



RISK ALERT

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

April 7, 2020

Examinations that Focus on Compliance with Form CRS

I. Introduction

In this Alert:
Examinations related to Form CRS.

The Office of Compliance Inspections and Examinations (“OCIE”)¹ is issuing this Risk Alert to provide SEC-registered broker-dealers and investment advisers (“firms”) with information about the scope and content of initial examinations after the compliance date for Form CRS.² Form CRS and its related rules (“Form CRS”) require firms to deliver to retail investors³ a brief customer or client relationship summary (“relationship summary”) that provides information about the firm.⁴ Firms must also file their initial relationship summaries (and any amendments) with the Commission, using the Central Registration Depository (“Web CRD”) or Investment Adviser Registration Depository (“IARD”), as applicable, and post the current relationship summary on the firm’s public website, if the firm has one. After the compliance date, OCIE will begin examinations to assess compliance with Form CRS. Initial examinations will focus on assessing whether firms have made a good faith effort to implement Form CRS.

OCIE stands ready to work with firms and our colleagues in the Divisions of Trading and Markets and Investment Management on issues that may arise in the course of examinations and understands that the coronavirus disease 2019 (COVID-19) has created challenges for firms.⁵

This Risk Alert is not intended to be an explanation of the requirements of Form CRS. Firms are encouraged to familiarize themselves with the specific requirements of Form CRS by reviewing

¹ This Risk Alert represents the views of the staff of OCIE. 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 Risk Alert, like all staff guidance, 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 On June 5, 2019, the Commission adopted Form CRS under both the Securities Exchange Act of 1934 (“Exchange Act”) and the Investment Advisers Act of 1940 (“Advisers Act”), both of which have a compliance date of June 30, 2020. See Exchange Act Release No. 86032 (June 5, 2019) (“Form CRS Adopting Release”). Additional information on Form CRS, including frequently asked questions, is available at: <https://www.sec.gov/regulation-best-interest>.

³ A “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.” Exchange Act Rule 17a-14(e)(2); Advisers Act Rule 204-5(d)(2).

⁴ See Exchange Act Rule 17a-14; Advisers Act Rule 204-5.

⁵ While the Commission and staff across Commission divisions and offices continue to monitor the effects of COVID-19 on market participants, including investment advisers and broker-dealers, the Commission has not extended the compliance date for Form CRS. OCIE staff remains fully operational nationwide and continues to execute its investor protection mission. See OCIE Statement on Operations and Exams (Mar. 23, 2020), available at: <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>.

the [Form CRS Adopting Release](#) and the [Small Entity Compliance Guide](#).⁶ Questions regarding Form CRS may be directed to: IABDQuestions@sec.gov.

II. Examinations for Compliance with Form CRS

Initial examinations of firms with retail investors conducted after June 30, 2020 may include an assessment relating to Form CRS. Examples of the areas the staff may focus on during examinations are discussed below.

- **Delivery and Filing.** Staff may (1) review whether the firm has filed its relationship summary, including any amendments, with the Commission and whether the relationship summary is posted on the firm’s public website, if any; (2) evaluate the process for delivering the relationship summary to existing and new retail investors;⁷ and (3) review policies and procedures to assess whether they address the required relationship summary delivery processes and dates. In particular, the staff may review records of the dates⁸ that each relationship summary was provided to retail investors to validate whether the firm has complied with the following delivery obligations:
 - *Existing Retail Investors.* The initial delivery of the relationship summary to existing retail investors by July 30, 2020,⁹ and before or at the time of:
 - The opening of a new account that is different from the retail investor’s existing account;
 - A recommendation of a rollover of assets from a retirement account into a new or existing account or investment; or
 - A recommendation of 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 (*e.g.*, a first time purchase of a direct-sold mutual fund through a “check and application” process).
 - *New Retail Investors.* The delivery of the relationship summary to new retail investors before or at the earliest of:
 - Entering into an investment advisory contract with the retail investor;
 - A recommendation to a retail investor of an account type, a securities transaction, or an investment strategy involving securities;
 - Placing an order for the retail investor; or
 - The opening of a brokerage account for the retail investor.
- **Content.** Staff may review a firm’s relationship summary to assess whether it (1) includes all required information; and (2) contains true and accurate information and does

⁶ The Form CRS Adopting Release is available at: <https://www.sec.gov/rules/final/2019/34-86032.pdf>; the Small Entity Compliance Guide is available at: <https://www.sec.gov/info/smallbus/secg/form-crs-relationship-summary>.

⁷ See General Instruction 10 to Form CRS.

⁸ See Exchange Act Rule 17a-3(a)(24); Advisers Act Rule 204-2(a)(14)(i).

⁹ Broker-dealers and investment advisers are required to deliver the relationship summary to existing customers and clients within 30 days after the date the firm must file the relationship summary with the Commission. Thirty days after the June 30, 2020 compliance date is July 30, 2020. See General Instruction 7.C.iv. to Form CRS.

not omit any material facts necessary in order to make the required disclosures, in light of the circumstances under which they were made, not misleading.¹⁰ For example, the staff may review relationship summaries for information about:

- How the firm describes the relationships and services it offers to retail investors, including statements regarding account monitoring and investment authority.
 - How the firm describes its fees and costs, including disclosures about the principal fees and costs that retail investors will incur, other fees and costs related to services and investments that retail investors will pay directly or indirectly, and examples of the categories of the most common fees and costs applicable to the firm's retail investors (*e.g.*, custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees).
 - Staff may review fee schedules, advisory agreements, and brokerage agreements and compare the fees listed in those documents against the fees listed in the relationship summary.
 - How the firm describes the manner in which its financial professionals are compensated, including cash and non-cash compensation, and the conflicts of interest those payments create.
 - How the firm describes its conflicts of interest, including incentives related to proprietary products, third-party payments, revenue sharing, and principal trading.
 - Whether the firm accurately discloses if the firm or its financial professionals have legal or disciplinary history.¹¹
- **Formatting.** Staff may review a firm's relationship summary to assess whether it is formatted in accordance with the instructions (*e.g.*, it includes particular wording where required, it uses text features where required, and it is written in plain English).¹²
 - **Updates.** Staff may review a firm's policies and procedures for updating the relationship summary to: (1) assess how and whether a firm updates and files its relationship summary within 30 days after any information becomes materially inaccurate; (2) assess how and whether a firm communicates these changes to retail investors within 60 days after the updates are required to be made; and (3) assess the firm's process for highlighting to retail investors the most recent changes and including an exhibit highlighting or summarizing material changes with any filed updates.¹³
 - **Recordkeeping.** Staff may review the firm's records related to delivery of the relationship summary, and the policies and procedures regarding record-making and recordkeeping, to assess how the firm complies with applicable delivery and recordkeeping obligations.

¹⁰ See General Instruction 2.B. to Form CRS.

¹¹ See Form CRS Items 2–4.

¹² See General Instructions 1–4 to Form CRS.

¹³ See General Instruction 8 to Form CRS.

III. Conclusion

In sharing the focus for these initial examinations, OCIE encourages firms to assess their implementation plans for Form CRS. OCIE is providing transparency into its plans regarding Form CRS examinations to empower firms to assess their level of preparedness as the compliance date nears.

This Risk Alert is intended to highlight for firms risks and issues that OCIE staff has identified. In addition, this Risk Alert describes risks that firms may consider to (i) assess their supervisory, compliance, and/or other risk management systems related to these risks, and (ii) make any changes, as may be appropriate, to address or strengthen such systems. Other risks besides those described in this Risk Alert may be appropriate to consider, and some issues discussed in this Risk Alert may not be relevant to a particular firm's business. The adequacy of supervisory, compliance and other risk management systems can be determined only with reference to the profile of each specific firm and other facts and circumstances.
