



Summary of Observations by the Standards of Conduct Implementation Committee Regarding Form CRS Disclosures Included in the [SEC Staff Statement](#)

| | Observed Themes | Requirements and Reminders |
|---|---|---|
| 1 | Use of Technical Language, Including Disclaimers | <p>Relationship summaries must be:</p> <ul style="list-style-type: none"> • Concise and direct; • Use plain English; and • Take into account the level of financial experience of retail investors. <p>Firms must, among other things, abstain from the use of:</p> <ul style="list-style-type: none"> • Legal jargon; and • Highly technical business terms unless such jargon and/or technical business terms are clearly explained. <p>Relationship summaries must not include disclosures other than disclosures that are required or allowed pursuant to Form CRS instructions and the applicable item.</p> <p>Firms are reminded that they are not permitted to use disclaimers or hedging language in their relationship summaries.</p> |

| | Observed Themes | Requirements and Reminders |
|---|--|---|
| 2 | Omission of Required Information | <p>Firms must generally include all:</p> <ul style="list-style-type: none"> • Required headings; • Conversation starters; and • Prescribed language. <p>Required disclosures or conversation starters may only be omitted or modified under the following limited circumstances:</p> <ul style="list-style-type: none"> • It is inapplicable to the firm’s business; or • The specific wording prescribed in the Form CRS instructions would be inaccurate as it relates to the firm. |
| 3 | Reliance on Proposed, Rather than Final Instructions | <p>Firms must rely on the requirements set forth in the <i>final instructions</i> to Form CRS. The SEC expects firms to:</p> <ul style="list-style-type: none"> • Include required information and prescribed language; and • Follow prescribed order and formatting requirements. <p>Firms should verify that disclosures included in their relationship summaries comply with the adopted instructions to Form CRS.</p> |
| 4 | Lack of Specific References to More Detailed Information | <p>Firms are required to “include specific references to more detailed information in the relationship summary sections describing the firm’s services, fees and costs, and conflicts of interests... These references must include[, at a minimum,] the same or equivalent information to that required by Form ADV, Part 2A and Regulation Best Interest, as applicable” (e.g., direct hyperlinks to Form ADV Part 2A, “Regulation Best Interest Disclosure,” fee information regarding the service or account described).</p> <p>If a relationship summary is posted on a firm’s website or is otherwise provided to retail investors electronically, the firm “must provide a means of facilitating access to any information that is referenced in the relationship summary if the information is available online.”</p> |
| 5 | Shortcomings in Descriptions of Relationships and Services; Fees, Costs, Conflicts, and Standard of Conduct | <p>All information that firms include in their relationship summaries “must be true and may not omit any material facts necessary in order to make the required disclosures, in light of the circumstances under which they were made, not misleading.” Moreover, the disclosures firms include in their relationship summaries must be “responsive and relevant to the topics covered.”</p> <p>The Committee observed that some relationship summaries omitted “required information or included impermissible, extraneous, or unresponsive disclosures.” The Committee noted that the shortcomings commonly related to monitoring, investment authority, limited investment offerings, principal fees and costs, wrap fee program offerings and fees, extraneous disclosures regarding standards of conduct, and firm and financial professional compensation arrangements and conflicts of interest. Based on these observations, the Committee set forth the following reminders:</p> <ul style="list-style-type: none"> • Monitoring. Firms are required to explain whether or not: <ul style="list-style-type: none"> – They monitor retail investors’ investments, and, if so, the frequency and material limitations associated with such monitoring; and |

| | Observed Themes | Requirements and Reminders |
|--|-----------------|--|
| | | <ul style="list-style-type: none"> – Whether or not monitoring services are included as part of the firm’s standard services. • Investment Authority. <ul style="list-style-type: none"> – <i>Investment advisers that accept discretionary authority.</i> Such firms are required to explain these services, material limitations on this authority (e.g., length of time), as well as particular conditions that elicit such authority. – <i>Investment advisers that offer non-discretionary services and broker-dealers.</i> Such firms are required to set forth that the retail investor is responsible for making the ultimate decision with respect to the purchase or sale of investments. – <i>Firms that exercise both discretionary and non-discretionary authority.</i> Such firms must adequately explain “which investment authority applies to which services or accounts that the firm offers.” • Limited Investment Offerings. Firms are required to describe “whether or not they make available or offer advice only with respect to proprietary products or a limited menu of products or types of investments.” Such firms must explain these limitations in their relationship summaries. • Principal Fees and Costs. Principal fees and costs that retail investors will incur for firm services, including the frequency such fees and costs are assessed and the conflicts of interest they create, must be summarized. • Wrap Fee Program Offerings and Fees. Investment advisers that offer wrap fee programs are required to explain such programs and their related fees. Firms that charge wrap fee program fees are urged to set forth that “asset-based fees associated with the wrap fee program will include most transaction costs and fees to a broker-dealer or bank that has custody of these assets, and therefore are higher than a typical asset-based advisory fee.” • Extraneous Disclosures Regarding Standards of Conduct. Firms must employ the prescribed language in Item 3 of Form CRS, including the term “best interest,” to explain their applicable standard of conduct. • Firm and Financial Professional Compensation Arrangements and Conflicts of Interests. Firms are required to “summarize how their financial professionals are compensated and disclose any potential conflicts of interest related to the firm’s compensation practices.” These conflicts should be explained in a fashion that assists retail investors to appreciate the conflicts and how they may impact a financial professional’s motivation. Firms are further reminded not to: (i) use ambiguous wording to suggest that the firm “may” have a conflict without describing when the conflict could occur; or (ii) describe how they mitigate their conflicts of interest under this item. |

| | Observed Themes | Requirements and Reminders |
|---|---|--|
| 6 | Modification and/or Supplementation of the Disciplinary History Disclosure | <p>Firms must include the following heading in their relationship summary: “Do you or your financial professionals have legal or disciplinary history?” and answer “yes” or “no” contingent upon whether the firm or its financial professionals have a triggering event. Firms are also required to include a reference to Investor.gov/CRS and certain conversation starters in their relationship summaries.</p> <p>Firms are reminded that they:</p> <ul style="list-style-type: none"> • Do not have the option to leave the disciplinary history answer blank or omit reportable disciplinary history from the relationship summary; and • May not: <ul style="list-style-type: none"> – Omit or modify the heading or the conversation starters; or – Add descriptive or other qualitative or quantitative language when responding to the disciplinary history heading in their relationship summaries. |
| 7 | Issues with Prominently Displaying Relationship Summary on Firm Website | <p>The SEC expects firms that operate a publicly available website to prominently post the current version of their relationship summary on their website. This means that the relationship summary is required to “be posted in a location and format that is easily accessible for retail investors.”</p> <p>Firms are reminded not to:</p> <ul style="list-style-type: none"> • Use “small or hard to read text in the hyperlink to the relationship summary”; • Use a “non-descriptive term or phrase to label the relationship summary” (e.g., “regulatory disclosures”); • Place the “hyperlink to the relationship summary several pages (clicks) away from the firm’s investor homepage”; or • Place the “relationship summary among numerous other disclosure and/or promotional documents.” |
| 8 | Issues with Description of Affiliate Relationships | <p>Affiliated firms that prepare a single relationship summary must set forth the information regarding brokerage and investment advisory service offerings “with equal prominence, and clearly distinguish and facilitate comparison of the two types of services.”</p> <p>Firms are reminded to:</p> <ul style="list-style-type: none"> • Clearly state which firm offers which services or investment products; • Attribute disclosures to a specific firm or make clear that certain disclosures apply to both firms; and • Clearly describe the relationship between affiliated entities listed in the relationship summary. <p>Where affiliated firms elect to prepare separate relationship summaries and offer services through dually licensed financial professionals, such firms must “provide a means of facilitating access to the relationship summaries of their affiliates.”</p> |

| | Observed Themes | Requirements and Reminders |
|----|----------------------------------|--|
| 9 | Poor Design | <p>Firms are expected to use white space and design features to make the relationship summary easily digestible. Text features are also required to be used by firms for specific information (e.g., conversation starters and headers).</p> <p>The SEC urges firms to use charts, graphs, tables, and other graphics or text features to describe or contrast discrete or distinct facets of firm offerings.</p> |
| 10 | Use of Marketing Language | <p>The relationship summary is not intended to serve as a marketing document.</p> <p>Responses provided in a firm’s relationship summary must be factual and provide balanced descriptions in order to aid retail investors in evaluating firm service offerings.</p> <p>Responses provided in a firm’s relationship summary must not include:</p> <ul style="list-style-type: none"> • Exaggerated statements; or • Unsupported claims. <p>Firms are reminded not to use marketing language, tout their abilities, or employ superlatives or other similar descriptors.</p> |
| 11 | Boilerplate | <p>Firms are reminded to tailor their disclosures. Vague and inaccurate “boilerplate” explanations that may impede transparency or comparability between firms must not be included in relationship summaries.</p> <p>Furthermore, firms should avoid use of the term “may” to suggest that it has a specific conflict. The SEC has stated that use of the term “may” undermines the existence of the conflict.</p> |

Meet us at the intersection of capital and innovation: goodwinlaw.com

This informational piece, which may be considered advertising under the ethical rules of certain jurisdictions, is provided on the understanding that it does not constitute the rendering of legal advice or other professional advice by Goodwin Procter or its lawyers. Prior results do not guarantee a similar outcome. Goodwin Procter is an international legal practice carried on by Goodwin Procter LLP and its affiliated entities. For further information about our offices and the regulatory regimes that apply to them, please refer to www.goodwinlaw.com/legal-notices.

