

December 11, 2019

SEC Division of Investment Management and Division of Trading and Markets Issue Interpretive Guidance on Form CRS

On November 26, 2019, the SEC’s Division of Investment Management and Division of Trading and Markets [posted on its public website](#) “Frequently Asked Questions on Form CRS” (the “CRS FAQs”).

The CRS FAQs provide SEC staff responses to questions regarding the permissible format of a Form CRS and its delivery requirements. Most notably, while the CRS FAQs do not address directly the question of whether an investment adviser to a pooled investment vehicle is required to deliver a Form CRS to investors in the vehicle, the CRS FAQs provided the staff an opportunity to clarify that the Form CRS must be delivered to the investors themselves, and the staff appears to have chosen not to do so. Accordingly, the SEC staff appears to confirm in the CRS FAQs that an investment adviser to a pooled investment vehicle is not required to deliver a Form CRS to retail investors in that vehicle.

A summary of the CRS FAQs is set forth below.

Form CRS Question	Summary of Staff Response
<i>Relationship Summary Format</i>	
May a firm prepare multiple relationship summaries, each for a different service a firm offers to retail investors?	No. Each broker-dealer or investment adviser must only prepare one relationship summary summarizing all of the principal relationships and services that the broker-dealer or investment adviser offers to retail investors. In addition, a dually registered firm may prepare a single relationship summary addressing both brokerage and investment advisory services (rather than two separate relationship summaries).
How do I create machine readable headings to comply with General Instruction 7.A.(i) to Form CRS?	Persons responsible for preparing Form CRS should consult with the specifications and instructions provided by the software provider of the application being used to create the PDF in order to determine how to make the headings machine readable. The FAQ also provides specific steps to follow in order to create machine readable headings when using Microsoft Word and Adobe.
<i>Delivery Requirements</i>	
Can a firm satisfy its relationship summary delivery requirement with respect to its existing retail investor clients or customers by including the relationship summary with the mailing of its June 2020 quarterly account statements (e.g., within one week after June 30, 2020)?	Yes. In the staff’s view, a firm may deliver the relationship summary separately, in a bulk delivery to clients, or as part of the delivery of information that the firm already provides, such as the annual Form ADV update, account statements or other periodic reports. A firm must initially deliver its relationship summary to each of its existing clients and customers who are retail

	<p>investors within 30 days after the date by which it is first required to electronically file its relationship summary with the SEC. The FAQ also provides information regarding the presentation of customer relationship summaries that are sent as part of a package of documents or that are sent electronically.</p>
<p>My firm is an investment adviser to pooled investment vehicles, such as a hedge funds, private equity funds and venture capital funds. The investors in these funds include natural persons who may be “retail investors” as defined in Form CRS. Am I required to deliver a relationship summary to these funds?</p>	<p>In the staff’s view, pooled investment vehicles such as hedge funds, private equity funds, and venture capital funds would not meet the definition of “retail investor” and, as such, a relationship summary would not be required to be delivered. As noted above, this FAQ logically extends to support a conclusion that a pooled investment vehicle is not required to deliver a Form CRS to retail investors who are invested in that vehicle.</p>

The SEC’s release adopting Form CRS (described in this Ropes & Gray [Alert](#)) adopted Advisers Act Rule 204-5 and Exchange Act Rule 17a-14, which will require registered investment advisers to deliver to certain retail investors, and registered broker-dealers to deliver to certain retail customers, their current Form CRS beginning June 30, 2020. The current Form CRS can be found [here](#).

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For more information about the CRS FAQs or Form CRS generally, please contact any member of Ropes & Gray’s [asset management](#) practice group.