

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>.

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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)

Delivery Requirements

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)

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. (Posted February 11, 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)

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)

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)

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)