

MEMO# 32819

October 9, 2020

SEC Staff Issues Additional FAQs on Form CRS

[32819]

October 9, 2020 TO: ICI Members
Investment Company Directors
Broker/Dealer Advisory Committee
Investment Adviser and Broker-Dealer Standards of Conduct Working Group
Investment Advisers Committee
Operations Committee
Pension Committee
SEC Rules Committee
Transfer Agent Advisory Committee SUBJECTS: Compliance
Disclosure
Investment Advisers

Operations RE: SEC Staff Issues Additional FAQs on Form CRS

The SEC staff recently issued additional “Frequently Asked Questions” (FAQs) on Form CRS.^[1] The staff’s recent FAQs, which are summarized below, focus on Item 4 of Form CRS, which asks whether a firm or its financial professionals have legal or disciplinary history.^[2] In conjunction with the staff’s issuance of the FAQs, SEC Chairman Jay Clayton, Dalia Blass, Director of the SEC’s Division of Investment Management, and Brett Redfearn, Director of the SEC’s Division of Trading and Markets, issued a joint statement regarding the new FAQs (“Joint Statement”).^[3]

Joint Statement on FAQs

The Joint Statement emphasizes the importance of Form CRS’s disciplinary history disclosure, and explains that a firm must respond to Item 4 with a “Yes” or “No” answer. The firm also must direct the retail investor to visit [Investor.gov/CRS](https://www.investor.gov/crs) for a free search tool to research the firm and its financial professionals. Additionally, the firm must include a “conversation starter” that will allow an investor to assess his or her financial professional’s disciplinary history or that of the firm, and engage in further discussion about those events. A firm must report disciplinary history in its Form CRS if that history must be reported on other forms, including Form ADV, Form BD, and Forms U4, U5, or U6. As explained further in the FAQs, when responding to the disciplinary history question, a firm may not add descriptive or other qualitative or quantitative language.

The Joint Statement explains that, in connection with its review of Form CRS filings, the SEC’s staff Standards of Conduct Implementation Committee (“Committee”) has observed examples of relationship summaries where firms did not provide a response in the

disciplinary history section. The staff also observed examples where firms' responses in the disciplinary history section appear to lack required information or otherwise could be improved. The FAQs are intended to address issues that the Committee's review has identified or questions that firms have posed to the staff.

The Joint Statement reaffirms the SEC's continued commitment to providing feedback and assistance to firms to ensure that their Forms CRS meet the SEC's goals of reducing retail investor confusion in the marketplace for brokerage and investment advisory services and otherwise enhancing the quality and transparency of retail investors' relationships with their financial professionals. The Joint Statement also notes the upcoming October 26 SEC roundtable on Reg BI and Form CRS, at which the Committee will share additional thoughts on its review of firms' initial relationship summaries.^[4] In the future, the staff is expected to update its FAQs on Form CRS as appropriate.

Disciplinary History FAQs

The staff's new FAQs confirm that Item 4 of Form CRS requires that firms include in their relationship summary the heading "Do you or your financial professionals have legal or disciplinary history?" along with a "Yes" or "No" response. A firm may not omit the heading, even if it does not have any legal or disciplinary history to report.

The FAQs further provide that a firm must respond to this question for both the firm and its financial professionals (*i.e.*, it cannot just respond to only address the firm's history). The firm may, however, include separate responses for the firm and its financial professionals indicating, for example, that the firm does not have disciplinary or legal history, but that its financial professionals do (or vice versa).

Regardless of whether the firm responds separately or provides a single response for both the firm and its financial professionals, it may only provide "Yes" or "No" responses, and may not add descriptive or other qualitative or quantitative language. The staff believes that adding such language might intentionally or unintentionally obfuscate or otherwise minimize the disciplinary history. The staff clarifies, however, that Form CRS does not preclude firms or their financial professionals from explaining disciplinary history in a discussion with the customer and/or by separately providing copies of additional regulatory disclosures (*e.g.*, Form ADV Part 2B brochure supplements or a print-out of the IAPD or BrokerCheck "Disclosures" section for the particular firm or financial professional).

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endnotes

^[1] The FAQs, which were prepared by the staff of the SEC's Divisions of Investment Management and Trading and Markets, are *available at* <https://www.sec.gov/investment/form-crs-faq>. The staff's FAQs on Regulation Best Interest ("Reg BI") are available at <https://www.sec.gov/tm/faq-regulation-best-interest>. For a detailed summary of the SEC's standards of conduct rulemakings, including Reg BI and Form CRS, *please see* the attachments to ICI Memorandum No. 31815 (June 19, 2019), *available at* https://www.ici.org/my_ici/memorandum/ci.memo31815.idc. The

implementation date of Reg BI and Form CRS was June 30, 2020.

For prior ICI summaries of the staff's FAQs on Reg BI and Form CRS, *please see* ICI Memorandum No. 32728 (September 1, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32728; ICI Memorandum No. 32068 (Nov. 27, 2019), *available at* https://www.ici.org/my_ici/memorandum/memo32068; ICI Memorandum No. 32164 (Jan. 21, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32164; ICI Memorandum No. 32219 (Feb. 19, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32219; ICI Memorandum No. 32423 (Apr. 28, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32423; ICI Memorandum No. 32585 (July 7, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32585.

[2] The instructions to Form CRS are *available at* <https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf>.

[3] The Joint Statement is *available at* <https://www.sec.gov/news/public-statement/joint-statement-faq-form-crs>.

[4] *See SEC Staff to Host October 26 Roundtable on Regulation Best Interest and Form CRS* (Sept. 28, 2020), *available at* <https://www.sec.gov/news/press-release/2020-229>.

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