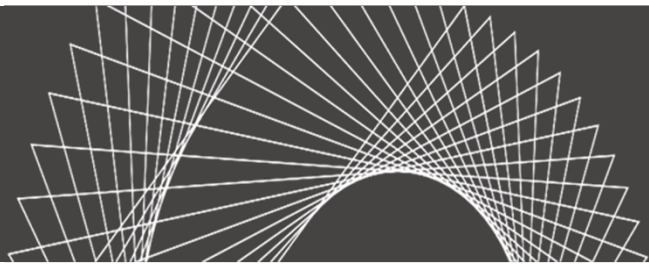


New ADV Part 3: Form CRS for Registered Investment Advisers and Dual Registrants¹



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Filing Requirements for Investment Advisers and Recent Guidance from the SEC

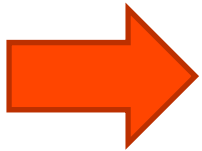
¹Does not address requirements in detail for registered broker-dealers. This summary is not intended to be a substitute for instructions on the form or legal advice.

What Is ADV Part 3/Form CRS?

- Client relationship summary (CRS) for registered investment advisers (RIAs), broker-dealers and dual-registrants that advise retail investors, available [here](#) (adopting release available [here](#)).
- For RIAs, Form CRS is now Part 3 of Form ADV. CRS is designed to assist retail investors with the process of deciding whether to:
 - Establish an investment advisory or brokerage relationship.
 - Engage a particular firm or financial professional.
 - Terminate or switch a relationship or specific service.
- CRS must be filed with the Securities and Exchange Commission (SEC), delivered to a firm's retail investors and prominently posted to the firm's website, if it has one.

Which Investment Advisers Must File?

- An RIA is only required to deliver a CRS to retail clients or their retail client representatives (such as guardians and attorneys-in-fact) if the RIA provides advisory services to a retail client.
 - If the RIA does not have any retail clients, it is not required to draft, file or deliver one.
 - An RIA is not required to deliver a CRS to fund clients or their investors.



“Retail investor” is defined as a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.

Deadlines

- For investment advisers that are already registered or have an application for registration pending with the SEC before June 30, 2020:
 - May file beginning on May 1, 2020, and by no later than June 30, 2020, either as (i) an other-than-annual amendment or (ii) part of initial application or annual updating amendment.
- For investment advisers with retail clients that file an application for registration with the SEC on or after June 30, 2020:
 - Any application must include the CRS.
- Updates and amendments:
 - Must file an amendment within 30 days of any information in the CRS becoming materially inaccurate.
 - Must communicate any changes in the updated CRS to existing retail investor clients within 60 days after the updates are required to be made and without charge.
 - Must highlight the most recent changes by, for example, marking the revised text or including a summary of material changes.
 - Must be attached as an exhibit to the unmarked amended CRS.

Form CRS Requirements

- Formatting
- Required topics and “conversation starters”
- Delivery
- Recordkeeping

Formatting

- **Plain English:** Must be written in plain English, taking into consideration retail investors' level of financial experience.
 - Must be drafted as if the drafter is speaking to the recipient using “you,” “us” and “our firm.”
 - The SEC has a publication entitled “A Plain English Handbook,” available [here](#).
- **Headings:** Do not use the prescribed item topics as headings.
 - The introduction does not need a heading.
 - For the other topic headings, use the suggested headings in the CRS instructions, but do not include “Item: ___” in the title.
 - Headings must be in machine readable format.

Formatting (*cont'd*)

- **Conversation Starters:** Must be formatted to make them more noticeable and prominent than the standard surrounding text.
- **Additional Information:** Cross reference to other parts of ADV, which must also be formatted to make them more noticeable and prominent than the standard surrounding text.
- **Date:** Include prominently at the beginning of the CRS.
- **Page Limits:**
 - For broker-dealers and investment advisers: must not exceed two pages.
 - For dual registrants filing one Form CRS: must not exceed four pages.
- **Electronic and Graphical Formatting:** Encouraged but not required.
 - Other graphic cues and layered disclosure through hyperlinks, pop-up windows and fee calculators are required if posted on a website.

Required Topics

- **Required topics to be included in CRS:**
 - Introduction
 - Relationships and services
 - Fees, costs, conflicts and standards of conduct
 - Disciplinary history
 - Additional information.
- Referred to as “items” in the CRS.
- Do not include information that is not responsive to a prompt.

Required Topics (*cont'd*)

- **If the CRS instructions say:**
 - “*State that*”: include the language as close as possible to the language provided unless incorrect.
 - “*State*” or “*list*”: provide a list.
 - “*Include*”: state the text provided unless wholly inapplicable.
 - “*Summarize*”: provide a short summary of other disclosure and, if applicable, cross reference to ADV Part 2A.
 - “*Explain*”: answer the prompt as a complete answer sentence.
 - “*Describe*” or “*summarize*”: provide a short as possible narrative answer and cross reference to ADV 2A.

Required Conversation Starters

- Conversation starters are awkward questions intended to start conversations about the RIA's conflicts of interest.
- Formatting for conversation starters:
 - Must use text features to make the conversation starters more noticeable and prominent in relation to other discussion text:
 - Use larger or different font.
 - A text box around the heading or questions.
 - Bolded, italicized or underlined text.
 - Lines to offset the questions from the other sections.
 - ***If a required topic or conversation starter is inapplicable to your business or specific wording required by the Instructions is inaccurate, you may omit or modify.***

Delivery

- **Delivery to Existing Retail Clients and Customers:**

- Within 30 days after the date by which you are first required to electronically file the CRS with the SEC.
- Within 30 days upon the retail investor's request.
- Delivery must be before or at the time you:
 - Open a new account that is different from the retail investor's existing account(s).
 - Recommend that the retail investor roll over assets from a retirement account into a new or existing account or investment.
 - Recommend or provide a new brokerage or investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

Delivery (*cont'd*)

- **Delivery to New and Prospective Retail Clients and Customers:**
 - As of the date by which you are first required to electronically file the CRS with the SEC.
 - Delivery must be before or at the time you:
 - Enter into an investment advisory contract with the retail investor.
 - Recommend to a retail investor of an account type, a securities transaction or an investment strategy involving securities.
 - Place an order for the retail investor.
 - Open a brokerage account for the retail investor.

Delivery and Recordkeeping

- **If delivered electronically:**
 - Must not exceed the equivalent of two pages or four pages in paper format, as applicable.
 - Must be presented prominently in the electronic medium, for example, as a direct link or in the body of an email or message, and must be easily accessible for retail investors.
- **If delivered in paper format:**
 - Must ensure that the relationship summary is the first among any documents that are delivered at that time.
- **Delivery must satisfy the SEC's requirements for delivery, including obtaining specific consent for electronic delivery.**
- **A dual registrant must deliver the CRS at the earlier of the timing requirements for RIAs or broker-dealers.**
- **An RIA must keep copies of the CRS and records of each date that the CRS and any amendments are provided to a retail investor, including dates prior to the date the retail investor opens an account or becomes a client.**

Recent SEC Guidance

- **Risk Alert**

- SEC Office of Compliance Inspections and Examination (OCIE) issued a risk alert on April 7, 2020, regarding inspections for RIA compliance with CRS.
- Examinations conducted after June 30, 2020, may include assessments regarding compliance with CRS.
- Comprehensive list of CRS issues staff “may focus on” in an examination, including:
 - Delivery and filing to both existing and new retail investors.
 - Whether a firm’s CRS includes all required information.
 - Whether the CRS omits any material facts.
 - Whether the CRS is formatted as required.
 - Policies and procedures for updating filing and distributing updates and how changes are highlighted.
 - How a firm makes and keeps records for CRS and any updates.
- **As of now, no extension of filing deadline for CRS, even in light of COVID-19.**

Contact Information

If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or

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