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April 07, 2020

SEC Staff Publishes Risk Alerts Regarding Reg BI and Form CRS Inspections and Possible COVID-19 Impact

On April 7, 2020, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") published two risk alerts intended to provide market participants with advance information regarding (1) [upcoming inspections for broker-dealer compliance with Regulation Best Interest](#) ("Regulation BI") and (2) [upcoming inspections for broker-dealer and investment adviser compliance with Form CRS](#). The compliance date for both Regulation BI and Form CRS is June 30, 2020. You can find more details in our [client alert](#). OCIE is preparing for potential issues that may arise in connection with the COVID-19 pandemic. Notwithstanding the current climate, OCIE remains [fully operational](#) nationwide. In a related [press release](#), Director of OCIE Pete Driscoll stated "[b]ased on conversations we have had with the industry, we know firms have made substantial progress in implementing these new rules. We understand that this implementation will be an iterative process, and our focus will be on firms continuing good faith and reasonable efforts, including taking into account firm-specific effects from disruptions caused by COVID-19."

Regulation BI

The Risk Alert highlighted that upcoming examinations will evaluate "whether firms have made a good faith effort to implement policies and procedures reasonably designed to comply with [Regulation BI](#), including the operational effectiveness of broker-dealers' policies and procedures." Market participants may also use the [Small Entity Compliance Guide](#) as a compliance resource. Further the Alert identifies areas of focus to include the following obligations:

- **Disclosure Obligation:** providing retail customers, in writing, full and fair disclosure of (A) all material facts relating to the scope and terms of the relationship with the retail customer; and (B) all material facts relating to conflicts of interest that are associated with the recommendation.
- **Care Obligation:** exercising reasonable diligence, care, and skill when making a recommendation to a retail customer.
- **Conflict of Interest Obligation:** establishing, maintaining, and enforcing written policies and procedures reasonably designed to address conflicts of interest associated with its recommendations to retail customers.
- **Compliance Obligation:** establishing, maintaining, and enforcing written policies and procedures reasonably designed to achieve compliance with Regulation BI as a whole.

Form CRS

The Risk Alert recommends that broker-dealers and investment advisers familiarize themselves with [Form CRS](#), and related rules, and the Small Entity Compliance Guide in advance of examinations. Further the Alert identifies areas of focus to include the following obligations:

- **Delivery and Filing:** (A) filing the firm's relationship summary with the SEC and posting it on its website; and (B) establishing policies and procedures addressing required summary delivery processes and dates.
- **Content of Filing:** ensuring that the relationship summary (A) includes all the required information; (B) contains true and accurate information; and (C) does not omit material and necessary facts.
- **Formatting:** ensuring that the relationship summary is formatted in accordance with the instructions.
- **Updates:** establishing policies and procedures for updating the relationship summary.
- **Recordkeeping:** keeping records related to delivery of the relationship summary and creating policies and procedures regarding record-making and recordkeeping.

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