THIS MONTH'S RESOURCE:

COMPLIANCE MANUAL UPDATES, SEC STATEMENT ON FORM CRS & PROXY VOTING

Updates and Changes to Your Firm's Policies and Procedures

Under Rule 206 (4) -7, Firms are required to have Compliance Policies and Procedures, adequately designed to help them meet their regulatory requirements. A Firm must implement the written policies and procedures tailored and reasonably designed to prevent violation of the Advisers Act by the Firm or any of its supervised persons. This Rule also requires federally registered investment advisors to conduct a review at least annually to determine the adequacy and effectiveness implementing of the investment advisor's written policies and procedures. This design and annual review should include updating, deleting, or adding policies as regulatory requirements change.

Throughout the year, CRP releases updates to our Base Compliance Manual to include updated language that has been revised due to changes or regulatory guidance on certain rules and regulations, language based on exam feedback, or language that is considered general best practice. During the 2020 year, Regulation Best Interest was implemented on June 30, 2020. Firms received sample template language in June. CRP updated one paragraph to enhance the review process for the Firm's disciplinary history and its IARs per the October 8th public statement regarding the review of Form CRS – see commentary below. Additionally, a new section of "definitions" is added to address commonly used terms.

Because all Manuals are customized to each Firm, references to certain Sections in your manual may vary. As per Rule 206 (4)- 7 and the Base Compliance Manual indicates, a thorough review of your Manual should be done at least annually to revise/enhance the Firm's policies and procedures and add policies and procedures if they apply to your Firm. CRP will continue to send out updates throughout the year. CRP does require Firms to tailor and update their Manual as needed after the first initial review and customization. If your Firm needs assistance on adding sections, our hourly rate of $300 will apply.

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*Highlight from a **SEC Risk Alert** released on November 9, 2015:*

> *Staff Observed that compliance policies and procedures were not tailored to registrants' businesses or practices. Several of the compliance manuals that the staff reviewed were created using outsourced CCO-provided templates. However, some of these templates were not tailored to registrants' businesses and practices and, thus, the compliance manuals that had been adopted contained policies and procedures that were not appropriate or applicable to the registrants' businesses or practices.*

Examples include:

- *Critical areas were not identified, and thus certain compliance policies and procedures were not adopted,*
- *Policies were adopted but did not apply to the advisers' businesses and operations. This includes keeping in language because you may add a type of business in the future.*
- ***Critical control procedures were not performed or not performed as described. It is essential you do what you say you are going to do!***

TO ASSIST WE HAVE INCLUDED INSTRUCTIONS FOR UPDATING THE TABLE OF CONTENTS IN WORD:

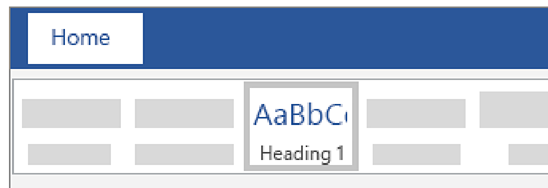
Create/Update a Table of Contents

Word for Office 365 Word 2019 Word 2016 Word 2013 Word 2010 Word 2007

A Table of Contents in Word is based on the headings in your document.
Before you create your table of contents, ***apply heading styles*** - Heading 1, Heading 2, or Heading 3.

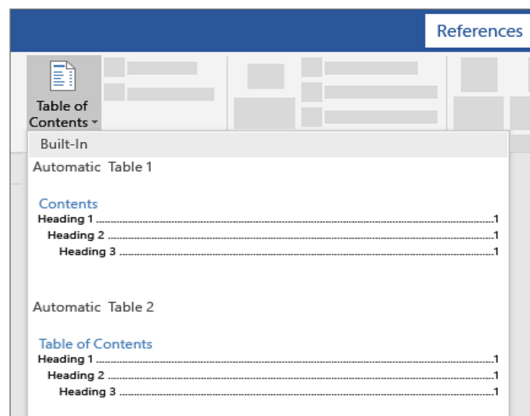
Add heading styles

For each heading that you want in the table of contents, select the heading text, go to **Home** > **Styles**, and then choose **Heading 1**, **2**, or **3**.



Create a Table of Contents

1. Put your cursor where you want to add the table of contents.
2. Go to References > Table of Contents, choose Automatic Table 1 or Automatic Table 2, or choose Custom Table of Contents to create your own style.
3. If you make changes to your document that affect the table of contents, update the table of contents by right-clicking the table of contents and choosing Update Field.



SEC Statement Regarding New FAQs for Form CRS

**SEC ADVISERS ONLY (this section does not apply to State Registered Advisers)*

The SEC released a statement on October 8, 2020, referencing their observations around disciplinary disclosure on the newly required Form CRS.

> "Under the Instructions for Form CRS, a Firm must include in its relationship summary the following:
>
> - a heading that includes: ***"Do you or your financial professionals have legal or disciplinary history?" and answer "yes" or "no" depending upon whether the Firm or any of its financial professionals has a triggering event.***
> - instructions that direct the retail investor to visit Investor.gov/CRS for a free and simple search tool to research the Firm and its financial professionals.
> - conversation starters that will allow a retail investor to assess his or her financial professional's disciplinary history and engage in further discussion about those events or any events applicable to the Firm."

"In connection with its review of Form CRS filings, the staff Standards of Conduct Implementation Committee (the "Committee") has observed examples of relationship summaries ***where Firms did not provide a response in the disciplinary history section.*** **The staff also observed examples where Firms' responses in the disciplinary history section appear to lack the required information or otherwise could be improved.** Today, the staff of the Division of Investment Management and the Division of Trading and Markets (the "Staff") have published "frequently asked questions" ("FAQs") about the disclosure requirements of Form CRS with respect to a Firm's disciplinary and legal history. These FAQs are intended to address issues that the Committee's review has identified or questions that Firms have posed to the Staff. Click HERE to view the FAQ.

Specifically, a Firm must indicate whether it or its financial professionals currently disclose, or are required to disclose, the following information:

- disciplinary information in Form ADV (Item 11 of Part 1A or Item 9 of Part 2A);
- legal or disciplinary history in Form BD (Items 11 A-K) (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312); or
- *disclosures for any financial professionals in Items 14 A-M on Form U4,* or in Items 7A or C-F of Form U5.

Attention to those who recently added our Sample Regulation Best Interest Compliance language that was sent out to all SEC Registered Firms in June of 2020. Based on the SEC comments published on October 8th and as indicated in our commentary on "This Month's Resource" – we have amended our procedures to include review of disciplinary history and reporting on Form CRS. Please tailor the sample language below to fit your Firm's Procedure and add to the existing Reg BI language sent out back in June 2020.

- **DISCIPLINARY HISTORY - REVIEW AND REPORTING ON FORM CRS**
  For continuous oversight and an effort to comply with an updated Form CRS, the CCO or designee will review the Firm's and Individual disciplinary history to determine proper disclosure of Item 5 of the Form CRS. At least semi-annually or as deemed necessary, the CCO will review the Firm's and Individual disciplinary report on IARD. Documentation of review will be retained in Firm's compliance file and prompt update of the Form CRS will be made, if warranted.

***CCO TIP –** Under IARD tab 'Report' feature– create "Disclosure Download" Report for the Firm and Individuals.

ATTN: FIRMS WHO VOTE PROXIES

On July 22, the SEC adopted: (i) amendments to its proxy rules related to proxy voting advice (the "proxy advice amendments"); and (ii) supplemental proxy voting guidance for investment advisers (the "2020 guidance"). This 2020 guidance supplements the proxy voting guidance that the SEC provided to investment advisers in 2019 (the "2019 guidance"). The Proxy Voting Responsibilities of Investment Advisers ("Guidance") became effective on September 3, 2020. Additionally, the SEC final rules governing Proxy Advisors ("Amendments"), intended to improve the accuracy and transparency of information provided by proxy advisory Firms, will go into effect on November 2, 2020 with a required compliance date of December 1, 2021, for certain provisions and full compliance by the 2022 proxy season.

The 2020 guidance addresses investment advisers'

(i) ***Use of proxy advisory Firms' electronic voting platforms*** and consideration of additional information that issuers may provide about the proxy voting advice to which they are subject, and ***Disclosures*** about these matters.

The 2019 guidance stated generally that an investment adviser that retains a proxy advisory Firm to provide voting recommendations or voting execution services also should ***consider additional steps to evaluate whether the investment adviser's voting determinations are consistent with its voting policies and procedures and in the client's best interest before the votes are cast.*** The 2019 guidance further stated that one such step could be considering policies and procedures that **provide for consideration of additional information that may become available on a proxy proposal** (e.g., an issuer's or shareholder proponent's subsequently filed additional proxy materials or other information conveyed by such parties to the investment adviser that would reasonably be expected to affect the adviser's vote).

With respect to electronic voting platform usage and consideration of additional information, an investment adviser's changes to its policies and practices may, to some extent, be contingent upon its proxy advisory Firm's changes to its policies and practices, which could occur over the next fifteen months. Accordingly, it is our understanding that, depending on the circumstances and in response to the 2019 guidance, the 2020 guidance, and the proxy advice amendments, ***an investment adviser could modify its policies and practices in stages.*** For example, an investment adviser could make changes in response to the SEC guidance directed to investment advisers, and then make further changes if and when its proxy advisory Firm changes its policies and practices (e.g., in response to the proxy advice amendments).

With respect to disclosure, an investment adviser should consider whether changes to its disclosures are warranted in light of the guidance directed to investment advisers and its policies and practices. Once again, depending on the circumstances, such disclosure changes may be made in stages following changes to underlying policies and practices. For example, if an investment adviser determines that disclosure changes are warranted following its 2020 guidance review, the adviser would amend its Form ADV. But the investment adviser's proxy advisory Firm may not have completed all necessary changes to its policies, practices, and services as of that time. In that case, if the investment adviser modifies its policies and practices in response to future proxy advisory Firm changes, then the investment adviser should consider whether additional disclosure changes are warranted. If so, the adviser would amend further its Form ADV.

In general, the Guidance is intended to:

- Assist advisers in determining how to consider any additional information that will become more readily available as a result of the Amendments; and
- Address the disclosure obligations and considerations that may arise when advisers use proxy advisory Firms, electronic vote management systems, or other voting execution services for voting proxies.

Some steps that an adviser could take to demonstrate that it is making voting determinations in a client's best interest include, but is not limited to:

- Review the policies and procedures to determine whether they are reasonably designed to address circumstances where the adviser becomes aware that an issuer intends to file or has filling additional soliciting materials with the SEC after the adviser has received the proxy advisory Firm's voting recommendations but before the submission deadline;
- Determine whether the proxy advisory Firm may obtain non-public information about how an adviser will vote clients' proxies and then review all agreements with the proxy advisory Firm to determine whether the agreements will permit the proxy advisory Firm to use that non-public information in a manner that would not be in the best interest of the adviser's clients; and
- Determine whether policies and procedures are reasonably designed to address the adviser's disclosure obligations.

DISCLOSURE OBLIGATIONS

Advisers are required, as part of its duty of loyalty to clients, to make full and fair disclosure of all material facts relating to the advisory relationship including, material facts related to the exercise of its proxy voting authority. Advisers that use automated voting should disclose:

- The extent of the adviser's use of automated voting and under what circumstances it will use automated voting;
- How the adviser's policies and procedures address the use of automated voting when the adviser becomes aware that an issuer intends to file or already filed additional soliciting materials with the SEC regarding a matter to be voted on prior to the submission deadline for proxies to be voted at the shareholder meeting; and
- Sufficient and specific information will provide a client with enough information to understand the role of the automated voting in the adviser's exercise of its voting authority and provide informed consent to the use and scope of automated voting.

The new requirements could impact an adviser's continued use of electronic proxy voting and the use of proxy advisor voting Firms due to the Amendments and the corresponding anticipated increased cost of compliance.

If your Firm is engaged in voting proxies on behalf of your clients (either directly or via the use of a proxy voting vendor), then Compliance Resource Partners is available to help you evaluate your proxy voting policy and process.