

Fiduciary Reference

Analysis of Issues in Financial Advice

September 22, 2021

The Case to Fix Form CRS Disclosure

Testing reveals CRS forms of Large BDs obscure or omit key facts on core roles / purposes of broker-dealers; large fee-only RIAs downplay fiduciary status, 5 of 12 omit mentioning their highest legal standard

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Introduction

The rulemaking package of June 5, 2019 has two “overarching objectives” according to then SEC Chair Jay Clayton. First, to bring the conduct standards and the “related mandated disclosures in line with reasonable investor expectations”. Second, to “preserve retail investor access” – regarding choice and cost – to investment services and products.

Behind these objectives is the often-stated urgency that drives much thinking on retail investors. The urgency is investor “confusion”. It is an influencer in the rulemaking that is hard to overstate. Chair Clayton cited investor confusion in two of three reasons for the “Need for action” for rulemaking. The Form CRS Release states CRS exists “to reduce retail investor confusion in the market-place for brokerage and investment advisory services”¹ and research continues to show that investors are confused by “the differences” between broker-dealers and investment advisers (p 5). Clayton said CRS provides “succinct information about the relationships and services”. “Material information” must be disclosed.²

This backdrop sets out what the rulemaking and Form CRS seek to do. Form CRS seeks to bridge the gap between professional reps and ordinary investors -- through plain language words that inform and matter. The Institute reviewed 29 BD / IA and 12 RIA CRS forms. This paper reports our findings. The Plain Language Group report reviewing six CRS forms for readability and best practices is attached.

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¹ [Form CRS Relationship Summary; Amendments to Form ADV \(sec.gov\)](#). See statement of Chair Clayton, June 5, 2019.

² Ibid at 41.

Disclosure and the SEC

The discussion of disclosure has been constant over the SEC's 87-year history. Former SEC Commissioner Troy Paredes wrote in 2003, as a law professor at Washington University, that "Perhaps the most hotly-contested debate in the history of securities regulation has been over the need for mandatory disclosure."³ Paredes argues that the sheer quantity of required disclosure raises questions as to its utility to serve its purpose. That is to address the "asymmetries" between companies and investors. This requires, according to Paredes two conditions. First, the center of most attention, that information be disclosed. The second condition that receives far less attention according to Paredes, that the consumer can understand and use it "effectively."

Disclosure skepticism. This second point focuses more on the quality of disclosure. This is a long-standing concern. In 1934 William O. Douglas, future SEC Chairman and Supreme Court Justice, questioned if the new registration disclosure would help most investors. Douglas was committed to investor protection and he noted the registrations would likely bar some fraudsters from participating in the markets. The registrations would also help experts evaluate companies. Yet, he was also skeptical that the inherent complexities in company registrations would help most investors evaluate securities. He concluded that the investors most "needing investment guidance" were effectively left to fend for themselves.⁴

The SEC has acknowledged better disclosure is necessary. The 1996 Task Force on Disclosure Simplification⁵ made many recommendations and resulted in the 1998 publication, A Plain English Handbook.⁶ Form ADV Part 2 was many years in the making. The SEC adopted Part 2 of Form ADV in 2011. The "brochure" is intended to provide advisory clients with "clearly written, meaningful, current disclosure of the business practices, conflicts of interest and background of SEC-registered investment advisers and their advisory personnel." Part 2 requires advisers make a narrative in plain English.⁷

Disclosure and broker-dealers and investment advisers

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: investors are mainly at fault. This view is now conventional wisdom.

³ Paredes, Troy. (January 2003), Blinded by the Light: Information Overload and Its Consequences for Securities Regulation., *Washington University Law Review*, available at

https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1287&context=law_lawreview

⁴ Douglas, William. (March 1934), Protecting the Investor., *Yale Review*

⁵ U.S. SEC (March 5, 1996), Report on the Task Force on Disclosure Simplification., Available at

<https://www.sec.gov/news/studies/smpl.htm>

⁶ U.S. SEC (August 1998), A Plain English Handbook: How to create clear SEC disclosure documents., Available at

<https://www.sec.gov/pdf/handbook.pdf>

⁷ U.S. SEC, FORM ADV Part 2: Uniform Requirements for the Investment Adviser *Brochure* and *Brochure Supplements*., Available at <https://www.sec.gov/about/forms/formadv-part2.pdf>

The 2019 SEC heralded rulemaking. Reg BI seeks a “best interest” standard: CRS seeks to inform investors what the functions, roles and purposes of broker-dealers and investments advisers mean. They are basic. Broker-dealer trading, product distribution and sales fundamentally differ from investment adviser fiduciary advice. Yet, the SEC appears to have difficulty describing these differences – or even agreeing on what constitutes a difference.

SEC commissioners, industry participants and investor advocates expressed starkly different views of Reg BI. SEC commissioners disagreed on what the new broker-dealer standard means and should be called. The rule was proposed and branded “best interest”. Commissioner Stein said Reg BI “maintains the status quo”. Commissioner Peirce said it’s “suitability plus”. There is no consensus understanding.

Disclosure and “materiality” of the facts of BDs and IAs

These perspectives are set against the key question of what information should be -- or must be -- disclosed in CRS. A *material* fact must be disclosed. Here, SEC commissioners and established precedent appear to agree.

The SEC position is clear and consistent with the high court. “The (CRS) disclosure obligation requires the disclosure of all material facts related to the scope and terms of the relationship.⁸ at 132 ... “The (SEC) standard for materiality is consistent with the Supreme Court articulation in *Basic v. Levinson*.”⁹ This means according to the release, “A fact is material if there is a ‘substantial likelihood that a reasonable shareholder would consider it important.’ In the context of Regulation Best Interest, the standard is for the retail customer, as defined by the rule.”

What facts are *material* to retail customers about broker-dealers (BDs) and investment advisers (IAs)? Chair Clayton said in announcing the rulemaking, key attributes of BDs and IAs are different and material. BDs and IAs work with customers in “significantly different ways” in their relationships, services and fee models. Different obligations “should reflect these different characteristics.” (Page 3)

This is important because key characteristics are omitted in CRS forms. To the SEC, important facts of law and function that define roles and purposes are not deemed “material” and do not require disclosure. Instead, general attributes describing IAs and BDs similarly are said to “reduce investor confusion”¹⁰ This is backwards. The Institute argues this idea of materiality actually increases confusion.¹¹

⁸ U.S. SEC, Form CRS Relationship Summary; Amendments to Form ADV., Release Nos. 34-86032. Available at <https://www.sec.gov/rules/final/2019/34-86032.pdf>

⁹ U.S. Supreme Court, (March 7, 1988) *Basic, Inc. v. Levinson*., No. 86-279. Available at <https://supreme.justia.com/cases/federal/us/485/224/>

¹⁰ *Ibid* at Form CRS

¹¹ Rostad, K. Bosley, D. Fogarty, D. (June 22, 2021) “Investor Confusion” over how advisers differ from brokers stymies regulatory disclosure, experts say., *Institute for the Fiduciary Standard*. Available at <https://thefiduciaryinstitute.org/2021/06/22/investor-confusion-bad-language/>

BDs and IAs are portrayed as similar; differences in law and functions are overlooked

CRS focuses on attributes of apparent similarities of IA and BD services and investing. SEC required language on standards of conduct and conflicts are identical for IAs and BDs. *“When we make a recommendation as your broker-dealer (or) act as your investment adviser, we must act in your best interest and not put our interest ahead of yours. Meanwhile, the way we make money creates some conflicts with your interests.”*

This language has significant consequences. It not only puts BD and IA standards on the same plane; it puts the interests of BDs and their customers on the same plane. This is the logic of not putting “our interest ahead of yours”. It means “our interest” may be treated the same as yours. (For this reason, this paper refers to Reg BI as the BD standard.)

CRS either minimizes and obscures or ignores key differences in law and functions that differentiate IAs and BDs. Portraying IAs and BDs as similar is hardly new. Describing BDs as “trusted” advisors is 50 years in the making. In 2012 law professor Arthur Laby chronicles the development of broker-dealer advertisements using “language suggestive of advice” from the 1970s and 1980s. Laby says the advertising worked, as RAND research shows that investors “believe their brokers are acting in their best interest.”¹²

The importance of this decades-long advertising effort is evident. In 2009 SEC Chair Mary Schapiro called for IAs and BDs to be regulated alike because they shared an “apparent commonality of services and functions” The operable word is *apparent* as the Chair notes the different standards are indistinguishable “from the retail investors perspective”¹³

IAs and BDs In their Roles and Purposes

The functions and laws delineating IAs and BDs are seen in their roles and purposes. They are summarized here and are starkly different. Note that these attributes may appear at odds with what is in many CRS forms because they are not required to be clearly stated in CRS forms. They can be either minimized and obscured in a flood of words (usually averaging 500-600 per page) or omitted altogether.

In Reg BI or Form CRS, for example, neither the form itself nor the staff have stated or indicated that broker-dealers, in the context of primary offerings, are required to disclose important information about their roles and purposes. Important information plainly and clearly stated in this context includes:

¹² Laby, A. p.766 (2012) Selling Advice and Creating Expectations: Why Brokers Should be Fiduciaries., *Washington Law Review*.

¹³ Schapiro, M. (June 18, 2009) Speech by SEC Chairman: Address before the New York Financial Writers’ Association Annual Awards Dinner., U.S. SEC. Available at <https://www.sec.gov/news/speech/2009/spch061809mls-2.htm>

That the BD acts as an agent for the issuer as well as the retail customer; the BD's primary role is to offer and sell the issuers securities; the BD's compensation is set and paid by the issuer, not the customer; the BD is only compensated if sales are made; the BD's sales activity is dictated by the issuer (or an agent of the issuer) in a selling agreement.

The BD owes a duty of care and loyalty to the issuer, whose interests are contrary and not the same as the interests of the retail customer. In law, the BD recommendation is solely incidental to the brokerage services and the BD is not paid for recommendations or advice.

The result of these legal parameters and basic functions is the sharp picture of the contrasting roles and purposes of broker-dealers and investment advisers. These roles and purposes are summarized:

Broker-dealers

- The role and purpose of a broker-dealer (BD) is to trade securities for its own account or for the account of others, or to sell securities. In securities primary offerings when hired by issuers such as mutual funds or other third parties, broker-dealers primary role is to distribute and sell securities as an agent for third parties and an agent of their customer.
- BD recommendations or advice to customers is limited by law to be *solely incidental* to brokerage services. This means advice cannot be a primary service of a BD. BDs cannot be paid for recommendations or advice to customers. In securities offerings, BDs sell securities – and are only paid if securities sales are made. These are relationships of three.

Investment advisers

- The role and purpose of an investment adviser (IA) is to provide fiduciary advice to clients. IAs, as fiduciaries, have an advisor relationship with clients. They act as agents and in the best interest of their clients and put clients interests first. IAs are generally paid only by client fees for advice.
- By law, IAs are held to a fiduciary standard and obliged to avoid conflicts of interest. The standard is intended to separate advice from sales and distribution and to minimize conflicts. These are relationships of two.

In sum: 1) BDs trade securities for customers. 2) They sell securities to their customers representing 3rd parties. 3) In primary securities offerings for issuers BDs are only paid by issuers if a sale is made. 4) In law, BDs cannot be paid by customers for their advice and their advice is “solely incidental” to their brokerage services. 5) BDs owe their issuers a duty of loyalty and care. In contrast, 6) IAs act as agents for and are paid by their clients 7) to render fiduciary advice.

Advisers are not brokers – and brokers are not advisers. This is why comparing legal and functional roles and purposes of BDs to IAs is essential to explaining how they compare.

Review of 29 Large BD / Wirehouse Dual-Registered Firms

We reviewed the CRS forms of dually registered broker-dealer and investment advisers of 24 large BD firms and five wire-house firms.¹⁴ (Attachment A.) We also conducted a word count for each CRS form (Attachment B.)

Form CRS for broker-dealer services. We reviewed these forms for clarity in describing roles, purposes, and compensation. General findings include:

- All firms state, as required, that they are compensated for executing trades and selling securities. Only Goldman Sachs and Wells Fargo state their “primary” service is executing trades.
- No firms state they are not compensated for recommendations. None state that their recommendations, in law, must be solely incidental to their brokerage services.
- No firms state that they act as an agent for issuers and owe a duty of loyalty and care to issuers. Only ten of the 29 firms use the word “issuer”; 19 do not.

Form CRS for investment adviser services. We reviewed the investment adviser forms for how their Status as a fiduciary is addressed. General findings include:

- Seventeen of the 29 firms do not reference fiduciary status in their investment adviser CRS. Eleven firms reference their fiduciary status and only one firm, Equitable Advisors, references fiduciary and also seeks to describe what this means.
- Seven of the eleven firms reference fiduciary with the required language all BDs and IAs must use. Four do not. This is important because the required language, “not place their own interest ahead of their clients” is language that demotes the status and importance of fiduciary. Not placing the firm interest ahead of the client’s interests explicitly allows treating the interests of the broker-dealer and the customer the same, on an equal footing. This is a lower standard. Fiduciary has long meant an adviser must “put the client’s interests first.”¹⁵
- The CRS for Equitable Advisors suggests that the fiduciary standard is better or higher than the broker-dealer standard. *“When we serve as your investment advisor, we owe you a fiduciary duty, which likewise requires us to act in your best interest but in a manner that is generally broader in duration and scope than the broker-dealer standard.”*

¹⁴ Investment News, Broker-Dealer Rankings. Available at https://data.investmentnews.com/broker-dealer-data/rankings?U=assets&XS=18195_0 Also, many of these BDs are also registered as CPO or CTAs, insurance brokers

¹⁵ Drafting Committee, (June 25, 2019) Statement of Concerned Securities Law Professors Regarding Investment Advisers and Fiduciary Obligations., *CLS Blue Sky Blog*. Available at <https://clsbluesky.law.columbia.edu/2019/06/25/statement-of-concerned-securities-law-professors-regarding-investment-advisers-and-fiduciary-obligations/>

Form CRS for IAs and BD at the same firm. In the section titled how financial reps “Make money” firm efforts to make IAs and BDs appear similar – if not indistinguishable – are clear. Here are three.

- Ameriprise

IAs “Your financial advisor receives a percentage of any advisor fees you pay,” while BDs “Your financial advisor receives a percentage of the brokerage commissions you pay.” For both IAs and BDs: “The percentage of payments described above varies based on the amount of the commissions your financial advisor generates annually, number of clients and assets under management. Some financial advisors also receive 6a salary from us.”

- Commonwealth

Commonwealth’s financial reps “Are compensated based on a variety of factors such as the amount of client assets they service; the time and complexity required to meet you needs; and the products, programs, or services offered or sold to you.”

- Royal Alliance

Financial reps are “compensated ... based on factors such as: the amount of client assets they service, the time and expertise required to meet a client’s needs; the product sold; ... or the revenue we earn from” advisory services or recommendations.” Also, “Commission-based” reps ... are compensated solely through commission.... (while) “fee-based” reps “charge an asset-based or fat fee directly to their clients for their services ... (Reps) that offer both brokerage and advisory services can be compensated as commission-based or fee-based depending on the type of product or service offered.”

Review of Twelve Large Fee-only RIA Firm CRS Forms

We also reviewed twelve large (\$5 to 30 billion AUM) RIA fee-only firms. (16) The firms are from Investment News data base. (See attachment A.) Form CRS of large RIA fee-only firms. We reviewed the forms for how fiduciary status is addressed.

- Five of the twelve firms make no mention of their fiduciary status in their CRS.
- Three firms mention their fiduciary status and use the language noted above that describes fiduciary with the language that describes the BD standard. This language permits treating the BD and customer interests the same.
- Four firms reference fiduciary without associating it to the BD standard. Just two of these four firms explicitly describe fiduciary as a better standard for investors.

Summary Findings

The background on disclosure, BD and IA confusion, and “material” information sets the stage for the mission of Form CRS. 29 dually registered and 12 fee-only IA CRS forms are reviewed. We note:

- CRS forms were meant to reduce confusion and show IA and BD differences; however, the evidence suggests **they do not.**

The SEC has sought to improve disclosure over decades. Disclosure and IA and BD confusion is central in the 2008 RAND Report and subsequent SEC and third-party research. Addressing “confusion” is highlighted by the SEC Chair as he introduced CRS. The evidence suggests CRS forms do not reduce confusion.

- CRS forms were meant to disclose “material” information about BDs and IAs; however, the omission of much basic information suggests **they do not.**

Instead, CRS forms focus on disclosure of products and services and fee schedules that are common in marketing materials.

- CRS forms **do not include** key material information about BD s and IAs.

Trading securities for customers and selling securities for issuers are not disclosed as core BD businesses that define their role and purpose and define their compensation.
BD duties of loyalty and care to issuers are not disclosed.
BD compensation arrangements that depend on issuers and that prohibit customer comp for recommendations are not disclosed.
IA fiduciary duties to and fees from clients are not disclosed.
That BDs and IAs are not required to disclose actual fees for individual customers is not disclosed.
That BDs primary role to distribute securities for themselves or third parties directly conflicts with IAs role to advise clients as fiduciaries is not disclosed.

- CRS forms **do include** general attributes that appear to show that BDs and IAs are either much the same or that their differences are merely differences of degree.

The required language on the standard of conduct, legal obligations and conflicts explains BDs and IAs identically. The CRS focus on services and products, fee schedules, and “conversation starters” create an aura of similarity between BDs and IAs and make CRS appear to prioritize disclosing *marketing* information more than *material* information.

Language describing how reps “Make money” at Ameriprise, Commonwealth and Royal Alliance show how different purposes and compensation methods are co-mingled so that differences are not readily seen.

- **CRS forms of IAs minimize or omit their fiduciary status.**

Among the 29 dually-registered BD / IA firms' IA CRS forms, only the Equitable Advisors CRS mentions a fiduciary duty and suggests the fiduciary is better than the BD standard.

Among the twelve fee-only IA CRS forms, only two firms explicitly disclose their fiduciary status and suggest it is better for investors than the BD standard.

- **The CRS forms suggest that confusion around differences between BDs and IAs is from unclear or misleading messages, information and advertising – and not from investor shortcomings. The paradigm of “information confusion and omission” is more accurate than the paradigm of “investor confusion”.**

Since at least 2008, investors have been implicitly faulted for being confused about BD and IA differences. Why investors struggle to understand their core differences in functions and law and roles and purposes should be no mystery. Industry marketing and regulatory disclosures have communicated either that there are no differences or that the differences are minimal.

Professor Arthur Laby has relayed how BD advertising from the 1970s and 1980s has portrayed BDs as ‘trusted advisers’. He notes it should be no surprise that investors believe BDs provide “best interest” advice.

Conclusion

Broker-dealers and investment advisers serve distinct and important roles in the capital markets. As Chair Clayton points out in his June 5, 2019 announcement, “They do so in significantly different ways ...” Law and function define their separate roles and purposes and these different ways.

Industry marketing over decades has described very general similarities between BDs and IAs as their defining attributes. CRS reinforces these very general similarities. Industry marketing has helped engender uncertainty from investors how BDs and IAs differ and RAND research reflects this uncertainty. Marketing can change perceptions, but marketing does not change legal requirements or business functions that define roles and purposes.

Form CRS falls short meeting its own stated objectives. CRS minimizes and obscures, or omits altogether, material information about their roles and purposes instead of highlighting it. This is why Form CRS needs to be fixed.

Appendices Table of Contents

Appendix A: List of 29 BDs, 12 fee-only RIA, and Wirehouse firms:	11
Table 1: Broker-Dealer Firms	11
Table 2: Fee-only Firms	12
Table 3: Wirehouse Firms	12
Appendix B: Word Counts of CRS Forms for Independent BDs, Wirehouse Firms, and Fee-only Advisor Firms	13
Table 1: Independent Broker-Dealer Firms' Form CRS Word Count	13
Table 2: Wirehouse Firms' Form CRS Word Count	14
Table 3: Fee-Only Advising Firms' Form CRS Word Count	14

Appendix A: List of 24 BDs, 12 fee-only RIA, and 5 Wirehouse firms:

Name	AUM (in millions)
LPL Financial LLC	\$764,410
Raymond James Financial Services Inc.	\$344,442
MML Investor Services, LLC	\$207,350
Commonwealth Equity Services, LLC	\$200,660
Northwestern Mutual Investment Services	\$189,705
Equitable Advisors, LLC	\$152,897
Royal Alliance Associates Inc.	\$123,580
Cambridge Investment Research Inc.	\$114,065
Securities America Inc.	\$103,000
Kestra Financial, Inc	\$88,088
Avantax Investment Services, Inc.	\$70,135
Principal Securities, Inc.	\$67,869
Woodbury Financial Services	\$67,245
Waddell & Reed Financial Advisors	\$60,095
Voya Financial Advisors Inc.	\$58,323
SagePoint Financial Inc.	\$52,190
M Holdings Securities Inc.	\$48,800
Lincoln Investment Planning, LLC ¹⁷	\$38,874
FSC Securities Corp.	\$36,206
Park Avenue Securities LLC	\$33,593
Triad Advisors, LLC	\$32,538
American Portfolios Financial Services Inc.	\$30,845
Independent Financial Group, LLC	\$30,108
Ameritas Investment Company, LLC	\$24,300

**Table 1:
Broker-
Dealer
Firms¹⁶**

¹⁶ *Broker-dealer data center*. InvestmentNews. (n.d.). Available at <https://data.investmentnews.com/broker-dealer-data/rankings?U=assets>.

¹⁷ Securian Financial Services Inc. which is the #18 BD firm according to Investment News was left out of consideration due to inability to count words in their Form CRS.

Table 2: Fee-only Firms¹⁸

Moneta Group Investment Advisors, LLC	\$27,418
Mercer Global Advisors Inc	\$15,849
Financial Counselors Inc	\$12,404
EP Wealth Advisors, LLC	\$11,225
Homrich & Berg Inc	\$8,929
Lido Advisors, LLC	\$7,692
Churchill Management Group	\$6,567
Adviser Investments LLC	\$6,541
Valeo Financial Advisors, LLC	\$6,392
Orgel Wealth Management, LLC	\$5,619
The Mather Group, LLC	\$5,614
Plancorp, LLC	\$5,068

Table 3: Wirehouse Firms¹⁹

J.P. Morgan Securities LLC	\$2,833,000
Goldman Sachs & Co. LLC	\$2,204,000
Merrill Lynch, Pierce, Fenner, & Smith Inc.	\$1,100,000
Ameriprise Financial ²⁰	\$893,000
Wells Fargo	\$603,000

¹⁸ RIA data center. InvestmentNews. (n.d.) Available at <https://data.investmentnews.com/ria/>

¹⁹ *World's Top Asset Management Firms*. ADV Ratings. (n.d.) Available at <https://www.advratings.com/top-asset-management-firms>

²⁰ *Ameriprise financial Celebrates 125 years of putting clients first*. Ameriprise Financial Investor Relations | Ameriprise Financial Celebrates 125 Years of Putting Clients First. (n.d.). Available at <https://ir.ameriprise.com/news-events/news-releases/press-release/2019/Ameriprise-Financial-Celebrates-125-Years-of-Putting-Clients-First/default.aspx>

Appendix B: Word Counts of CRS Forms for Independent BDs, Wirehouse Firms, and Fee-only Advisor Firms

*The word counts for these documents were acquired by converting the PDFs of these CRS Forms into word documents, tallying the word count.

Table 1: Independent Broker-Dealer Firms' Form CRS Word Count

Name	Word Count	# of Pages
LPL Financial LLC	2,814	4
Raymond James Financial Services Inc.	2,127	4
MML Investor Services, LLC	2,423	4
Commonwealth Equity Services, LLC	2,264	4
Northwestern Mutual Investment Services	N/A*	4
Equitable Advisors, LLC	3,945	4
Royal Alliance Associates, LLC	2,936	4
Cambridge Investment Research Inc.	2,255	4
Securities America Inc.	2,925	4
Kestra Financial, Inc.	2,428	4
Avantax Investment Services, Inc.	2,773	4
Principal Securities, Inc.	2,781	5
Woodbury Financial Services	2,926	4
Waddell & Reed Financial Advisors	2,235	4
Voya Financial Advisors Inc.	2,437	4
SagePoint Financial Inc.	2,923	4
M Holdings Securities Inc.	2,813	4
Lincoln Investment Planning, LLC	2,525	4
FSC Securities Corp.	2,922	4
Park Avenue Securities LLC	2,202	4
Triad Advisors, LLC	2,930	4
American Portfolios Financial Services Inc.	1,960	4
Independent Financial Group, LLC	1,955	4
Ameritas Investment Company, LLC	4,194	4

Table 2: Wirehouse Firms' Form CRS Word Count

Name	Word Count	# of Pages
J.P. Morgan Securities LLC	2,192	4
Goldman Sachs & Co. LLC	2,694	4
Merrill Lynch, Pierce, Fenner, & Smith Inc.	3,081	4
Ameriprise Financial	1,868	4
Wells-Fargo	N/A* ²¹	4

Table 3: Fee-Only Advising Firms' Form CRS Word Count

Name	Word Count	# of Pages
Moneta Group Investment Advisors	1,143	2
Mercer Global Advisors	1,474	3
Financial Counselors Inc	1,058	2
EP Wealth Advisors	N/A*	3
Homrich & Berg Inc	1,251	3
Lido Advisors	1,345	2
Churchill Management Group	1,069	2
Advisors Investments	1,318	2
Valeo Financial Advisors	1,087	2
Orgel Wealth Management	1,130	2
The Mather Group	1,245	3
Plancorp	1,118	2

(*) - Secured document, unable to access word count



Readability Test and Plain Language Expert Analysis of Six Randomly Selected CRS Forms

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The following report includes the results of an analysis of six randomly selected CRS forms from those the Institute for the Fiduciary Standard analyzed. The analysis sections are in 1) the results of readability tests using Visible Thread (AI software) and 2) a comparison of all six forms using additional plain language best practices. The six CRS forms we tested and analyzed are the following:

1. Ameriprise
2. Commonwealth
3. Equitable Advisors
4. RA
5. Sage Point Financial
6. Wells Fargo

What Readability Tests Show: Readability tests count verbal elements to indicate the ease of understanding content. Many elements contribute to making a text difficult to understand. Among these elements are the use of the passive voice, long sentences, and multi-syllabic words. Passive voice is problematic because it often hides agency: who does what to whom/what. Long sentences burden our short-term memory and often include multiple phrases, redundancy, and too much information. Multi-syllabic words are often derived from Latin and have shorter, easier equivalents (“utilize” vs. “use”). These factors determine the readability scores.

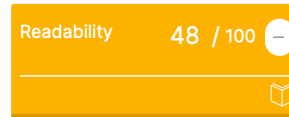
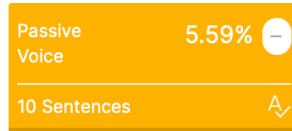
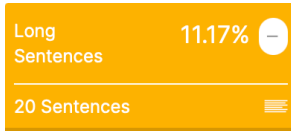
1. Results of AI Software Readability Tests

- **Passive Voice:** The passive voice is wordier, harder to understand, and adds unnecessary complexity. Aim for 4% or lower.
- **Long Sentences:** For easy reading and to not overload member, sentences should contain 15-20 words maximum. Aim for 5% or lower for the number of longer sentences.
- **Readability:** The Flesch Reading Ease Test scores from 1-100 with the higher scores indicating easier reading. The standard best practices is a score of 60-70. A score of 100 is comparable to reading a comic book; any score below 40 could be comparable to an academic article.

To better understand how these scores compare among the six CRS forms, I color coded the results indicating how well or how poorly each CRS form meets plain language best practices. Consider if these colors were translated into grades:

- **green** = meets best practices well A
- **yellow** = moderately meets best practice C
- **red** = does not meet best practices F

1. Ameriprise



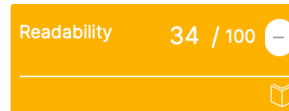
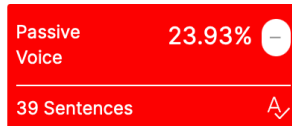
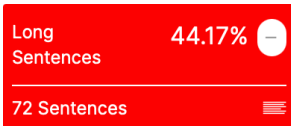
2. Commonwealth



3. Equitable Advisors



4. Royal Alliance



5. Sage Point Financial



6. Wells Fargo



These results show that of the six tested forms only one moderately met all these tests (long sentences, passive voice, and readability). The rest failed. These results, however, are only a beginning point of how to determine if people can understand a text.

2. Comparison with Best Practices

Besides sentence length, passive voice, and readability algorithms, we always analyze additional elements to determine how difficult or easy a text is to understand. Using the *SEC Plain English Handbook* (1998) and additional best practices since it was first published, I analyzed the CRS Forms for common problems. Using the same color coding, the table below includes both the readability scores and the additional best practice elements of avoiding jargon, using pronouns, having a helpful tone, and including an appropriate visual format.

The percentages in the table below indicate what percent of the text includes long sentences (more than 20 words) and the frequency of passive voice.

Company	Readability Score	Long Sentences	Passive Voice	No Jargon	Pronouns	Helpful Tone	Visual Format
1. Ameriprise	48	11.7%	5.59%				
2. Commonwealth	35	28.77%	13.01%				
3. Equitable Advisors	40	17.09%	8.54%				
4. RA	34	44.17%	23.93%				
5. Sage Point Financial	34	42.68%	23.78%				
6. Wells Fargo	34	42.68%	23.78%				

2. Usability Tests

We did not conduct usability testing on these forms. However, the best way to determine if investors understand CRS forms is to test them with investors. Having one-on-one interviews with 10-12 people in which we ask close-ended questions like “Where does the form tell you about fees?” or open-ended questions like “Explain in your own words the differences or similarities between an investment advisor and a broker-dealer” gives us “the voice of the customer” and helps locate confusion. Counting elements in a form, or even an expert analysis may not be enough to gather information on what the investor can or cannot understand. Companies that perform usability tests on their CRS forms would be able to better understand how to write them for true readability.

3. Conclusions

The results of the table on page 3 shows that all six forms need improvement if we are to create a form that people can understand. Only Ameriprise scored reasonably well in all categories. All six used pronouns, but that is insufficient if the form is loaded with jargon, for example. None had a visual format that lent itself to easier understanding. To summarize, these randomly selected forms contain these problems:

- Too much information crammed on each page.
- Far too many long sentences and long paragraphs.
- Too much passive voice.
- Small typeface typeface (one is only 8 pt) – makes it difficult for older readers and regulations generally require 10 pt., which also is too small for easy reading.
- Lacks visual appeal that leads to people to not want to read the CRS.
- Loaded with financial jargon (“discretionary investment authorization,” “investment authority”) without explanations.

These issues, and likely others, mean that the forms the Institute and The Plain Language Group tested and analyzed would fail to meet plain language best practices and be confusing to the average investor.