

**MEMO# 32585**

July 7, 2020

## **SEC Staff Issues Additional FAQs on Form CRS**

[32585]

July 7, 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, which the SEC adopted, along with Regulation Best Interest (“Reg BI”), in June 2019 as part of its standards of conduct rulemakings.[\[1\]](#) The staff’s recent FAQs are summarized briefly below.[\[2\]](#)

### **Principal Underwriters - Orphaned, Abandoned Accounts**

The SEC staff confirmed that, as long as a principal underwriter to a mutual fund issuer or variable annuity or variable life insurance contract issuer acts solely in such capacity, the staff would not consider it to be offering services to a retail investor for purposes of Form CRS when the retail investor’s “orphaned” or “abandoned” securities are transferred to the principal underwriter, and/or it becomes the default “broker of record” on the mutual fund’s or insurance company’s books. The staff noted, however, that if the broker-dealer interacts with the retail investor in a different capacity, Form CRS obligations may apply.

### **Scope of Requirements**

The staff confirmed that a firm does not have to prepare or file Form CRS if it determines that it does not have any retail investors to whom it must deliver a Relationship Summary.

### **Relationship Summary Format**

The SEC staff noted that a firm filing Form CRS may omit or modify a required disclosure or conversation starter where (i) it is inapplicable to the firm’s business; or (ii) the specific

wording required by the instructions is inaccurate. However, the staff clarified that generally, the firm must respond to each item, provide responses in the same order as the items appear in the instructions, and may only include disclosures permitted or required by the instructions or the applicable item. The staff also stated that all information in the Relationship Summary must be true, and that firms may not omit any material facts necessary to make the required disclosures not misleading.

## **Delivery Requirements**

The SEC staff stated that, for purposes of Form CRS delivery obligations, unaffiliated firms are treated as standalone broker-dealers and standalone investment advisers, each with an independent obligation to create and deliver its own Relationship Summary. Thus, if a dually-licensed financial professional<sup>[3]</sup> offers services to retail investors through both a standalone broker-dealer and a standalone unaffiliated investment adviser, each firm must evaluate its relationship to the retail investor and deliver its Relationship Summary, if such delivery is triggered.

The staff noted that firms dually registered as broker-dealers and investment advisers must deliver a new Relationship Summary to a retail investor client that chooses to convert an existing investment advisory account into a brokerage account (even if the account does not have a different name or account number).

The SEC staff took the position that under General Instructions 9.A(iii) to Form CRS, if a firm recommends to an existing retail investor customer or client a “new brokerage or investment advisory service” that relates to the client’s investment options or capabilities, the firm must deliver its current Form CRS to the client before or at the time of making the recommendation. The staff stated, however, that merely offering new “account features” would not trigger a delivery requirement.

The staff also clarified that the delivery requirement for existing clients under General Instruction 9.A(iii) applies, in addition to direct-sold mutual funds and variable annuities, to the first-time recommendation to invest in a private placement, a structured product, or other investment, if such investment is to be held outside an existing account.

The SEC staff confirmed that if a firm has delivered a Relationship Summary to a retail investor, and within 30 days, delivery to that investor is triggered again under Instruction 9.A., the staff would not object if the firm does not deliver another Relationship Summary to that retail investor. However, the staff emphasized that the firm must adhere to all Relationship Summary updating requirements under Instruction 8 and must deliver a Relationship Summary within 30 days upon request.

## **Qualified Custodians, Clearing or Carrying Broker-Dealers - Introduced Accounts of Registered Investment Adviser Clients**

The staff stated that it would not object to a broker-dealer not preparing, filing, or delivering a Relationship Summary, if the broker-dealer provides services to retail investor clients of an investment adviser solely by: (i) opening brokerage accounts for such retail investors; (ii) introducing those retail investors to a “qualified custodian” or clearing or carrying broker-dealer; and (iii) as instructed by the investment adviser, transmitting orders to buy and sell securities for those retail investor clients to the qualified custodian, or clearing or carrying broker-dealer. The staff explained, however, that if the broker-dealer interacts with those retail investors in a different capacity, the obligations of Form CRS may apply.<sup>[4]</sup>

## **Delivery - Cover Sheet, Wrap Fee Program Sponsor's Relationship Summaries**

The SEC staff stated that an investment adviser that sponsors a wrap fee program, contracts with other investment advisers to manage strategies or portfolios in the program, and delivers certain disclosure documents on behalf of the participating advisers, can provide a cover sheet to retail investor clients to explain why the adviser is providing the clients with multiple Relationship Summaries (*i.e.*, of the participating advisers as well as the sponsor).

### **Recordkeeping**

Finally, the staff confirmed that broker-dealers must maintain books and records of each date on which they provided a Relationship Summary to a prospective retail investor, even if the prospective retail investor never becomes a customer.

The staff also noted that investment advisers must make and keep a record of the date that each Form CRS (including amendments and revisions) is given to any client or any prospective client who subsequently becomes a client.

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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>. For a detailed summary of the SEC's rulemakings, *please see* the attachments to ICI Memorandum No. 31815 (June 19, 2019), *available at* [https://www.ici.org/my\\_ici/memorandum/ci.memo31815.idc](https://www.ici.org/my_ici/memorandum/ci.memo31815.idc).

[2] The SEC staff last updated the FAQs on Reg BI in early May 2020, and these updates are *available at* <https://www.sec.gov/tm/faq-regulation-best-interest>. For prior ICI summaries of the staff's FAQs on Reg BI and Form CRS, *please see* ICI Memorandum No. 32068 (Nov. 27, 2019), *available at* [https://www.ici.org/my\\_ici/memorandum/memo32068](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](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](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](https://www.ici.org/my_ici/memorandum/memo32423).

[3] A financial professional that is licensed as an investment adviser representative with a standalone investment adviser and as a registered representative with a standalone, unaffiliated broker-dealer.

[4] For example, where the broker-dealer makes a recommendation of an account type, securities transaction or investment strategy involving securities, the retail investor places

an order directly with the broker-dealer, or the retail investor opens a separate brokerage account with the broker-dealer.

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