

Special Alert

October 2020

SEC Issues Additional Form CRS Guidance



On Oct. 8, 2020 the SEC issued a joint statement on additional Form CRS guidance regarding firms' disciplinary history. The statement was released in tandem with several new FAQs, which help clarify firms' disclosure obligations as they relate to disciplinary history. The update guidance comes in response to the SEC's early review of firms' Form CRS filings. The major takeaways are as follows:

First, firms are reminded that Form ADV requires reporting disciplinary history for the firm and all of its "advisory affiliates," which include persons directly or indirectly controlling the firm. Therefore, if a firm reports disciplinary history related to its parent company on Form ADV, firms must also ensure they provided a "Yes" response in Item 4 of Form CRS, even though the event involved the parent company of the firm and not the firm.

Second, firms must include Item 4's heading "Do you or your financial professionals have legal or disciplinary history?" followed with a "Yes" or "No" response. The SEC's first reviews of Form CRS filings revealed that some firms had chosen to omit the heading and response because they had no history to report. The fact that neither a firm nor its financial professionals have any legal or disciplinary history to disclose does not relieve a firm of its obligation to include this heading and a response.

Third, the heading "Do you or your financial professionals have legal or disciplinary history?" may not be amended to address only the firm's or its financial professionals' legal or disciplinary history. The SEC provides this guidance in response to an FAQ that presented a scenario in which a firm has no legal or disciplinary history to report, but one of its financial professionals does have a legal or disciplinary history subject to disclosure pursuant to the Form CRS Instructions.

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Fourth, and connected to the previous question, is that firms may provide two separate responses for the firm and its financial professionals. In the example above, a firm could include a “No” response with respect to the firm, and a “Yes” response regarding its financial professionals. This new information presents a change from earlier understanding of what is permissible in Item 4 of Form CRS. Firms must continue to adhere to the concise wording requirements of Item 4, and should only include language such as “No for our Firm. Yes for our financial professionals.” Or “Firm—No. Financial Professionals—Yes.” This flexibility also works in the other direction, where a firm does have legal or disciplinary history but none of its financial professionals do. The SEC’s language limitation requirement stems from concern that a firm may add descriptive or other qualitative language that might minimize or obscure the disciplinary history. As an example, the SEC stated that it would be inappropriate to state “No for our firm. Yes for only one of our 50 financial professionals.”

Finally, assuming there is legal or disciplinary history to disclose, a firm may not include any additional information in their relationship summaries for explanatory or other purposes. The SEC’s early review of Form CRS filings found that some firms included various other pieces of information in Item 4 to help explain their disciplinary history. In one of the newly released FAQs, the SEC reiterated that Item 4 must only include the (a) heading, (b) “Yes” or “No” responses, (c) the reference to Investor.gov/CRS (Item 4.D.(i)), and (d) the conversation starter (Item 4.D.(ii)). However, there is nothing preventing firms from separately providing additional regulatory disclosures to clients, such as Form ADV Part 2B brochure supplements for its investment adviser representatives.

If you have questions or feel that this new guidance may affect your firm’s Form CRS, do not hesitate to contact us.

Links:

[Joint Statement](#) →

[Form CRS FAQ’s](#) →

[Form CRS Instructions](#) →

Questions? Contact the DCS Team

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