

Form CRS Drafting Guide and Template

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What You Need To Know:

- The Form CRS must be filed with the SEC by June 30, 2020, at the latest.
- All investment advisers, broker-dealers, or dual registrants that service retail investors may now file the Form CRS with the SEC and distribute it to new and existing retail clients.
- The Form CRS has strict page restrictions, a prescribed layout, and may not omit material facts.

In an ongoing informational series, Taking Action—Reg. BI, Lowenstein Sandler LLP will provide updates and guidance to broker-dealers, investment advisers, and dual registrants to assist and enhance preparedness for the June 30 implementation date for Regulation Best Interest (Reg. BI) and Form Client Relationship Summary (Form CRS).¹ Lowenstein generated Reg. BI and Form CRS resources are available [here](#).

Starting on June 30, all investment advisers, broker-dealers, or dual registrants (individually the Firm or collectively the Firms) that service retail investors must distribute Form CRS to all existing and prospective clients. Firms may deliver Form CRS to existing and prospective clients beginning on April 6. A Firm that delivers the Form CRS in advance of the June 30 implementation date should also generally post the Form CRS on its public website, comply with updating and related delivery requirements, and file its Form CRS with the U.S. Securities and Exchange Commission (SEC).

Each Firm may only have one Form CRS, with only dual registrants permitted to have two Form CRSs, one for each registrant. Form CRS is a uniform disclosure document prescribed by the SEC; it is intended to enhance investor protection by providing succinct and relevant information to retail investors, thus enabling comparability between broker-dealers and investment advisers and operating as a resource regarding fees, conflicts, and services provided.

Drafting Form CRS will be a challenge in brevity given its strict page restrictions, prescribed layout, and the requirement that it not omit material facts or be misleading. Form CRS will not satisfy existing state and federal disclosure requirements, but it will provide retail investors with a means of accessing additional information.

The below Form CRS Drafting Guide and Template are meant to offer guidance and assist Firms as they prepare and refine their initial Form CRS. Please contact one of the listed authors or your regular Lowenstein Sandler contact if you have any questions with respect to Reg. BI and Form CRS or would like assistance preparing for the implementation date, including reviewing and updating your compliance policies and procedures, training, and/or disclosures as well as drafting Form CRS.

Resources

- [SEC Form CRS: A Small Entity Compliance Guide](#)
- [SEC Form CRS: Instructions](#)
- [SEC Form CRS: FAQs](#)
- [FINRA Reg. BI Website](#)

Drafting Guide:

- **Scope of Form CRS:** Applies to all broker-dealers, investment advisers, or dual registrants that offer services to retail investors. Retail investors is broadly defined as natural persons

¹ The term "Form CRS" is used to also refer to "Form ADV, Part 3."

that receive services for personal or household use (i.e., two-legged test).

- **Initial Filing:** April 6, 2020-June 30, 2020
 - Broker-dealers file with SEC through Central Registration Depository (Web CRD) operated by Financial Industry Regulatory Authority (FINRA).
 - Investment advisers file with SEC through Investment Adviser Registration Depository (IARD) as part of Form ADV, Part 3.
 - Dual registrants must file through both Web CRD and IARD.
- **Distribution:** Form CRS must be delivered to existing retail customers within 30 days of its filing with the SEC. Thereafter, broker-dealers must provide Form CRS at the earliest of (i) making a recommendation, (ii) placing an order, or (iii) opening an account. Investment advisers must provide Form CRS prior to entering into an advisory contract. Dual registrants must provide Form CRS at the earlier of either registrant delivery time.
 - Form CRS may be sent either electronically or in paper form. Regardless, it must be presented *prominently*.
 - Form CRS must be posted on any public website of the Firm.

A Firm that delivers the Form CRS in advance of the June 30 implementation date should generally post the Form CRS on its public website, comply with updating and related delivery requirements, and file its Form CRS with the SEC.

- **Length:** Form CRS for either a broker-dealer or an investment advisor may be up to two pages. Dual registrants, or affiliated broker-dealers and investment advisers, are encouraged to provide a combined Form CRS that may be up to four pages. Dual registrants may prepare two separate, two-page Form CRSs (both must be provided to retail customers regardless of services they utilize).
- **Layout:**
 - Five required items: (i) Introduction; (ii) Relationships and Services; (iii) Fees, Costs, Conflicts, and Standards of Conduct; (iv) Disciplinary History; and (v) Additional Information.
 - Uniform headings, questions, and conversation starters must be more prominent and noticeable than other text [**larger, italicized, bolded, or underlined**].
 - A Firm is able to omit inapplicable conversation starters or required disclosures.
 - If a Firm solely provides automated investment advisory or online brokerage and there is no person with whom a retail investor could speak to, then it must make available answers to the questions and conversation starters contained within the Form CRS.
- **Plain English** is required, meaning short sentences, active voice, "you" and "us" pronouns, and avoidance of double negatives

and legalese. Descriptions and summaries must be factual; Form CRS is not intended to be marketing material for retail investors.

- The SEC encourages charts, graphics, and comparison tables.
- The SEC encourages layered disclosure, which is access to additional information from Form CRS through URL links, QR codes, pop-up screens, etc.

CRS Template

Form CRS Template Guide: Language below that is highlighted in **red** is required text, as mandated by Form CRS Instructions. Bracketed items reference Form CRS Instruction items. If annotated with BD (broker-dealer), IA (investment adviser), or DR (dual registrant), then certain language is applicable to the specific registrant; otherwise, the requirement is applicable to all registrant types.

Item 1. Introduction

[Firm Name] [Date]

[Form Customer Relationship Summary] [Item 1.]

[Firm name] is registered with the Securities and Exchange Commission (SEC) as a [broker-dealer, investment adviser or dual registrant]. [Item 1.A.]

Brokerage and investment advisory services and fees differ, and that it is important for you to understand these differences. [BD may refer to FINRA or Securities Investor Protection Corporation] [Item 1.A.] **Free and simple tools are available to research firms and financial professionals at [Investor.gov/CRS](https://www.investor.gov/crs), which also provides educational materials about broker-dealers, investment advisers, and investing.** [Item 1.B.]

Item 2. Relationships and Services **What investment services and advice can you provide me?** [Item 2.A.]

We offer to retail investors [brokerage services, investment advisory services, or both. Describe the principal services, accounts, or investments the Firm makes available to retail investors, and any material limitations on such services.] [For BD, state particular principal services including buying and selling of securities and whether recommendations are offered to retail investors.] [For IA, or BD that provides recommendations, state the particular types of principal investment advisory services the Firm offers to retail investors, including, for example, financial planning and wrap fee programs. *Description must address:* (i) **Monitoring:** Including frequency and any material limitations. If so, indicate whether or not monitoring is offered as part of your standard service; (ii) **Investment Authority:** Describe discretionary authority, including circumstances that would trigger this authority and material limitations (e.g., length of time); for nondiscretionary services, explain that client makes ultimate decision (regarding the purchase or sale of investments); (iii) **Limited Investment Offerings:** Explain whether

or not you make available or offer advice only with respect to proprietary products or a limited menu of products or types of investments, and if so, describe these limitations; and (iv) **Account Minimums and Other Requirements:** Explain whether or not there are requirements to open or maintain an account (e.g., minimum account size or investment amount). [Item 2.B.]

For additional information, please see [cross references to other applicable documents].²

CONVERSATION STARTERS: Ask your financial professional:

- [BD or IA] *Given my financial situation, should I choose a [brokerage service or investment advisory service? Why or why not?* [Item 2.D.(i) and (ii)]
- [DR] *Given my financial situation, should I choose an investment advisory service? Should I choose a brokerage service? Should I choose both types of services? Why or why not?* [Item 2.D.(iii)]
- *How will you choose investments to recommend to me?* [Item 2.D.]
- *What is your relevant experience, including your licenses, education, and other qualifications? What do these qualifications mean?* [Item 2.D.]

Item 3. Fees, Costs, Conflicts, and Standard of Conduct *What fees will I pay?* [Item 3.A.]

[As applicable, summarize principal fees and costs retail investors will incur for broker-dealer or investment advisory services, including how frequently the fees are assessed and the conflicts of interest they create.] [Item 3.A.(i)] [For BD: Must disclose its conflicts related to transaction-based fees and could address conflicts by stating that a retail investor would be charged more when there are more trades in his or her account, and this may motivate the Firm to encourage the investor to trade more often. [Item 3.A.(i)a.] [For IA: Must describe ongoing asset-based fees, fixed fees, wrap-fee program fees, or other direct-fee arrangement.³ [Item 3.A.(i)b.] [For IA: Describe each type of fee reported on Form ADV; if wrap-fee program, encouraged to explain that asset-based fees associated with 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 typical asset-based advisory fees.] [Item 3.A.(i)b.(1)] [With respect to addressing conflicts of interest, an investment adviser that charges an asset-based fee could, for example, include a statement that the more assets there are in a retail investor's advisory account, the more a retail investor will pay in fees, and the Firm may therefore have an incentive to

encourage the retail investor to increase the assets in his or her account.] [Item 3.A.(i)b.(2)] [Describe other fees and costs related to your brokerage or investment advisory services and investments in addition to the Firm's principal fees and costs disclosed in Item 3.A.(i) that the retail investor will pay directly or indirectly. List examples of the categories of the most common fees and costs applicable to your retail investors (e.g., custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees).] [Item 3.A.(ii)]

You will pay fees and costs whether you make or lose money on your investments. Fees and costs will reduce any amount of money you make on your investments over time. Please make sure you understand what fees and costs you are paying.⁴ [Item 3.A.(iii)]

For additional information, please see [cross references to other applicable documents].

CONVERSATION STARTER: Ask your financial professional:

- *Help me understand how these fees and costs might affect my investments. If I give you \$10,000 to invest, how much will go to fees and costs, and how much will be invested for me?* [Item 3.A.(iv)]

[For BD] What are your legal obligations to me when providing recommendations? How else does your firm make money, and what conflicts of interest do you have?

When we provide you with a recommendation we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you. Here are some examples to help you understand what this means: [Item 3.B.(i)a.]

If solely an executing BD: We do not provide recommendations. The way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you. Here are some examples to help you understand what this means:

[For IA] What are your legal obligations to me when acting as my investment adviser? How else does your firm make money and what conflicts of interest do you have?

² Must include specific references to more detailed information about your services that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure (Items 4 and 7 of Part 2A or Items 4.A. and 5 of Part 2A Appendix 1) or Regulation BI, as applicable. [Item 2.C.]

³ The principal fees for investment advisory services should align with the type of fee(s) that you report in response to Form ADV Part 1A, Item 5.E.

⁴ You must include specific references to more detailed information about your fees and costs that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure (specifically Items 5.A., B., C., and D.) or Reg. BI, as applicable. [Item 3.A.(iii)]

When we act as your investment adviser, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you. Here are some examples to help you understand what this means: [Item 3.B.(i)b.]

[For DR] What are your legal obligations to me when providing recommendations as my broker-dealer or when acting as my investment adviser? How else does your firm make money and what conflicts of interest do you have? [Item 3.B.]

When we provide you with a recommendation as your broker-dealer or act as your investment adviser, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you. Here are some examples to help you understand what this means: [Item 3.B.(i)c.]

[As applicable, summarize other ways in which the Firm and its affiliates make money from brokerage or investment advisory services and investments provided to retail investors. Explain the incentives created by each of the following: (i) Proprietary Products: Investments that are issued, sponsored, or managed by the Firm or its affiliates; (ii) Third-Party Payments: Compensation the Firm receives from third parties when it recommends or sells certain investments; (iii) Revenue Sharing: Investments for which the manager or sponsor of those investments or another third party (such as an intermediary) shares with the Firm revenue it earns on those investments; (iv) Principal Trading: Investments the Firm buys from a retail investor, and/or investments the Firm sells to a retail investor, for or from its own accounts, respectively.] [Must describe all four if applicable; if none are applicable, summarize at least one other material conflict of interest that affects retail investors.] [Item 3.B.(ii)]

CONVERSATION STARTER: Ask your financial professional:

- *How might your conflicts of interest affect me, and how will you address them?* [Item 3.B.(iii)]

For additional information, please see [cross references to other applicable documents].⁵

How do your financial professionals make money?

[Summarize how the Firm's financial professionals are compensated, including cash and noncash compensation, and the conflicts of interest those payments create.] [Item 3.C.(i)] [Include whether financial professionals are compensated based on

factors such as amount of client assets they service; time and complexity required to meet a client's needs; product sold (i.e., differential compensation); product sales commissions; or revenue the Firm earns from financial professional's advisory services.] [Item 3.C.(ii)]

Item 4. Disciplinary History

Do you or your financial professionals have legal or disciplinary history? [Item 4.A.]

[State "Yes" or "No" as applicable. Firms must state yes if they or any of their financial professionals currently disclose, or are required to disclose, disciplinary information in a Form ADV, Form BD, or Form U4, U5, or U6 [Item 4.B.] Visit Investor.gov/CRS for a free and simple search tool to research you and your financial professionals. [Item 4.D.(i)]

CONVERSATION STARTER: Ask your financial professional:

- *As a financial professional, do you have any disciplinary history? For what type of conduct?* [Item 4.D.(ii)]

Item 5. Additional Information

For additional information about our services, [include appropriate cross references]. [Item 5.A.] If you would like additional, up-to-date information or a copy of this disclosure, please call [include a telephone number for clients to request up-to-date information and request a copy of Form CRS]. [Item 5.B.]

CONVERSATION STARTER: Ask your financial professional:

- *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?* [Item 5.C.]

⁵ You must include specific references to more detailed information about your conflicts of interest that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure, or Reg. BI. [Item 3.B.(iv)]

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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