Frequently Asked Questions on Form CRS

The staff of the Division of Investment Management and the Division of Trading and Markets have prepared the following responses to questions about Form CRS and expect to update from time to time our responses to additional questions. These responses represent the views of the staff of the Division of Investment Management and the Division of Trading and Markets. They are not a rule, regulation, or statement of the Securities and Exchange Commission ("Commission"). The Commission has neither approved nor disapproved this content. These responses, like all staff guidance, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person. Current Form CRS can be found here: https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf. Frequently Asked Questions on Regulation Best Interest are available at https://www.sec.gov/tm/faq-regulation-best-interest.

Topics

Scope of Form CRS Requirements

Q: I am a registered broker-dealer, and I have determined that I have no retail investors to whom I must deliver a relationship summary. Am I required to prepare and file one?

A: No. If your firm does not have any retail investors to whom it must deliver a relationship summary, you are not required to prepare or file a relationship summary. (Posted June 26, 2020)

Retail Investor

Q: For purposes of the definition of retail investor, who would be considered a legal representative?

A: The Commission interpreted the term "legal representative" to only cover non-professional (i.e., non-regulated) legal representatives. Examples of non-professional legal representatives are non-professional trustees that represent the assets of natural persons and similar representatives such as executors, conservators, and persons holding a power of attorney for a natural person. A non-professional legal representative is covered pursuant to this rule even if another person is a trustee or managing agent of the trust. A workplace retirement plan representative (e.g., plan sponsor, trustee, other fiduciary) generally is not considered a non-professional legal representative of a natural person except in limited circumstances (e.g., where the plan representative is a sole proprietor or other self-employed individual who will participate in the plan).

If a legal representative is a regulated financial services industry professional, he or she would not be covered by the definition of "retail investor." Examples of regulated financial services industry professionals include registered investment advisers and broker-dealers, corporate fiduciaries (e.g., banks, trust companies and similar financial institutions) and insurance companies, and the employees or other regulated representatives of such advisers, broker-dealers, corporate fiduciaries and insurance companies. In the staff's view, a legal representative who was formerly a regulated financial services industry professional, but who is not currently regulated, would be considered a "non-professional" legal representative that would be covered by the definition of "retail investor." (Posted February 11, 2020)

Relationship Summary Format

Q: My firm offers three types of services to our retail investors. Can my firm prepare and deliver three different relationship summaries, one for each type of service that it offers?

A: No. Each broker-dealer or investment adviser must only prepare one relationship summary summarizing all of the principal relationships and services it offers to retail investors. For example, if an investment adviser offers a wrap fee program, advice to participants in a 401(k) plan, and discretionary asset management for high net worth clients, the investment adviser would be required to prepare a single relationship summary describing all of the firm's different services. Similarly, if a broker-dealer offers a range of brokerage services to retail investors, including, for example, self-directed, full-service, and employer-sponsored retirement plan options, the broker-dealer would be required to prepare a single relationship summary describing all of the firm's different services. To the extent a dually registered firm prepares a single relationship summary addressing both brokerage and investment advisory services (rather than two separate relationship summaries), the firm must summarize all of the principal brokerage and investment advisory relationships and services the firm offers to retail investors. (Posted November 26, 2019)

Q: How do I create machine readable headings to comply with General Instruction 7.A.(i) to Form CRS?

A: You should consult with the specifications and instructions provided by the software provider of the application that you are using to create the PDF of your relationship summary in order to determine

how to make the headings machine readable. If, for example, you are using Microsoft Word and Adobe, you would complete the following steps:

1. Enter the text that will become the machine readable heading (e.g. “”What investment services and advice can you provide me?” per Item 2.A of the Instructions to Form CRS). Highlight this text and on the **Home** tab, **Styles** pane, select a Heading Type (e.g. Heading 1). This highlighted text is now captured as a heading in Microsoft Word. Repeat this process for each additional heading that is required, as applicable, in the Instructions to Form CRS.
2. Enter your disclosure responses to the relevant instruction under each heading, as applicable, that was created in Step 1 above.
3. Save the Microsoft Word file as a PDF file by clicking File/Save as Adobe PDF. Once saved as a PDF, view the Headings by clicking/expanding the left Bookmarks icon. Each heading created in the initial Microsoft Word document (Step 1 above) will be displayed as a Bookmark in the PDF. These PDF Bookmarks comply with the machine readable heading format required by the Instructions to Form CRS.

(Posted November 26, 2019)

Q: Many of the items in Form CRS require firms to use specific wording (reflected with quotation marks in the Instructions). In particular, specific wording is required for headings, conversation starters, the disclosure statement regarding fees and costs, the disclosure statement regarding standard of conduct, and the yes/no disclosure regarding disciplinary history. To what extent can I modify the specific wording required in Form CRS?

A: In limited circumstances, you may omit or modify a required disclosure or conversation starter where: (i) it is inapplicable to your business; or (ii) the specific wording required by the Instructions is inaccurate. Generally, however, you must respond to each item, must provide responses in the same order as the items appear in the Instructions, and you may not include disclosures in the relationship summary other than disclosures that are required or permitted by the Instructions and the applicable item. You should keep in mind that the relationship summary is designed to serve as disclosure, rather than marketing material. Moreover, all information in your relationship summary must be true and may not omit any material facts necessary in order to make the required disclosures not misleading in light of the circumstances under which they were made. (Posted June 26, 2020)

Filing Requirements

Q: When will the Investment Adviser Registration Depository (“IARD”) and the Central Registration Depository (“Web CRD®”) systems begin accepting filings of the relationship summary?

A: Firms may now begin filing through IARD and Web CRD®. Please see the questions below for further guidance regarding the filing process. (Posted April 6, 2020)

Q: Where must I file my firm’s relationship summary?

A: ***If you are an investment adviser and are required to deliver a relationship summary to a retail investor***, you must file Form ADV, Part 3 electronically through IARD. Your relationship summary will be publicly disseminated through the Investment Adviser Public Database (“IAPD”).

If you are a broker-dealer and are required to deliver a relationship summary to a retail investor, you must file Form CRS electronically through Web CRD®, operated by the Financial Industry Regulatory Authority, Inc. ("FINRA"). Your relationship summary will be publicly disseminated through BrokerCheck.

If you are a dual registrant as defined under General Instruction 11 to Form CRS, you must file your broker-dealer relationship summary and your investment adviser relationship summary (whether prepared as a combined relationship summary or separate summaries) as Form ADV, Part 3 (Relationship Summary) through IARD, as described in more detail below.

For filing purposes, a dual registrant will prepare one PDF file containing both its broker-dealer relationship summary and its investment adviser relationship summary (whether prepared as a combined relationship summary or separate summaries) and any applicable exhibit for purposes of filing. A dual registrant attempting to file its relationship summary through Web CRD® will automatically be routed to IARD to file Form ADV, Part 3 (Relationship Summary). A firm registered with the Commission as both a broker-dealer and an investment adviser but whose investment adviser has no clients that are retail investors (i.e., not a dual registrant under General Instruction 11 to Form CRS) will not be automatically routed to IARD from Web CRD®, and will continue filing as a broker-dealer through Web CRD® (*see* "If you are a broker-dealer…" above).

This streamlined filing method for dual registrants is designed to facilitate consistent reporting of relationship summaries. Filing in this manner through IARD will satisfy your obligation to file through Web CRD® and IARD, and your relationship summary (if combined) or summaries (if separate) will appear in both Web CRD® and IARD, and will be publicly disseminated through both BrokerCheck and IAPD.

Information for investment advisers on how to file through IARD is available on the Commission's website at www.sec.gov/iard. Information for broker-dealers on how to file through Web CRD® is available on FINRA's website at https://www.finra.org/registration-exams-ce/web-crd/web-crd-system-links. Please also see FINRA's quick reference guides for filing of Form CRS through Web CRD® here and through IARD here.

For a simplified overview of the filing process, please also see our Relationship Summary Filing Workflow on IARD & Web CRD®. (Posted April 6, 2020)

Q: I have prepared a combined relationship summary with my affiliate. Can I file the combined relationship summary on behalf of my firm and my affiliate?

A: No. Affiliated firms must each file the combined relationship summary. When you log in to Web CRD® or IARD, as appropriate, to file your relationship summary, you will be prompted to check a box to indicate whether your relationship summary includes "affiliate information." However, that check-box does not satisfy the filing obligation for your affiliate. Your affiliate must separately log in to Web CRD® or IARD, using its own login credentials issued for that firm, and also file the combined relationship summary to meet its own filing obligations. (Posted April 6, 2020)

Delivery Requirements

Q: Can a firm deliver its relationship summary in advance of the compliance date for Form CRS?

A: Yes. In the staff's view, a firm may deliver its relationship summary to new or existing retail investors before the compliance date. If a firm chooses to deliver a relationship summary to retail investors in advance of the compliance date, the firm generally should: (i) post the relationship summary on the firm's public website as described in General Instruction 10 to Form CRS; (ii) comply with the updating and related delivery requirements of General Instructions 8 and 9 to Form CRS; and (iii) file its relationship summary with the SEC.

The staff reminds firms that all information in their relationship summaries must be true and may not omit any material facts necessary in order to make the disclosures, in light of the circumstances under which they were made, not misleading. Accordingly, to the extent dually registered or affiliated firms choose to deliver and/or file a relationship summary describing both advisory and brokerage business, all disclosures, including those concerning standard of conduct, must be true as of the time they are made. (Posted April 6, 2020)

Q: Can a firm satisfy its relationship summary delivery requirement with respect to its existing retail investor clients or customers by including the relationship summary with the mailing of its June 2020 quarterly account statements (e.g., within one week after June 30, 2020).

A: Yes. In the staff's view, a firm may deliver the relationship summary separately, in a bulk delivery to clients, or as part of the delivery of information that the firm already provides, such as the annual Form ADV update, account statements or other periodic reports. A firm must initially deliver its relationship summary to each of its existing clients and customers who are retail investors within 30 days after the date by which it is first required to electronically file its relationship summary with the SEC. If the relationship summary is delivered in paper format as part of a package of documents, a firm must ensure that the relationship summary is the first among any documents that are delivered at that time. If the relationship summary is delivered electronically, it must be presented prominently in the electronic medium, for example, as a direct link or in the body of an email or message, and must be easily accessible for retail investors. (Posted November 26, 2019)

Q: My firm is an investment adviser to pooled investment vehicles, such as a hedge funds, private equity funds and venture capital funds. The investors in these funds include natural persons who may be "retail investors" as defined in Form CRS. Am I required to deliver a relationship summary to these funds?

A: An investment adviser must initially deliver a relationship summary to each retail investor before or at the time the adviser enters into an investment advisory contract with the retail investor. "Retail investor" is defined as "a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes." In the staff's view, the types of pooled investment vehicles described above would not meet this definition and a relationship summary would not be required to be delivered. (Posted November 26, 2019)

Q: I am an associated person of a broker-dealer. Do I need to deliver Form CRS to a retail investor if I meet and talk with her in an informal setting (e.g., on the golf course, at social gatherings or while running errands), sometimes referred to as "hire me" communications?

A: You must deliver the Relationship Summary to each retail investor before or at the earliest of: (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor.

For purposes of Form CRS, in the staff's view, "recommendation" would be interpreted consistently with how the Commission interprets that term in Regulation Best Interest. See the responses to recommendation questions in the Frequently Asked Questions on Regulation Best Interest for further information and guidance.

If you engage in a communication that rises to the level of a "recommendation" to a retail investor, whether in the context of a "hire me" conversation or otherwise, the recommendation will trigger the delivery obligation under Form CRS. (Posted January 10, 2020)

Q: My firm (Firm A) provides investment advisory services to an unaffiliated investment adviser (Firm B). Firm B provides investment advisory services to retail investors. I do not provide services to, and I do not have an investment advisory contract with, Firm B's retail investor clients. Am I required to deliver a relationship summary to Firm B's retail investor clients?

A: An investment adviser is required to deliver a relationship summary before or at the time the adviser enters into an investment advisory contract with a retail investor, even if the agreement with the retail investor is oral. In this scenario, absent other facts or circumstances that would indicate that Firm A provides investment advisory services to Firm B's retail investor clients, it is the staff's view that Firm A would not be required to deliver a relationship summary to Firm B's retail investor clients. (Posted February 11, 2020)

Q: Firm A is an investment adviser that is not affiliated with Firm B, a broker-dealer. Some financial professionals are dually licensed as investment adviser representatives with Firm A and as registered representatives with Firm B. Would both Firm A and Firm B be required to deliver their relationship summary to retail investors seeking or obtaining services from these dually-licensed financial professionals?

A: Unaffiliated firms are treated as standalone broker-dealers and standalone investment advisers, each with an independent responsibility to create and deliver its own relationship summary. If a dually-licensed financial professional offers services to retail investors through both firms, to the extent a delivery obligation is triggered, retail investors generally should receive both firms' relationship summaries. However, each firm should evaluate the nature of its relationships with retail investors to determine its distinct delivery obligations. (Posted June 26, 2020)

Additional Delivery Requirements to Existing Clients and Customers

Q: An existing retail investor has an account with my firm in her name and received a relationship summary when she opened the account. She wants to add her spouse to the account by amending the existing account agreement, but the type of account, including its services, fees, and conflicts of interest will not change. There would not be any recommendation to the retail investor or her spouse to roll over any of the spouse's retirement assets into the account. Must the firm deliver a relationship summary to the existing retail investor or new joint account holder?

A: The staff would not object if a firm that amends an existing account agreement solely to add another account holder or beneficiary does not deliver a relationship summary. (Posted February 11, 2020)

Q: If a retail investor client of a dually registered firm elects to convert an investment advisory account to a brokerage account, must the firm deliver a new relationship summary to the retail

investor? The firm already provided the retail investor with a relationship summary describing both its brokerage and advisory services when the retail investor opened the account.

A: Yes, the firm would have to deliver a new relationship summary. Opening a new account that is different from the retail investor's existing account triggers delivery of the relationship summary — even if the converted account does not have a different name or account number. (Modified June 26, 2020)

Under General Instruction 9.A.(iii) to Form CRS, a firm must deliver to an existing client or customer who is a retail investor the current Form CRS before or at the time it "[r]ecommend[s] or provide[s] a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account, for example, the first-time purchase of a direct-sold mutual fund or insurance product that is a security through a "check and application" process, *i.e.*, not held directly within an account."

Q: To what "new brokerage service[s] or investment advisory service[s]" does this delivery requirement apply?

A: In the staff's view, this delivery requirement for an existing customer or client applies to a new type of brokerage or investment advisory service that relates to a customer's or client's investment options or capabilities, without regard to whether the services are offered in an existing account. For instance, new types of services that might trigger delivery under General Instruction 9.A.(iii) include the initial recommendation or provision of margin capability, options eligibility, account monitoring, or discretionary trading. In contrast, the staff would not consider the recommendation or provision of account features such as automatic bill pay, check writing privileges, or technological features, such as offering a chat feature or mobile application, to be "new brokerage or investment advisory service[s]" under General Instruction 9.A.(iii), as they do not relate to the customer's or client's investment options or capabilities. (Posted June 26, 2020)

Q: In addition to direct-sold mutual funds and variable annuities, to what new investments does the delivery requirement under General Instruction 9.A.(iii) to Form CRS apply?

A: In the staff's view, the first-time recommendation to invest in a private placement, structured product or other investment would trigger the delivery obligation if such investment is to be held outside an existing account. (Posted June 26, 2020)

Q: If a firm delivers its relationship summary to an existing client or customer that is a retail investor, and shortly thereafter, the delivery requirement is triggered again under General Instruction 9.A, would the firm be required to deliver another relationship summary to the existing client or customer?

A: If a firm has delivered a relationship summary to a retail investor, and within 30 days, delivery is triggered again under General Instruction 9.A., the staff would not object if the firm does not deliver another relationship summary to that retail investor. Nevertheless, a firm must adhere to all relationship summary updating requirements as outlined in General Instruction 8, and must deliver a relationship summary within 30 days upon request. *See* General Instruction 9.B. Moreover, firms should be mindful of other potential disclosure obligations. (Posted June 26, 2020)

State-Registered Investment Adviser Switching to SEC Registration

Q: Our firm is a state-registered investment adviser that will be transitioning to SEC registration after June 30, 2020. We understand that we will be required to include our relationship summary as part of our application for registration with the SEC. When will we be required to deliver our relationship summary to our existing retail investor clients?

A: The relationship summary delivery requirements in the Form CRS Instructions and under Advisers Act rule 204-5 apply only to investment advisers that are registered with the Commission and therefore do not apply until the Commission grants registration. General Instruction 7.C.iv. of Form CRS requires an investment adviser to deliver its relationship summary to existing clients within 30 days after the date it is first required to electronically file its relationship summary with the SEC. Because the relationship summary delivery requirement is tied to when an adviser must file its relationship summary with the SEC, the staff understands that there may be limited circumstances in which a non-SEC registered investment adviser (such as a state-registered investment adviser) with retail investor clients may be applying for SEC registration (and thus required to file its relationship summary with its application), and therefore may believe it is obligated to deliver its relationship summary to its existing retail investor clients within 30 days of its application while such application is pending approval. In these circumstances, the relationship summary delivery obligations would not apply when the adviser is not yet registered with the Commission and the staff would not object if the investment adviser delivered its relationship summary to existing retail investor clients within 30 days after the effective date of the order granting its SEC registration. (Posted February 11, 2020)

Affiliate Services

Q: Could an investment adviser and any affiliate that is also an investment adviser prepare, file, and deliver a single relationship summary to retail investors that discusses the services provided by the adviser and its adviser affiliate(s)? Is the answer the same if a broker-dealer wants to prepare, file, and deliver a single relationship summary that discusses the services provided by the broker-dealer and its broker-dealer affiliate?

A: Yes. Under General Instruction 5 to Form CRS if you are an investment adviser or broker-dealer and your affiliate also provides investment advisory or brokerage services to retail investors, you may prepare a single relationship summary discussing the services you and your affiliate provide. This instruction is not limited to investment advisers with a broker-dealer affiliate or broker-dealers with an investment adviser affiliate. Accordingly, an investment adviser may prepare a joint Form CRS with an investment adviser affiliate and a broker-dealer may prepare a joint Form CRS with a broker-dealer affiliate. (Posted February 11, 2020)

Q: If I have more than one affiliate, can I include all of these affiliates in a single combined relationship summary?

A: Yes. In the staff's view, firms may include multiple affiliates in a single combined relationship summary. A combined relationship summary covering multiple affiliates must still comply with the four-page limit without compromising the relationship summary's accuracy, clarity, usability, and design. Firms that include multiple affiliates in a single combined CRS should be mindful of the potential that additional information from multiple affiliates could obscure or impede understanding of the information that must be included in the relationship summary. Firms should also be mindful of the requirement to

present brokerage and investment advisory information with equal prominence and in a manner that clearly distinguishes and facilitates comparison of the two types of services.

Alternatively, firms that have multiple affiliates may prefer to prepare separate relationship summaries for their services and their affiliates' services. (Posted February 11, 2020)

Qualified Custodians

Q: Does a registered broker-dealer serving as a "qualified custodian" pursuant to Rule 206(4)-2 under the Advisers Act have to deliver its own relationship summary to retail investor clients of registered investment advisers who opens a brokerage account with the registered broker-dealer as part of receiving services from the investment adviser?

A: The staff would not object if a registered broker-dealer providing services solely as a "qualified custodian" pursuant to Rule 206(4)-2 under the Advisers Act for a retail investor client of a registered investment adviser does not prepare, file or deliver its own relationship summary when acting solely in such capacity. In the staff's view, qualified custodians serving solely in that capacity do not typically establish the kind of relationship with retail investors that the relationship summary was designed to address. (Posted February 11, 2020)

Qualified Custodians, Clearing or Carrying Broker-Dealers - Introduced Accounts of Registered Investment Advisers' Clients

Q: Does a registered broker-dealer that introduces retail investor clients of a registered investment adviser to a "qualified custodian" as defined in Rule 206(4)-2 under the Advisers Act or to a clearing or carrying broker-dealer, have to deliver the broker-dealer's own relationship summary to such retail investors who open a brokerage account with the registered broker-dealer as part of receiving services from the investment adviser?

A: If a registered broker-dealer provides services to retail investor clients of a registered investment adviser solely by: (i) opening brokerage accounts for such retail investors; (ii) introducing those retail investors to such qualified custodian, or clearing or carrying broker-dealer; and (iii) as instructed by the investment adviser, transmitting orders to buy and sell securities for those retail investor clients to such qualified custodian, or clearing or carrying broker-dealer, the staff would not object if such broker-dealer does not prepare, file or deliver its own relationship summary, when acting solely in such capacity.

To the extent such a broker-dealer interacts with retail investors in a different capacity, the obligations of Form CRS may apply. For example, the requirements of Form CRS would apply where a broker-dealer makes a recommendation of an account type, securities transaction or investment strategy involving securities, the retail investor places an order directly with the broker-dealer, or the retail investor opens a separate brokerage account with the broker-dealer. (Posted June 26, 2020)

Principal Underwriters — Orphaned, Abandoned Accounts

Q: The Commission stated in the Form CRS adopting release that it would not consider a broker-dealer serving solely as principal underwriter to a mutual fund or variable annuity or variable life insurance contract issuer to be offering services to a retail investor for purposes of Exchange Act Rule 17a-14, when acting in such capacity. If such a retail investor's mutual fund or variable annuity or variable life insurance contract becomes "orphaned" or "abandoned,"

and, as a result, (a) is transferred to the principal underwriter and/or (b) the principal underwriter becomes the default "broker of record" on the books of the mutual fund issuer or insurance company with respect to such "orphaned" or "abandoned" securities, can the principal underwriter continue to rely on the Commission's treatment of principal underwriters? In other words, would it be considered to be offering services to such retail investors?

A: The staff would not consider a principal underwriter to whom a retail investor's "orphaned" or "abandoned" securities are transferred, and/or who becomes the default "broker of record" on the books of the mutual fund issuer or insurance company with respect to such "orphaned" or "abandoned" securities to be offering services to such retail investor for purposes of Exchange Act Rule 17a-14 when acting solely in such capacity. To the extent such a broker-dealer interacts with such a retail investor in a different capacity, the obligations of Form CRS may apply. (Posted June 26, 2020)

Presentation and Delivery for Affiliates

Firm A is an investment adviser affiliated with Firm B, a broker-dealer. Both firms offer services to retail investors but they are not dual registrants. Some financial professionals are dually licensed, meaning that they are licensed both as investment adviser representatives with Firm A and as registered representatives with Firm B. Other financial professionals are only licensed as investment adviser representatives with Firm A or only as registered representatives with Firm B.

Q: Can Firm A and Firm B prepare a single relationship summary?

A: Yes, General Instruction 5 to Form CRS permits Firm A and Firm B to prepare a relationship summary discussing the brokerage and investment advisory services the two affiliates provide. Depending on the relationship among the affiliates and their financial professionals, a single relationship summary may be an appropriate way to reflect their services and business model, and may be helpful to retail investors. For example, if the firms do not operate independently, their services are marketed together, and they have financial professionals who hold licenses through both firms, Firm A and Firm B can choose to prepare a single relationship summary not to exceed four pages.

If Firm A and Firm B prepare a single relationship summary, the firms would be required to deliver the combined relationship summary, whether or not all of their financial professionals are dually licensed with Firm A and Firm B. Firms should be mindful of other potential disclosure obligations. For example, broker-dealers should be mindful of their capacity disclosure obligation under Regulation Best Interest. See also the Frequently Asked Question on Regulation Best Interest concerning the capacity disclosure obligation. (Posted February 11, 2020)

Q: Alternatively, can Firm A prepare a relationship summary describing its advisory services and Firm B prepare a separate relationship summary describing its brokerage services?

A: Yes, affiliated firms are permitted, but not required, to prepare a single combined relationship summary. Alternatively, affiliated firms can choose to prepare separate relationship summaries. But, affiliated firms cannot do both; each broker-dealer or investment adviser can only prepare one relationship summary summarizing all of the principal relationships and services it offers to retail investors (either a single combined relationship summary or separate relationship summaries). (Posted February 11, 2020)

Delivery — Cover Sheet, Wrap Fee Program Sponsors' Relationship Summaries

Q: My firm is a registered investment adviser that sponsors a wrap fee program (the "sponsor"). Our firm contracts with other SEC-registered investment advisers ("participating advisers") to manage strategies or portfolios in the wrap fee program (e.g., fixed income, international, large cap equity, small cap equity). The participating advisers have contracted with us to deliver certain disclosure documents (including their relationship summary), on their behalf, to clients in the wrap fee program. May a sponsor provide a cover sheet to clients to explain why the sponsor is providing the participating advisers' relationship summaries in addition to the sponsor's own relationship summary?

A: Yes. In circumstances where the sponsor is delivering participating advisers' relationship summaries to clients of the wrap fee program that are clients of the participating adviser(s), the staff would not object if the sponsor includes a brief cover sheet that explains why the retail investor is receiving multiple relationship summaries of the sponsor and the participating advisers in the wrap fee program. If delivering in paper format, the sponsor may provide the cover sheet on top of the relationship summaries, which must be the first among any other documents in a package that are delivered at that time consistent with Instruction 10.D. to Form CRS. In the case of email or other electronic delivery, the cover sheet may be delivered in the same electronic medium so long as the relationship summary is still presented in a prominent manner that is consistent with Instruction 10.C. to Form CRS. The cover sheet may not be presented in such a way as to obscure or impede the understanding of the information that must be included in the relationship summary. Furthermore, while the cover sheet does not count toward the page limitation of the sponsor's or any participating adviser's relationship summary, it must not be used to circumvent any page limitation or to satisfy any of the requirements of the relationship summary. (Posted June 26, 2020)

Amendments to the Relationship Summary

Q: Our firm offers advisory accounts that are managed by a subadviser. If the subadviser changes, but there are no changes to the advisory contract between the retail investor client and our firm, or to any of our firm's services, investments, or conflicts of interest as a result of the subadviser change, do we need to amend our relationship summary?

A: Pursuant to General Instruction 8.A. to Form CRS firms must update their relationship summary within 30 days whenever any information in the relationship summary becomes materially inaccurate. Certain subadviser changes may result in the relationship summary of the investment adviser becoming materially inaccurate. However, in circumstances where an adviser replaces a subadviser, and there are no changes to the advisory agreement, services, investments, or conflicts of interest that would make the information in the adviser's relationship summary materially inaccurate, the staff would not object if the firm does not amend its relationship summary. (Posted February 11, 2020)

Disciplinary History

Q: My firm reports disciplinary history related to its parent company in response to Item 11 on my firm's Form ADV and Items 11A-K on my firm's Form BD. Does my firm need to reply "yes" to Item 4 in Form CRS asking "Do you or your financial professionals have legal or disciplinary history?" since the reported event involved the parent company and not the firm?

A: In this scenario, the firm is required to answer "yes" to the disciplinary history question in the relationship summary. Form CRS Item 4 alerts investors that the firm currently discloses or is required to disclose legal or disciplinary history in response to specified items of Form ADV and Form BD. Those items of Form ADV and Form BD both require that firms disclose certain events involving affiliates of the firms. Form ADV requires reporting disciplinary history for the firm and all of its "advisory affiliates", which include persons directly or indirectly controlling or controlled by the firm. Form BD requires reporting legal and disciplinary history of "the applicant" or a "control affiliate", which includes any individual or organization that directly or indirectly controls, or is under common control with the applicant. Both definitions require reporting for a parent company. (Posted February 11, 2020)

Q: Item 4.C requires our firm to state 'No' in Item 4 because neither the firm, nor any of its financial professionals, currently discloses or is required to disclose, any of the information listed in Item 4.B. Because our firm is not required to state 'Yes' in Item 4, may we simply omit the heading and any response?

A: No. The Instructions to Item 4 require inclusion of the heading "Do you or your financial professionals have legal or disciplinary history?" and a "Yes" or "No" response. The Commission made clear in the Form CRS adopting release that the legal and disciplinary history of a firm and its financial professionals is important information for retail investors to have when entering into a financial relationship. The absence or presence of legal or disciplinary history (as described by the Instructions) is applicable to all firms. It would therefore not be permissible for a firm to omit the heading. Similarly, it would not be permissible for a firm to omit a "Yes" or "No" response. General Instruction 2.B, which permits the omission or modification of any disclosure or conversation starter that is inapplicable to a firm's business, does not permit omissions of, or modifications to, the heading or response to Item 4. Please see the questions below for further guidance regarding permissible responses to Item 4 and above for disciplinary history related to a parent company. (Posted October 8, 2020)

Our firm does not currently disclose and is not required to disclose any of the information listed in Item 4.B in Form CRS. One of the firm's financial professionals does currently disclose, or is required to disclose, information listed in Item 4.B.

Q: For purposes of replying to Item 4 of our firm's relationship summary, may we modify the heading to address only the firm's history and then reply "No"?

A: No. The Instructions to Item 4 require inclusion of the heading "Do you or your financial professionals have legal or disciplinary history?" and a "Yes" or "No" response. This heading applies to both a firm (which includes relevant affiliates – see the question above for disciplinary history related to a parent company) and a firm's financial professionals, and may not be modified. (Posted October 8, 2020)

Q: Alternatively, may we provide two responses: a "No" with respect to the firm and a "Yes" with respect to the firm's financial professionals.

A: Yes. The staff would not object if a relationship summary includes a separate "yes" or "no" response for the firm (including relevant affiliates) and the firm's financial professionals. Accordingly, based on the facts above, the staff would not object if the firm included the following concise response "No for our firm. Yes for our financial professionals." or "Firm – no." "Financial professionals – yes." Similarly, in circumstances where the firm (or relevant affiliates) has disciplinary history but none of the financial professionals does, the staff would not object if a relationship summary includes the following concise

response: “Yes for our firm. No for our financial professionals.” or “Firm – yes.” “Financial professionals – no.”

In the staff’s view, it would not be appropriate to add descriptive or other qualitative or quantitative language. Adding such language might intentionally or unintentionally obfuscate or otherwise minimize the disciplinary history. Accordingly, based on your facts, in the staff’s view, it would not be appropriate to respond, for example, “No for our firm. Yes for only one of our 50 financial professionals.”

The Commission required a “yes” or “no” disclosure because of the potential benefit to the retail investor of seeing at a glance whether a firm or its financial professionals have disciplinary history, which may encourage the investor to conduct further research or monitor the relationship or financial professional more closely. (Posted October 8, 2020)

Q: If we answer “Yes” in Item 4, may we include additional information in our relationship summary to explain the disciplinary history?

A: No. Item 4 requires a “Yes” or “No” response, along with the required reference to Investor.gov/CRS (Item 4.D.(i)) and the required conversation starter (Item 4.D.(ii)). Item 4 – and the conversation starter in particular - is designed to encourage a discussion regarding the nature, scope, or severity of any disciplinary history, including any differences between the firm’s disciplinary history and the financial professional’s disciplinary history, if applicable. Form CRS does not preclude firms or their financial professionals from providing separately copies of additional regulatory disclosures (e.g., Form ADV Part 2B brochure supplements or a print-out of the IAPD or BrokerCheck “Disclosures” section for the particular firm or financial professional). (Posted October 8, 2020)

Plain English; Fair Disclosure

Relationship Summary in Non-English Language

Q: My firm regularly communicates with retail investors in a language other than English. Our clients’ primary language is Spanish. May our firm deliver a relationship summary to those clients in Spanish?

A: The staff would not object to the delivery of a complete translation of the relationship summary in a foreign language so long as the firm also delivers a separate English relationship summary at the same time. In the staff’s view, the translated version: (i) should be a complete, fair, and accurate translation of the English relationship summary; (ii) should not make any of the terms used in the relationship summary misleading; and (iii) would not count towards the applicable page limit. Lastly, a firm should not translate the term “U.S. Securities and Exchange Commission.” This view applies to the relationship summary disclosure alone. (Posted February 11, 2020)

Recordkeeping and Recordmaking

Q: **I am a broker-dealer. Does my firm have to maintain books and records of each date on which I provided my relationship summary to a prospective retail investor, even if the prospective retail investor never becomes my customer?**

A: Yes. Rule 17a-3(a)(24) requires broker-dealers to make a record of the date that each Form CRS was provided to each retail investor, including any Form CRS provided before such retail investor opens an account. There is no exception from the recordmaking requirements of Rule 17a-3(a)(24) for

delivering a relationship summary to prospective customers who do not ultimately open accounts or become customers.

Under Rule 17a-4(e)(10), firms must maintain all records made pursuant to Rule 17a-3(a)(24), as well as a copy of each Form CRS, until at least six years after such record or Form CRS is created. Like Rule 17a-3(a)(24), the recordkeeping requirements of Rule 17a-4(e)(10) do not exclude retention of records for retail investors who do not ultimately open accounts.

Investment advisers have separate recordmaking and recordkeeping obligations with respect to prospective clients. Pursuant to Rule 204-2(a)(14)(i) under the Advisers Act, advisers are required to make and keep a record of the dates that each Form CRS, and each amendment or revision thereto, was given to any client or any prospective client who subsequently becomes a client. (Posted June 26, 2020)

Modified: Oct. 8, 2020