

MEMO# 32530

June 16, 2020

SEC Chairman Clayton Issues Statement Confirming Reg BI Compliance Date and Urging Increased Care in Recommendations to Retail Investors

[32530]

June 16, 2020 TO: ICI Members

Bank, Trust and Retirement Advisory Committee

Broker/Dealer Advisory Committee

ETF (Exchange-Traded Funds) Committee

ETF Advisory Committee

Internal Sales Managers Roundtable

Investment Adviser and Broker-Dealer Standards of Conduct Working Group

Investment Advisers Committee

Operations Committee

Pension Committee

Pension Operations Advisory Committee

Sales and Marketing Committee

SEC Rules Committee

Transfer Agent Advisory Committee

Variable Insurance Products Advisory Committee SUBJECTS: Compliance

Derivatives

Disclosure

Distribution

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Litigation & Enforcement

Operations

Pension RE: SEC Chairman Clayton Issues Statement Confirming Reg BI Compliance Date and Urging Increased Care in Recommendations to Retail Investors

On June 15, 2020, SEC Chairman Jay Clayton issued a public statement (“Statement”)[\[1\]](#) confirming the June 30th compliance date for Regulation Best Interest (“Reg BI”) and Form CRS, highlighting a new SEC website page on Form CRS for retail investors, and urging increased care by investment professions in making certain recommendations to retail investors. The Statement is summarized briefly below.

Confirmation of June 30th Compliance Date

Chairman Clayton references his April statement regarding the June 30th Reg BI and Form CRS compliance date,[\[2\]](#) and explains that the Commission has continued its engagement with firms and other market participants since that time. He states that the Commission's work over the past several months has strengthened his view "that the effects of the COVID-19 pandemic weigh substantially in favor of implementing the Reg BI and Form CRS requirements as soon as possible."

New SEC Website Page on Form CRS for Retail Investors

The SEC has established a new website page for retail investors to assist them in understanding Form CRS.[\[3\]](#) The website page also provides additional resources for investors to research firms and financial professionals.

Increased Care in Recommendations to Retail Investors

Chairman Clayton observes that the COVID-19 pandemic has resulted in "unprecedented stresses and volatility" in the capital markets. As a result, the future needs and expectations of many retail investors, and the risks they face, have changed. For example, retail investors may have a greater need for cash and liquidity as a result of a change in employment or other circumstances. The SEC is focused on the investments and strategies being marketed to retail investors, particularly given recent market volatility.

In meeting their respective obligations under Reg BI and the Investment Advisers Act of 1940, broker-dealers and investment advisers should make sure they are making recommendations or providing investment advice to retail investors that is in those investors' best interest. The Statement highlights the following as areas that may particularly warrant increased care:

- *Rollovers and withdrawals from 401(k) and other plans.* Reg BI's application to recommendations of and withdrawals from retirement accounts is one of its most significant enhancements. Firms should be particularly attuned to these obligations with respect to the increased flexibility Congress recently provided investors to take withdrawals from certain accounts under the Coronavirus Aid, Relief and Economic Security (CARES) Act. The Statement references a recent investor alert from SEC's Office of Investor Education and Advocacy addressing problematic practices the SEC has observed in this area.
- *Complex or risky products.* Recommendations or investment advice to retail investors regarding complex or risky products, including significantly leveraged products that rely on derivatives strategies to enhance returns, or those that focus on investments in less liquid and more volatile markets, should be carefully reviewed by firms to ensure that they are in the best interest of retail investors. The Statement notes as examples inverse or leveraged exchange-traded products, which "may not be in the best interest of a retail investor absent an identified, short-term, investor-specific trading objective."
- *COVID-related investments.* Some companies and promoters have announced new products, services, and investment opportunities designed to address aspects of the COVID-19 virus or its effects. A broker-dealer's recommendation of COVID-19 related investments must be in the best interest of the client based, among other things, on an understanding of the potential risks, rewards, and costs of the recommendation. An investment adviser similarly must have a reasonable belief that its advice is in the client's best interest, including a consideration of whether investments are

recommended only to those clients who can tolerate the risks and for whom the potential benefits may justify those risks.

- *SPACs and other structured investment vehicles.* While special purpose acquisition corporations (SPACs) may be appropriate investments for some retail investors, they may present complex risks. Recommendations or investment advice to retail investors regarding an investment in a SPAC or another type of structured investment vehicle should take any such risks into account in determining whether the investment is in a retail investor's best interest.

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endnotes

[1] SEC Chairman Jay Clayton, *Confirmation of June 30 Compliance Date for Regulation Best Interest and Form CRS* (June 15, 2020), available at <https://www.sec.gov/news/public-statement/clayton-compliance-date-regulation-best-interest-form-crs>.

[2] For a summary of the April statement, please see ICI Memorandum No. 32350 (Apr. 3, 2020), available at https://www.ici.org/my_ici/memorandum/memo32350.

[3] See <https://www.investor.gov/home/welcome-investor-gov-crs>.

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