

Risk Alert – Form CRS and SEC Examinations

April 13, 2020



On April 7, 2020, the Securities and Exchange Commission (“SEC”) Office of Compliance Inspections and Examinations (“OCIE”) issued a Risk Alert that provides guidance regarding SEC inspections for compliance with Form CRS, also referred to as a “relationship summary.” In the Alert linked [here](#), OCIE provides investment advisers with information about the scope and content of initial examinations focused on Form CRS. These examinations will begin after the June 30, 2020 compliance implementation of the relationship summary. While the SEC understands the challenges firms currently face due to COVID-19, the staff has, nevertheless, reaffirmed that the June 30, 2020 compliance date will not be extended, and firms must comply by this deadline. Given the advance notice provided by the Risk Alert, we strongly encourage advisers to be ready for full compliance with the new Form CRS regulations, by June 30, 2020.

Following June 30th, OCIE will begin examinations to assess investment advisers’ compliance with Form CRS. The initial exams will focus on whether firms have made good faith efforts to implement the relationship summary and establish necessary policies and procedures reasonably designed to achieve compliance with the rules governing Form CRS. For example, SEC Staff will

review whether a firm has made a timely filing of the initial Form CRS and any subsequent amendments, and that the firm has posted their Form CRS on the firm's public-facing website. The Staff will also evaluate a firm's policies and procedures for delivery to ensure compliance with the unique delivery requirements for this new form to existing and new retail customers.

Delivery

In particular, the Staff will review records to ensure Form CRS is delivered to **existing** retail clients:

- at the opening of a new account different from the client's existing account;
- upon recommendation of a rollover of assets from a retirement plan account into a new or existing account; or,
- upon recommendation of a new investment advisory service or investment that does not necessarily involve the opening of a new account.

For **new** retail customers, the SEC will review records to ensure firms have delivered the Form CRS before or at the earliest of:

- entering into an investment advisory agreement with the customer;
- recommending a particular account, investment strategy or securities transaction to the customer;
- placing an order for the customer; or,
- opening a brokerage account for the customer.

Content

In addition to delivery, SEC Staff will evaluate a firm's Form CRS to assess whether the content includes all required information, is true and accurate, and does not omit any material facts. Required content includes information about:

- the firm's relationships and services, including the firm's account monitoring and investment authority;
- the fees and costs a retail investor will pay directly or indirectly, and any conflicts of interests these fee arrangements pose;
- the manner in which the firm and its financial professionals are compensated and any conflicts of interest; and,
- whether or not the firm or its financial professionals have disciplinary histories.

Format

Given the unique and specific formatting instructions for Form CRS, SEC Staff will look to see that a firm has formatted its relationship summary in accordance with the instructions that the form is:

- written in plain English;
- limited to 2 pages; and,
- includes required language and any hyperlinks.

The Staff will review a firm's policies and procedures to ensure procedures are in place for timely updates to a firm's relationship summary if information becomes materially inaccurate, and how the firm ensures proper delivery and disclosure following a required amendment. Finally, the SEC will likely review a firm's record-keeping procedures for Form CRS.

While we recognize the difficult challenges many advisers currently face with market instability and COVID-19, we encourage you to prioritize the development and implementation of Form CRS and related policies and procedures in the coming months. As always, Foreside is here to help you meet your Form CRS obligations prior to the June 30, 2020 compliance date. Feel free to reach out to your Foreside consultant with any questions or concerns.

[Home](#)