



ACA COMPLIANCE GROUP

Investment Adviser Standard of Conduct Article and Form CRS

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Investment Adviser Standard of Conduct and Form CRS

FORM ADV PART 3 IS HERE

On June 5, 2019, the U.S. Securities and Exchange Commission (“SEC”) voted to issue two interpretations, Broker-Dealer Exclusion and Standard of Conduct for Investment Advisers, and adopt two new rules, Regulation Best Interest and the new Form CRS Relationship Summary. The [Broker-Dealer Exclusion](#) was issued to confirm and clarify the SEC’s position on advice provided by registered representatives of broker-dealers when it relates to the business of conducting securities transactions. The SEC issued the [Standard of Conduct for Investment Advisers interpretation](#) to reaffirm and clarify the SEC’s views of the fiduciary duty that investment advisers owe to their clients under the Investment Advisers Act of 1940 (the “Advisers Act”).

The newly adopted Regulation Best Interest will require broker-dealers to act in the best interest of retail customers when recommending any securities transaction or investment strategy. The new Form CRS, “Customer Relationship Summary” (also referred to as “Form ADV Part 3”), will require both registered investment advisers and broker-dealers to provide retail investors with a two-page or four-page plain English and layered disclosure document. Investment advisers and broker-dealers are encouraged to use graphic, hyperlinks, and electronic formats in their Form CRS Relationship Summary.

The SEC designed these two new rules and interpretations to help retail investors to understand and compare the services offered by investment advisers and broker-dealers.

FORM CRS - CUSTOMER RELATIONSHIP SUMMARY

Form CRS will require both SEC-registered investment advisers and broker-dealers who have retail investors to prepare and file a relationship summary disclosing: (i) the types of client and customer relationships and services the firm offers; (ii) the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; (iii) whether the firm and its financial professionals currently have reportable legal or disciplinary history; and (iv) how to obtain additional information about the firm.

For Investment Advisers, Form CRS is being incorporated into the current Form ADV – noted as Part 3. Firms will file copies of their relationship summaries with the SEC, will update the disclosures when the information becomes materially inaccurate, and will communicate any changes to retail investors who are existing clients or customers.¹

MAINTENANCE AND FILING

Investment advisers must update their relationship summary when it becomes materially inaccurate. They have 30 days to update their document, and 60 days (after the updates are required to be made and filed) to deliver the updated relationship summary to retail investors. They must highlight the most recent changes by marking the revised text or including a summary of material changes, and attach the revised text or summary of changes to the clean copy of relationship summary. The relationship summaries will be accessible via the SEC’s public website, [Investor.gov](#), in addition to the requirement to be added to the firm’s website.

¹ <https://www.sec.gov/rules/final/2019/34-86032.pdf>

The filing must be in a text-searchable format and must be structured with machine-readable headings. Investment advisers may file an amended relationship summary as an other-than-annual amendment or by including the relationship summary as part of the annual Form ADV updating amendment, within the 30 days in which they are required to file the amendment.

Items to be disclosed in a Form CRS Relationship Summary:

Item 1 – Introduction

General Instructions to Form ADV Part 3: Instructions to Form CRS requires investment advisers to disclose certain information such as the adviser name, the registration information (i.e., broker-dealer, investment adviser, or both), as well as prescribed disclosures. Investment advisers must also include Investor.gov/CRS under Item 1.

Item 2 – Relationships and Services (“What investment services and advice can you provide me?”)

The SEC requires investment advisers to include prescribed conversation starters in a question-and-answer format, as well as prescribed headings to address certain information. Investment advisers must address their investment monitoring activities, investment authority, whether they only offer limited products or types of investments, and account minimum size and other requirements. They must also include specific references to more detailed information about their services, and at a minimum, include the same or equivalent information to Items 4 and 7 of Part 2A or Items 4.A. and 5 of Part 2A Appendix 1. Use of hyperlinks, mouse-over windows, or other means of facilitating access to this additional information and examples is encouraged.

Item 3 – Fees, Costs, Conflicts, and Standard of Conduct (“What fees will I pay?”)

Under Item 3, investment advisers must summarize their principal fees and costs, as well as other fees, that retail investors will incur for the services, and how frequently the fees or costs are charged to the retail investors. Investment advisers must also disclose any conflicts of interest that these fees cause. Similar to Item 2, investment advisers must also provide additional information and include prescribed conversation starters in a question-and-answer format, as well as prescribed headings.

Item 4 – Disciplinary History (“Do you or your financial professionals have legal or disciplinary history?”)

Investment advisers must include a prescribed conversation starter and respond “Yes” or “No” to the question asking whether the investment adviser or its financial professionals has disciplinary information disclosed in the adviser’s Form ADVs, the broker’s Form BD, or on Forms U4, U5, or U6. Regardless of the response, investment advisers must provide their retail investors with this link, [Investors.gov/CRS](https://www.investors.gov/crs), for a free and simple search tool to research the investment adviser and its investment professionals.

Item 5 – Additional Information

Similar to Items 2, 3, and 4, investment advisers must include the following prescribed conversation starters:

- » “Who is my primary contact person?”
- » “Is he or she a representative of an investment adviser or a broker-dealer?”
- » “Who can I talk to if I have concerns about how this person is treating me?”

Any additional information about the investment advisory services, including where to request a copy of the relationship summary, must be disclosed prominently at the end of the document. Investment advisers should also include a telephone number where retail investors can request up-to-date information and a copy of the relationship summary.

DELIVERY

The SEC has defined a “retail investor” 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.” For the Form CRS purposes, a natural person’s legal representative is a non-professional individual such as an executor, conservator, or a person holding a power of attorney for a natural person. Therefore, investment advisers will not be required to deliver their relationship summary to legal representatives who happen to also be regulated financial service professionals. Investment advisers will also not be required to deliver their summary relationship to participants in 401(k) plans and other workplace retirement plans unless an individual participant seeks or retains an investment adviser to provide advisory services for his or her own retirement account (e.g., IRA accounts).

Investment advisers who have retail investors must provide their relationship summary to all retail investors before or at the time they enter into any written or oral investment advisory agreement. The relationship summary is required whether or not there is a recommendation and covers any prospective and existing clients and customers (i.e., a person who “seeks to receive or receives services”) of investment advisers as well as broker-dealers.

Investment advisers who are also registered with the SEC as broker-dealers (and have retail investors) must deliver their relationship summary to the retail investors before or at the time of entering into an investment advisory agreement or before or at the earliest of:

- » A recommendation of any account types, a securities transaction, or an investment strategy involving securities; or
- » Placing an order for the retail investor; or
- » Opening of a brokerage account for the retail investor.

Please see the BD Alert for further discussions on the Form CRS Relationship Summary for broker-dealers.

The compliance date for the new rules is June 30, 2020. However, advisers considering registration in 2020 should take note that any initial application for registration as an investment adviser, that is filed with the SEC on or after May 1, 2020, must include a Form CRS.

FOR MORE INFORMATION

ACA assisted over 700 firms with their Form ADV filings in 2019. If you have questions about the new form requirements, please contact **Michael Pitts** at mpitts@acacompliancegroup.com or **781-375-5770**.