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SEC Touts Twin Goals Served by Form CRS and Reg BI, Advises Investment Advisers to Keep Form CRS Simple

SRZ Private Funds Regulatory Update

November 2020

During a roundtable hosted by the SEC on Oct. 26, 2020, Chairman Jay Clayton discussed how Form CRS and Regulation Best Interest ("Reg BI") together seek to enhance the transparency and quality of relationships between investment advisers, broker-dealers and retail investors and shared the staff's observations in the four months since the compliance date for each.[1]

The Chairman also defended his decision to maintain the June 30 compliance date, saying he believed "the significant benefits of Reg BI and Form CRS would be crucially important to Main Street investors as they sought to address the economic impacts of the COVID-19 pandemic and resulting market volatility."

Form CRS

As a reminder, Form CRS requires SEC-registered investment advisers to provide a brief relationship summary to their clients who are natural persons (defined for this purpose as "retail investors" but not including investors in pooled investment vehicles).[2] The summary must contain plain English disclosures on certain topics (e.g., fees, costs, conflicts of interest and disciplinary history) under standardized headings and in a prescribed order. It is designed to help retail investors make informed

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choices and improve the dialogue between retail investors and investment advisers.[3]

During the roundtable, the staff gave practical guidance for the disclosures, noting that, on average, the Forms CRS they reviewed were written at an 11th grade reading level and encouraging firms to write their Forms CRS at an eighth grade reading level to maximize readability.[4] The Chairman also observed that some filings failed to include required information regarding disciplinary history and directed managers to several recent FAQs[5] the staff has published on the topic.

Regulation Best Interest

Also, as a reminder, Reg BI establishes an enhanced standard of conduct that requires broker-dealers to act in the best interest of their retail customers and prohibits broker-dealers from placing their own interests ahead of their retail customers' interests.[6] Notably, this heightened standard applies when a broker-dealer recommends either a securities transaction or an investment strategy involving securities, including an account recommendation such as a retirement fund "rollover," and cannot be satisfied through disclosure alone. According to the Chairman, "Reg BI codifies the fundamental principle that investment professionals should not put their interests ahead of the interests of their clients and customers."

This article appeared in the November 2020 edition of SRZ's Private Funds Regulatory Update. To read the full Update, click here.

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[1] *See* Statement at the SEC's Staff Roundtable on Regulation Best Interest and Form CRS ("Chairman's Statement"); *see also* our April 10, 2020, *Alert* regarding Form CRS.

[2] *See* our August 2019 Private Funds Regulatory Update regarding Form CRS and Reg BI.

[3] *See* Chairman's Statement.

[4] *See* Roundtable on Regulation Best Interest and Form CRS.

[5] Securities and Exchange Commission, Division of Investment Management: Frequently Asked Questions on Form CRS.

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[6] *See* our August 2019 Private Funds Regulatory Update regarding Form CRS and Reg BI.

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