

## OCIE Issues Risk Alert that Focuses on Compliance with Form CRS

April 20, 2020

The SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a Risk Alert to provide SEC registered investment advisers and broker dealers ("firms") with information about compliance with new Form CRS<sup>[1]</sup> (Form ADV, Part 3) and its related rules that require firms to deliver to retail investors a brief customer or client relationship summary ("relationship summary"). The Risk Alert also provides information about the scope and content of OCIE examinations that will assess firm's compliance with Form CRS. Investment advisers must file their relationship summaries using the Investment Adviser Registration Depository (IARD) and broker dealers must file using the Central Registration Depository (Web CRD). Firms must file their initial relationship summaries by the June 30, 2020 compliance date.

### Form CRS

The Form CRS adopting release states that the relationship summary is intended to inform retail investors about "the types of client and customer relationships and services the firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; whether the firm and its financial professionals currently have reportable legal or disciplinary history; and how to obtain additional information about the firm." A copy of the relationship summary must be available upon request without charge.

According to SEC staff responses to Frequently Asked Questions about Form CRS, an investment adviser must deliver a relationship summary to each retail investor before or at the time the adviser enters into an investment advisory contract with the retail investor. A "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." In the staff's view, pooled investment vehicles, such as hedge funds, private equity funds and venture capital funds, would not meet this definition and a relationship summary would not be required to be delivered to these funds.

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<sup>[1]</sup> On June 5, 2019, the SEC adopted Form CRS with a compliance date of June 30, 2020. Although the SEC continues to monitor the effects of COVID-19 on market participants, it has not extended the Form CRS compliance date.

## Examinations for Compliance with Form CRS

Initial examinations of firms with retail investors will be conducted after June 30, 2020 and are intended to focus on the following areas:

### Delivery and Filing

OCIE may (a) review whether the firm has filed its relationship summary and whether it is posted on the firm's website (if any); (b) evaluate the process for delivering the relationship summary to existing and new retail investors; and (c) review policies and procedures to assess whether they address the required relationship summary delivery process and dates.

With respect to *existing* retail investors, initial delivery of the relationship summary must be made by July 30, 2020 (thirty days after the June 30, 2020 compliance date) and before or at the time of:

- opening of a new account that is different from the retail investor's existing account;
- recommendation of a rollover of assets from a retirement account into a new or existing account or investment; or
- recommendation of 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.

With respect to *new* retail investors, delivery of the relationship summary must be made before or at the earliest of:

- entering into an investment advisory contract with the retail investor;
- recommendation to a retail investor of an account type, a securities transaction, or an investment strategy involving securities;
- placing an order for the retail investor; or
- opening of a brokerage account for the retail investor.

### Content

OCIE may review a firm's relationship summary to assess if it (a) includes all required information; and (b) contains true and accurate information and does 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.

Specifically, OCIE may review how a firm describes (a) the relationships and services it offers to retail investors, including account monitoring and investment authority; (b) the fees and costs retail investors will incur; (c) the manner of compensation of firm's financial professionals; (d) conflicts of interest, if any; and (e) whether the firm or its financial professionals have reportable legal or disciplinary history.

## Formatting

OCIE may review a firm's relationship summary to assess whether it is formatted in accordance with the General Instructions to Form CRS and includes all enumerated items.

## Updates

OCIE may review a firm's policies and procedures for updating the relationship summary to assess (a) how and whether the firm updates and files its relationship summary within 30 days after any information becomes materially inaccurate; (b) how and whether the firm communicates these changes to retail investors within 60 days after the updates were required to be made; and (c) the firm's process for highlighting to retail investors the most recent changes.

## Recordkeeping

OCIE will review a firm's records related to delivery of the relationship summary and the policies and procedures regarding record-making and recordkeeping to assess how the firm complies with its delivery and recordkeeping obligations. Firms must maintain records in accordance with Rule 204-2 of the Investment Advisers Act of 1940 and/or Rule 17a-4 of the Securities Exchange Act of 1934, as applicable.

## Conclusion

OCIE has shared its intended focus for upcoming examinations so that firms can assess their implementation plans for Form CRS as compliance date nears.

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If you have any questions regarding Form CRS, please call [Meryl Wiener](#), any of the undersigned or your regular Warsaw Burstein attorney.

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