

Public Statement

Joint Statement Regarding New FAQs for Form CRS [1]



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Form CRS is a brief relationship summary designed to help retail investors make informed choices regarding what type of relationship — brokerage, investment advisory or a combination of both — best suits his or her particular needs and circumstances.[2] Both broker-dealers and investment advisers (each, a “firm”) must provide to retail investors a relationship summary containing plain English disclosures on the same topics under standardized headings and in a prescribed order. The relationship summary promotes transparency, comparability and better-informed decision making, through clear, concise disclosures, and by summarizing in one place selected information about a particular firm. This format allows retail investors to more easily compare different firms’ services, fees, and other important information.[3]

One section of the relationship summary allows retail investors—for the first time—to view at a glance whether or not a firm or its financial professionals have a reportable disciplinary history. This provides important information to retail investors before they enter into a relationship by alerting them when there is disciplinary history they may want to research, review, or discuss with their particular firm or financial professional. Additionally, as we describe below, separate from and in addition to the

mandatory relationship summary, firms or their financial professionals may provide the relevant disciplinary history directly to retail investors.

Under the Instructions for Form CRS, a firm must include in its relationship summary the heading: “Do you or your financial professionals have legal or disciplinary history?” and answer “yes” or “no” depending upon whether the firm or any of its financial professionals has a triggering event.^[4] A firm also must direct the retail investor to visit [Investor.gov/CRS](https://www.investor.gov/crs) for a free and simple search tool to research the firm and its financial professionals. Additionally, a firm must include a conversation starter that will allow a retail investor to assess his or her financial professional’s disciplinary history and engage in further discussion about those events or any events applicable to the firm.

Importantly, a firm must report disciplinary history in its relationship summary if that history already must be reported on other forms.^[5] Firms do not have discretion to leave the answer blank or to omit reportable disciplinary history from the relationship summary. Firms should review their reportable disciplinary history and that of their financial professionals to ensure that their relationship summaries are accurate, complete and consistent with those other forms. When responding to the disciplinary history heading in their relationship summaries, firms may not add descriptive or other qualitative or quantitative language. Adding such language might, intentionally or unintentionally, obfuscate or otherwise minimize the disciplinary history. However, as we describe below, firms or their financial professionals may provide the relevant disciplinary history directly to retail investors.

In connection with its review of Form CRS filings, the staff Standards of Conduct Implementation Committee (the “Committee”) has observed examples of relationship summaries where firms did not provide a response in the disciplinary history section. The staff also observed examples where firms’ responses in the disciplinary history section appear to lack required information or otherwise could be improved.^[6] Today, the staff of the Division of Investment Management and the Division of Trading and Markets (the “Staff”) have published “frequently asked questions” (“FAQs”) about the disclosure requirements of Form CRS with respect to a firm’s disciplinary and legal history.^[7] These FAQs are intended to address issues that the Committee’s review has identified or questions that firms have posed to the Staff.

For example, the FAQs state that a firm’s relationship summary may not omit the disciplinary history section in its entirety or omit the disciplinary history with respect to either a firm or its financial professionals, even when there is no such reportable disciplinary history. The FAQs explain that the required heading, which applies to both a firm (including relevant affiliates) and a firm’s financial professionals, requires a “yes” or “no” response. In order to facilitate retail investors’ ability to efficiently process the information provided and to help focus their follow-up questions or research, the FAQs also state that a firm may include separate “yes” or “no” responses for the firm (including relevant affiliates) and its financial professionals. Additionally, the FAQs state that Form CRS does not preclude firms or their financial professionals from providing separately copies of additional regulatory disclosures directly to a retail investor. These separate disclosures may include, for example, disclosures from BrokerCheck or the Investment Adviser Public Disclosure website for specific financial professionals who service or are expected to service the retail investor.

We remain committed to providing feedback and assistance so that firms can produce relationship summaries that meet the Commission’s goals of reducing retail investor confusion in the marketplace for brokerage and investment advisory services and otherwise enhancing the quality and transparency of retail investors’ relationships with their financial professionals. The FAQs are just one way in which Commission staff have engaged, and continue to engage, extensively with firms, retail investors, and

other market participants, as well as FINRA and other regulatory partners, regarding the implementation of Form CRS.^[8] In addition, the Committee will host a roundtable on October 26 to share additional thoughts following the Committee's review of firms' initial relationship summaries,^[9] and we expect the Staff will continue to update FAQs regarding Form CRS's requirements as appropriate. In addition, questions regarding Form CRS may be directed to IABDQuestions@sec.gov.

[1] This statement represents the views of Chairman Clayton and Directors Blass and Redfearn. It is not a rule, regulation, or statement of the Securities and Exchange Commission ("Commission"). The Commission has neither approved nor disapproved its content. This statement has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

[2] See Form CRS Relationship Summary; Amendments to Form ADV, Exchange Act Release No. 86032, Advisers Act Release No. 5247 (June 5, 2019) ("Form CRS Adopting Release"), available [here](#).

[3] See Exchange Act Rule 17a-14; Advisers Act Rule 204-5.

[4] The Instructions to Form CRS are available [here](#).

[5] Specifically, a firm must indicate whether it or its financial professionals currently disclose, or are required to disclose, the following information: (i) disciplinary information in Form ADV (Item 11 of Part 1A or Item 9 of Part 2A); (ii) legal or disciplinary history in Form BD (Items 11 A-K) (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312); or (iii) disclosures for any financial professionals in Items 14 A-M on Form U4, or in Items 7A or C-F of Form U5, or on Form U6 (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312).

[6] See Staff Standards of Conduct Implementation Committee, "Statement by the Staff Standards of Conduct Implementation Committee Regarding New Form CRS Disclosures" (Jul. 27, 2020), available [here](#). The inter-Divisional Standards of Conduct Implementation Committee was established when Form CRS was adopted, and includes representatives from the Division of Investment Management, Division of Trading and Markets, Division of Economic and Risk Analysis, and Office of Compliance Inspections and Examinations. See SEC Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Financial Professionals (Jun. 5, 2019), available [here](#).

[7] See Frequently Asked Questions on Form CRS, available [here](#).

[8] Among these resources are a Spotlight Page for relevant materials, including releases, comment letters, speeches, press releases and transcripts, available [here](#), and a Small Entity Compliance Guide, available [here](#). See also SEC Chairman Jay Clayton, "Confirmation of June 30 Compliance Date for Regulation Best Interest and Form CRS" (Jun. 15, 2020), available [here](#). Firms can also review the Office of Compliance Inspections and Examinations risk alert published in April, which shared the planned scope and content of its initial examinations, assessing whether firms have made a good faith effort to implement Form CRS. See Office of Compliance Inspections and Examinations, "Risk Alert – Examinations that Focus on Compliance with Form CRS" (Apr. 7, 2020), available [here](#).

[9] See SEC Staff to Host October 26 Roundtable on Regulation Best Interest and Form CRS (Sept. 28, 2020), available [here](#).