Standard for IAs and BDs is identical.

Third, redefining conflicts as an irritant or normal as opposed to a deadly virus has consequences. Conflicts can be defended. In the Reg BI Final Rule the SEC implicitly rejects the view that conflicts are inherently harmful and should be avoided if at all possible. New views minimize conflicts' harm. Eliminating conflicts is limited to sales contests and similar programs. Here the final release explains, "We were concerned (in the proposing release) that the absolute elimination of specified particular conflicts could mean a broker-dealer may not receive compensation for its services."

This statement appears to plainly put the interests of broker-dealers first. The candor is extraordinary while the rationale is inexplicable. The reasoning and its conclusions should be clearly rejected and replaced. The need to eliminate conflicts should be explained in plain language describing concrete ideas. The SEC can do better improving investor understanding of broker-dealer and investment adviser differences. It can build back plain language disclosure better.