

Chapman Client Alert

April 10, 2020

Current Issues Relevant to Our Clients

SEC and FINRA Issue Form CRS Exam Guidance

With the Form CRS compliance date set for June 30, 2020, the Securities and Exchange Commission (SEC) Office of Compliance Inspections and Examinations (OCIE) recently announced that it would begin conducting examinations focused on Form CRS compliance and outlined the focus of exams likely to occur in the first year following the compliance date. Firms should consider this guidance when completing their Form CRS and establishing related compliance policies and procedures with a focus on (1) delivery and filing, (2) content, (3) formatting, (4) updates and (5) recordkeeping. The Financial Industry Regulatory Authority, Inc. (FINRA) issued guidance that it would take the same approach in its examinations. The SEC recently declined to delay the compliance date despite the current COVID-19 pandemic but both OCIE and FINRA noted that they understand that firms face challenges in the current environment and stand ready to work with firms on issues that arise in the course of exams. The guidance is available at the following links: [OCIE](#) and [FINRA](#).

OCIE simultaneously published guidance on Regulation Best Interest (Reg BI) exams described in our Client Alert available [here](#).

Form CRS

Form CRS is the new relationship summary form that SEC registered broker-dealers and investment advisers will be required to complete, file with the SEC and deliver to retail investors. Firms are required to file the form with the SEC by June 30, 2020 and deliver the form to existing retail investors by July 30, 2020. After June 30, 2020, firms may be examined for compliance with Form CRS requirements.

- Update Form CRS when required along with making a related SEC filing and postings to their public website;
- Comply with Form CRS delivery requirements to new and existing retail investors by and after the July 30, 2020 compliance date and be prepared to show the SEC they have made required deliveries; and
- Ensure adequate recordkeeping of Form CRS.

Focus Areas for Exams

Based on the areas of examination described in the SEC's guidance, firms should ensure they have appropriate policies and procedures in place for compliance with Form CRS requirements on (1) delivery and filing, (2) content, (3) formatting, (4) updates and (5) recordkeeping.

Delivery and Filing

Firms should ensure they have appropriate policies and procedures in place to:

- File their initial Form CRS with the SEC and post the form to their public website by the June 30, 2020 compliance date;

Content

Firms should ensure their Form CRS contains all required content, is true and accurate, and does not omit material facts necessary to make the disclosures not misleading. Firms should carefully review disclosures of:

- relationships and services with a focus on account monitoring and investment authority;
- fee and cost descriptions;
- direct and indirect compensation of financial professionals and related conflicts;
- conflicts of interest; and
- firm and financial professional disciplinary histories.

Formatting

Firms should ensure formatting is consistent with Form CRS's instructions including use of required language, plain English and required text features (e.g. bold, italicized or underlined).

Updates

Firms should be prepared to show the SEC that they have appropriate policies and procedures to:

- assess when information in their form becomes materially inaccurate;
- making required updates to their form;
- file an updated form with the SEC and post to their public website within the time required (generally 30 days from the time information becomes materially inaccurate); and
- appropriately communicate updated information to retail investors within the time required (generally 60 days after updates are required).

Recordkeeping

Firms should ensure they have appropriate policies and procedures regarding Form CRS recordkeeping including maintenance of records of delivery of their Form CRS to investors. They should be prepared to demonstrate to the SEC that delivery has been made in the time required to all retail investors.

What Should I Do Now?

Firms should review the OCIE guidance in preparing their Form CRS and related compliance policies and procedures while keeping in mind that exam staff could make different requests and focus on additional areas. The OCIE guidance is not intended to be an explanation of the requirements of Form CRS, so firms should also use resources such as the [Instructions to Form CRS](#), [FINRA's Reg BI and Form CRS Checklist](#), the [Form CRS Small Entity Compliance Guide](#), [FAQs on Form CRS](#) and the [Hypothetical Form CRS Example Drafted by the SEC Staff](#).

For More Information

If you would like further information concerning the matters discussed in this Client Alert, please contact a member of the Investment Management Group or visit us online at chapman.com.

Chapman and Cutler LLP

Attorneys at Law · Focused on Finance®

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2020 Chapman and Cutler LLP. All rights reserved. Attorney Advertising Material.