

New Form CRS to be Required from Investment Advisers and Broker-Dealers Next Week

Alert

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Designed to protect retail investors from conflicts of interest, the SEC's new Regulation Best Interest, known as Reg BI, and related rules take effect on June 30, 2020. Every SEC-registered investment adviser and broker-dealer (firms) serving retail investors must create and deliver a client relationship summary (Form CRS) to each retail investor and file its Form CRS with the SEC. A retail investor is a natural person, or the legal representative of a natural person, receiving services for personal, family or household purposes.

Form CRS must include the following information in a prescribed order: (i) introduction; (ii) relationships and services; (iii) fees, costs, conflicts and standard of conduct; (iv) disciplinary history; and (v) additional information. The SEC provides formatting guidance and requires that Form CRS be written in plain English. Compliance will involve adoption and implementation of related policies, procedures, training and record-keeping.

The initial deadline for filing Form CRS is June 30. It should be filed through IARD as Form ADV Part 3. Form CRS must be delivered to current and prospective retail investor clients within 30 days of June 30, 2020. Going forward, Form CRS should be provided to new or prospective retail investors at or before entry into a contract. If delivered electronically, Form CRS should be presented prominently, such as a direct link in the body of an email. If delivered as part of a package of paper documents, Form CRS should be the first among documents delivered. In addition, Form CRS must be posted on a firm's public website, if it has one.

Existing client retail investors should also receive a copy of the most recent Form CRS in certain circumstances including the opening of certain accounts and upon the firm making certain recommendations. Updates to Form CRS should be filed with the SEC and provided to retail investors

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within prescribed time limits.

Reg BI establishes a new “best interest” standard of conduct on broker-dealers when making recommendations to retail customers. To satisfy this new standard, broker-dealers must not place their own interest ahead of the retail customer’s interest and must adhere to four related obligations: 1) disclosure; 2) care; 3) conflict of interest and 4) compliance.

Reg BI and related Form CRS rules were originally adopted on June 5, 2019. Since then, the Financial Industry Regulatory Authority (FINRA) proposed conforming revisions to its rules including suitability and non-cash compensation to align with the new Reg BI requirements. SEC Chairman Jay Clayton recently confirmed that the June 30 effective date will not be extended notwithstanding the COVID-19 pandemic. His comments and recent SEC and FINRA guidance state that “good faith” compliance efforts will be expected initially. Examinations of compliance with Reg BI and Form CRS are expected to follow.

CONTACT

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