

Staff Statement Regarding Form CRS Disclosures

Standards of Conduct Implementation Committee

Dec. 17, 2021

^[1] 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 a retail investor’s particular circumstances and investment objectives. SEC-registered broker-dealers and investment advisers (each, a “firm”) offering services to retail investors must file with the Commission and provide to retail investors a relationship summary containing plain English disclosures on specific topics under standardized headings and in a prescribed order. The relationship summary is intended 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. This format is designed to allow retail investors to more easily compare different firms’ services, fees, conflicts of interest, disciplinary history and other important information.

SEC rules require that firms deliver their relationship summaries to new and prospective retail clients and customers, as well as to existing retail clients and customers, file their relationship summary with the Commission and post the current relationship summary on the firm’s public website, if the firm has one.^[2] To help evaluate whether the relationship summary is fulfilling its intended purpose, the Standards of Conduct Implementation Committee (the “Committee”) reviewed filed relationship summaries from a diverse cross-section of firms and observed how firms have implemented the content and format requirements of Form CRS.^[3] Additionally, the Division of Examinations^[4] and FINRA have been examining firms to assess compliance with the Form CRS requirements.^[5]

Many of the Committee’s and FINRA’s initial observations regarding firms’ compliance with Form CRS were shared during an October 26, 2020 Roundtable on Regulation Best Interest and Form CRS.^[6] The Committee’s review of relationship summaries observed good examples of simple, clear disclosures, including relationship summaries that provided balanced and objective descriptions of services, direct and concise explanations of fees, and avoided extraneous language and legal jargon.

At the same time, the Committee observed areas where compliance improvements appear to be needed. Accordingly, to further the goals of the relationship summary, and to assist firms as they consider ways to improve their relationship summaries, we describe below some of the Committee’s observations – first, with respect to the specific disclosure topics required by the form’s instructions, and second, with respect to the

general requirements pertaining to content, format, and website posting. Firms may wish to review their relationship summaries, especially in light of the observations identified below, and confirm they address each item consistent with the form's instructions.^[7]

Use of Technical Language, Including Disclaimers. Relationship summaries must be concise and direct, using plain English and taking into consideration retail investors' level of financial experience. Among other things, firms must avoid legal jargon and highly technical business terms unless they are clearly explained. For example, some firms referenced terms such as "riskless principal", "in arrears", "markups" and "markdowns", or cited specific SEC rules without providing clear explanations. Additionally, firms are not permitted to include disclosures in their relationship summaries other than the disclosures that are required or permitted by the form's instructions and the applicable item. The staff also observed some relationship summaries that included disclaimers and hedging language (often placed in footnotes using small text and, in some cases, legal jargon) that are neither required nor permitted. For example, some firms included impermissible hedging language stating that their relationship summary "does not create or modify any agreement, relationship or obligation" between the investor and the firm or its financial professionals. The use of overly technical language and disclaimers could make it harder for investors to focus on and understand the important information provided in the relationship summary.^[8]

Omission of Required Information. Firms must generally include all required headings, conversation starters and prescribed language. Firms may only omit or modify a required disclosure or conversation starter in limited circumstances where: (i) it is inapplicable to the firm's business; or (ii) the specific wording required by the form's instructions would be inaccurate with respect to the firm. Some of the relationship summaries the staff reviewed omitted required disclosures, such as headers, prescribed language, or conversation starters related to conflicts of interest, investment authority, monitoring services, and disciplinary history. This prevents retail investors from easily comparing different firms' relationship summaries and getting the facts they need when deciding among firms or financial professionals and the accounts and services available to them.

Reliance on Proposed, Rather than Final Instructions. The staff also observed relationship summaries that omitted required information, modified prescribed language, or failed to follow the prescribed order or formatting requirements because firms appeared to rely on the [proposed instructions to Form CRS](#) (or portions thereof), rather than the adopted [final instructions to Form CRS](#). For example, many firms included the proposed conversation starters and/or proposed standard of conduct language (i.e., "We are held to a fiduciary standard that covers our entire investment advisory relationship with you.") rather than the required language as adopted (i.e., "we have to act in your best interest and not put our interest ahead of yours"). Reliance on the proposed, rather than final instructions, creates differences that undermine the intended transparency, consistency, and comparability of information across the relationship summaries of different firms. This makes it harder for retail investors to focus on information that the Commission identified as particularly helpful for purposes of deciding among firms, financial professionals, services, and accounts. Firms should confirm that the disclosures in their relationship summaries comply with the adopted instructions to Form CRS.

Lack of Specific References to More Detailed Information. Firms must include specific references to more detailed information in the relationship summary sections describing the firm's services, fees and costs, and conflicts of interests. This allows firms to summarize this information while making available more detailed information for retail investors through layered disclosure. At a minimum, these references must include the same or equivalent information to that required by Form ADV, Part 2A and Regulation Best Interest, as applicable. A relationship summary that is posted on a firm's website or otherwise provided electronically must provide a means of facilitating access to any information that is referenced in the relationship summary if the information is available online.

Many relationship summaries the staff reviewed included cross-references to more detailed information as required by the Instructions, and included hyperlinks to give retail investors quick and direct access to fee schedules, conflicts disclosures, and other pertinent information. For example, staff noted that many firms provided direct hyperlinks to their Form ADV Part 2A or to a "Regulation Best Interest Disclosure," and in some cases some firms provided direct hyperlinks to fee information or tables related to the specific service or account being described.

However, some relationship summaries did not include these required references. In some instances, relationship summaries posted on firms' websites simply stated that retail investors could find more detailed information in the firm's Form ADV and/or Regulation Best Interest Disclosures, but did not provide a means of facilitating access to that information although it was available online. When firms do not make more detailed disclosures readily accessible to retail investors, it can discourage retail investors from seeking out important information that could help inform their decisions when choosing a firm or financial professional.

Shortcomings in Descriptions of Relationships and Services; Fees, Costs, Conflicts, and Standard of Conduct. As noted above, firms are not permitted to include disclosures in their relationship summaries other than the disclosures that are required or permitted by the form's instructions and the applicable item. Also, all information in a relationship summary must be true and may 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. Furthermore, the disclosures in the relationship summary should be responsive and relevant to the topics covered. While the staff frequently observed disclosures that provided succinct descriptions of relationships and services designed to facilitate retail investor access to more detailed layers of disclosure, some relationship summaries reviewed did not include required information or included impermissible, extraneous, or unresponsive disclosures. These shortcomings were most commonly observed in the following disclosures:

- *Monitoring.* Firms must explain whether or not they monitor retail investors' investments, and, if so, the frequency and any material limitations of that monitoring and whether or not the monitoring services are part of the firm's standard services. The staff reviewed some relationship summaries that did not comply with these requirements. For example, some relationship summaries did not explain how frequently the firm evaluates client investments or if the firm imposes any material limitations on their monitoring services.
- *Investment Authority.* Investment advisers that accept discretionary authority must describe those services, any material limitations on that authority (e.g., length of time), and any specific circumstances that would trigger this authority. Investment advisers that offer non-discretionary services and broker-

dealers must explain in their relationship summary that the retail investor makes the ultimate decision regarding the purchase or sale of investments. Some relationship summaries reviewed did not include a description of the firm's investment authority that would allow retail investors to understand who—the firm or the retail investor—ultimately makes the investment decision regarding the purchase or sale of investments in the types of accounts and services offered. In other relationship summaries, firms stated that they exercise both discretionary and non-discretionary authority but did not appear to adequately describe which investment authority applies to which services or accounts that the firm offers.

- *Limited Investment Offerings.* Firms must explain whether or not they make available or offer advice only with respect to proprietary products or a limited menu of products or types of investments. If so, the firm must describe these limitations. Some relationship summaries did not expressly state whether the firm has any product limitations, while others acknowledged limitations but did not describe such limitations, as required.
- *Principal Fees and Costs.* Firms must summarize the principal fees and costs that retail investors will incur for the firm's services, including how frequently the fees and costs are assessed and the conflicts of interest they create. Some relationship summaries included only vague fee descriptions and/or did not appear to sufficiently address the frequency with which those fees are assessed and billed. For example, some firms stated that they charge an "advisory fee" but did not describe how such a fee is assessed (e.g., whether the fee is based on the amount of client assets) and billed (e.g., quarterly or annually) to the client. Other relationship summaries summarized fees, but did not address the associated conflicts of interest or incentives.
- *Wrap Fee Program Offerings and Fees.* Investment advisers that offer wrap fee programs must describe such programs and their related fees. In addition, firms that charge wrap fee program fees are encouraged to explain that asset-based fees associated with the wrap fee program will include most transaction costs and fees to a broker-dealer or bank that has custody of these assets, and therefore are higher than a typical asset-based advisory fee. Some firms' relationship summaries did not describe the services included as part of the wrap fee program. Other relationship summaries did not appear to adequately describe the fees and costs of the programs.
- *Extraneous Disclosures Regarding Standards of Conduct.* Firms must use the prescribed language, including the term "best interest," to describe their applicable standard of conduct, which is intended to promote consistency in communicating these standards to retail investors, whether a firm is a broker-dealer, investment adviser, or dual registrant. Some firms referred to themselves as "fiduciaries" or stated that they are subject to a "fiduciary duty" when describing the applicable standard of conduct instead of using the prescribed language in Item 3 of the form.
- *Firm and Financial Professional Compensation Arrangements and Conflicts of Interests.* Firms must summarize how their financial professionals are compensated and disclose any potential conflicts of interest related to the firm's compensation practices. Firms should describe these conflicts in a way that better helps retail investors understand these conflicts and how they might impact a financial professional's motivation. Many firms included explanations of conflicts and incentives associated with the ways the firm and its financial professionals make money by providing concrete examples to help

investors understand the incentives associated with proprietary products, third party payments, revenue sharing, and principal trading. For example, some of the helpful conflicts disclosures that we observed concretely explained incentives associated with cash sweep programs and order flow or order routing payments. Other relationship summaries the Committee reviewed, however, did not explain the incentives created by a particular conflict of interest or used vague phrasing to suggest the firm “may” have a particular conflict without also explaining when the conflict could exist. In some relationship summaries, rather than focusing on the conflicts, the disclosure explained how the firm addresses or mitigates its conflicts. For example, some firms referenced their standard of conduct to explain how they mitigate their conflicts of interest (e.g., some firms stated that a “conflict is mitigated by [their] fiduciary duty and adherence to [their] code of ethics”). This kind of disclosure is not permitted and undermines the Commission’s goal of highlighting the presence of conflicts and helping retail investors understand the incentives that these conflicts create.

As noted above, omitting required disclosures prevents retail investors from easily comparing different firms’ relationship summaries and getting the facts they need when deciding among firms or financial professionals and the accounts and services available to them. Moreover, when firms include impermissible, extraneous, or unresponsive disclosures, it can make it harder for investors to focus on the key information.

Modification and/or Supplementation of the Disciplinary History Disclosure. As highlighted in a prior public statement,^[9] 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. Firms also must include a reference to Investor.gov/CRS and required conversation starters in their relationship summaries. In some relationship summaries, firms omitted or modified the heading or the conversation starters and/or provided extraneous language explaining their response (beyond the permissible yes or no response). The form’s instructions do not require or permit these omissions or modifications. We remind firms that they do not have discretion to leave the disciplinary history answer blank or to omit reportable disciplinary history from the relationship summary. Also, 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.

Issues with Prominently Displaying Relationship Summary on Firm Website. Firms that operate a publicly available website must post the current version of their relationship summary prominently on that website. The relationship summary must be posted in a location and format that is easily accessible for retail investors. In some instances, the staff was unable to locate a relationship summary on the firm’s website or was able to locate the relationship summary only after an extensive search of the firm’s website. This undermines the goal of providing retail investors with ready access to the information as early as possible when deciding whether to engage the services of a firm or financial professional. The staff observed several common issues that contributed to making relationship summaries difficult to locate, including, but not limited to:

- Using small or hard to read text in the hyperlink to the relationship summary;

- Using a non-descriptive term or phrase to label the relationship summary, such as “regulatory disclosures;”
- Placing the hyperlink to the relationship summary several pages (clicks) away from the firm’s investor homepage; and
- Placing the relationship summary among numerous other disclosure and/or promotional documents.

Issues with Description of Affiliate Relationships. Affiliated firms that decide to prepare a single relationship summary must present the brokerage and investment advisory information with equal prominence, and clearly distinguish and facilitate comparison of the two types of services. Failure to do so undermines the ability of retail investors to learn about and compare the range of options available to them. Some firms were able to clearly articulate intricate affiliate structures in their relationship summaries by, for example, specifically identifying the entity a particular disclosure was referencing. Other firms’ relationship summaries, however, were difficult to evaluate and understand because the firm:

- Did not clearly state which firm offers which services or investment products discussed in the relationship summary;
- Did not attribute disclosures to a particular firm or did not make it clear that they apply to both; and
- Listed numerous affiliated entities, without clearly describing the relationship between the firm and such affiliates.

In addition to the above, the Committee observed that some firms with affiliates preparing separate relationship summaries and offering services through dually-licensed financial professionals did not reference and provide a means of facilitating access to the relationship summaries of their affiliates.

Poor Design. To make the relationship summary easy to read and understand, the Committee expects firms to use white space and other design features, and they are specifically required to use text features for certain information, such as conversation starters and headers. Additionally, the Committee encourages firms to use charts, graphs, tables, and other graphics or text features to explain or compare different aspects of firms’ offerings. These design elements can help retail investors easily digest the information and enhance their understanding of the disclosures. Staff observed some firms that used innovative approaches to the relationship summaries posted on their websites that made use of interactive features that aided readability. On the other hand, some relationship summaries made poor use of white space or other design features, and in some cases, did not use the required text features.

Use of Marketing Language. The relationship summary is designed to serve as a source for objective disclosure and information, rather than as marketing material. Relationship summary responses must be factual, provide balanced descriptions to help retail investors evaluate the firms’ services, and may not include exaggerated or unsubstantiated claims. The staff reviewed some relationship summaries that included marketing language, touted firms’ abilities, or used superlatives or similar descriptors. For example, some firms represented that they were held to the “highest possible legal standard.”

Boilerplate. Firms should not include vague and imprecise “boilerplate” explanations in their relationship summaries that could hinder transparency or comparability between firms. The staff observed disclosures in

some relationship summaries that did not appear to be tailored to the particular firm's services, fees, relationships, or conflicts. For example, as discussed above, some firms used boilerplate phrasing to suggest the firm "may" have a particular conflict, which undermined the goal of highlighting the presence of conflicts and helping retail investors understand the incentives they create. The boilerplate language used in many of these relationship summaries appeared to have been based on one or more widely shared relationship summary templates without appropriate modification.

The Committee encourages firms to familiarize themselves with the specific requirements of Form CRS by reviewing the [Form CRS Adopting Release](#), the [Small Entity Compliance Guide](#), the [Frequently Asked Questions on Form CRS](#) and the [SEC Spotlight page on Regulation Best Interest, Form CRS and Related Interpretations](#). In addition, firms with interpretive questions regarding Form CRS may submit questions to IABDQuestions@sec.gov. The staff stands ready to continue assisting firms as they prepare, update, file, and deliver relationship summaries that will improve the quality and transparency of their relationships with retail investors.

[1] This statement represents the views of the staff of the Standards of Conduct Implementation Committee, which is comprised of staff from the Division of Trading and Markets, the Division of Investment Management, the Division of Examinations, and the Office of Investor Education and Advocacy. 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, like all staff statements, 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] SEC-registered broker-dealers and SEC-registered investment advisers or investment advisers that have an application for registration pending with the Commission were required to file their initial relationship summaries with the Commission by June 30, 2020. These firms were also required to deliver their relationship summaries to existing clients or customers by July 30, 2020. On July 26, 2021, the Commission announced settlements with 21 investment advisers and six broker-dealers that had missed these regulatory deadlines and agreed to settle charges that they failed to timely file and deliver their client or customer relationship summaries to their retail investors. The orders found that none of the firms filed or delivered its Form CRS, or posted it to its website, until being twice reminded of the missed deadlines by their regulators. See "SEC Charges 27 Financial Firms for Form CRS Filing and Delivery Failures" (Jul. 26, 2021), available at <https://www.sec.gov/news/press-release/2021-139>.

[3] See Statement by the Staff Standards of Conduct Implementation Committee Regarding New Form CRS Disclosures (July 27, 2020), available [here](#).

[4] Prior to December 2020, the Division of Examinations was known as the Office of Compliance Inspections and Examinations ("OCIE"). See Commission Statement on the Renaming of the Office of Compliance Inspections and Examinations to the Division of Examinations (Dec. 17, 2020), available at <https://www.sec.gov/news/public-statement/joint-statement-division-examinations>.

[5] See OCIE, “Risk Alert – Examinations that Focus on Compliance with Form CRS” (Apr. 7, 2020), available [here](#).

[6] SEC Roundtable on Regulation Best Interest and Form CRS (Oct. 26, 2020), available [here](#).

[7] Firms should also consider their obligations when updating their relationship summaries.

On March 5, 2021, staff of the Division of Investment Management and the Division of Trading and Markets published FAQs about firms’ obligations to update their relationship summaries when making material and non-material changes. See Frequently Asked Questions on Form CRS, available [here](#).

[8] Note, the SEC’s Office of Investor Education and Advocacy has published A Plain English Handbook available at www.sec.gov/news/extra/handbook.htm. Firms may find the handbook helpful in writing or revising their relationship summaries.

[9] See Joint Statement Regarding the New FAQs on Form CRS (Oct. 8, 2020), available [here](#).