



# Regulatory Alert

## Regulatory Insights



January 2022

### Form CRS Disclosures: SEC Staff Statement

*SEC's heightened focus on investor protections and "fair and balanced" disclosures (see KPMG Regulatory Alert [here](#)) clearly extends to compliance with Form CRS (i.e., client or customer relationship summary), which is intended to provide retail investors with greater transparency and comparability amongst individual investment advisors and broker-dealers through "balanced and objective descriptions" of firms' services, fees, conflicts of interest, disciplinary history, and other information. These firms must anticipate greater scrutiny regarding their Form CRS disclosures by both regulators and investors as all parties become more familiar with the forms. Firms should also anticipate increased potential for regulatory compliance examinations conducted by the SEC's Division of Examinations and FINRA, as appropriate, and should promptly review their relationship summaries for accuracy, completeness, and consistency with form instructions as highlighted by SEC staff.*

#### SEC Statement

The SEC released a [staff statement](#) regarding Form CRS disclosures required of SEC-registered broker-dealers and investment advisers that offer services to retail investors. The Statement outlines the observations of the Standards of Conduct Implementation Committee based on a review of filed relationship summaries from a diverse cross-section of firms. *(Note: The Standards of Conduct Implementation Committee is an inter-divisional committee established when Form CRS was adopted in June 2019 (along with Regulation Best Interest) to assist firms with compliance - see press statement [here](#).)* The Committee's review considered how firms have implemented the content and format requirements of Form CRS as well as whether the relationship summary is fulfilling its intended purpose "to promote transparency, comparability and better-informed decision-making, through clear, concise disclosures, and by summarizing in one place selected information about a particular firm."

The Committee states that it observed areas where improvements appear to be needed to ensure compliance with Form CRS disclosure requirements, and suggests firms review their relationship summaries in light of the identified observations to confirm they address each item in a manner consistent with the form's instructions. Select items highlighted by the staff suggest that, when completing Form CRS, firms should:

- Provide the relationship summary to new, prospective, and existing clients/customers consistent with the required timetables, for the initial Form CRS and any updates, as appropriate
- File the relationship summary with the Commission, including subsequent updates
- Post the current relationship summary on the firm's public website in an easily accessible location and format
- Ensure that the relationship summary is clear, concise, and direct, uses plain English (avoiding jargon, technical language, and disclaimers), and takes into consideration the level of financial experience of retail investors



- Include all required headings, conversation starters, and prescribed language
  - Adhere to the [final instructions](#)
  - Include specific references to more detailed information as required, including functioning and relevant hyperlinks to information that is available online
  - Limit disclosures to those required or permitted by the instructions; ensure disclosures are responsive and relevant to the topics covered, include only accurate data, and do not exclude material facts
  - Present brokerage and investment advisory information with equal prominence, and clearly distinguish and facilitate comparison of the two types of services if a single relationship summary is prepared for affiliated firms
  - Utilize white space, other design features (e.g., charts, graphs), and text features for certain information, such as conversation starters and headers, to enhance readability and understanding of the disclosures
- Present factual and balanced descriptions free of marketing language and exaggerated or unsubstantiated claims
  - Do not include vague or “boilerplate” explanations, or explanations that are not tailored to the firm.

Form CRS compliance was required beginning June 30, 2020. SEC previously indicated that initial examinations after the compliance date would focus on assessing whether firms have made a good faith effort to implement Form CRS (see SEC Risk Alert [here](#)), and FINRA issued a separate statement indicating it would generally take the same approach (see FINRA statement [here](#)). Notably, SEC [announced](#) enforcement actions against 21 investment advisers and 6 broker-dealers in July 2021 for failure to timely file and deliver their Form CRS. Regulation Best Interest and Form CRS were among the named 2021 examination priorities for both the SEC and FINRA. The agencies’ 2022 examination priorities are forthcoming.

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