

> Client Alert

SEC Provides Guidance on Form CRS and Regulation BI Examination Priorities

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In an effort to encourage broker-dealers and registered investment advisers to evaluate and further prepare for the upcoming compliance date of June 30, 2020, the SEC issued two Risk Alerts providing information about the scope and content of initial examinations with respect to Form CRS and Regulation Best Interest (Regulation BI).

In both Risk Alerts, the SEC indicated that they will be sensitive to issues and challenges that may arise for broker-dealers and registered investment advisers due to Covid-19, and will work with examiners to the extent such issues arise during examination.

Form CRS

Form CRS requires broker dealers and registered investment advisers to provide a brief client or customer relationship summary to all retail investors (including high net worth individuals) with information about their firm. After the compliance date, examiners initially will focus on determining whether firms have made a good faith effort to implement and comply with Form CRS. Areas of focus for the SEC may include the content of the relationship summary, as well as the delivery, filing and formatting of the relationship summary and related record keeping and updates. Examinees should be prepared for questions relating to their policies

and procedures, including the timing and effectiveness of their delivery process, the manner in which fees, investment professional compensation and conflicts of interest are disclosed, and the frequency and detail with which such relationship summaries are updated.

Regulation BI

Unlike Form CRS, Regulation BI applies only to broker-dealers and associated persons of broker-dealers (collectively, “broker-dealers”). Regulation BI articulates a new standard of conduct for broker-dealers making investment recommendations to retail clients by requiring them to act in the best interest of the client at the time a recommendation is made, without placing their own financial or other interest ahead of the customer’s interest. In discussing what broker-dealers should expect in an examination, the Regulation BI Risk Alert outlines the four prongs of a broker-dealer’s obligations pursuant to Regulation BI, namely disclosure, care, conflict of interest and compliance. The Alert also discusses the specific information an examiner would be most likely to request and review. Examinees should be prepared for questions about their Regulation BI policies and procedures, including processes for information gathering from clients, making investment recommendations, assessing risks to clients and disclosing, mitigating or eliminating conflicts of interest. Examiners are also likely to focus on the implementation, operational effectiveness of, and continued compliance with, such policies and procedures.