

MEMO# 32365

April 8, 2020

OCIE Issues Risk Alerts on Examinations for Compliance with Reg BI and Form CRS

[32365]

April 8, 2020 TO: ICI Members
Bank, Trust and Retirement Advisory Committee
Broker/Dealer 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: Advertising
Compensation/Remuneration
Compliance
Disclosure
Distribution
Fees and Expenses
Investment Advisers
Operations
Pension
Recordkeeping RE: OCIE Issues Risk Alerts on Examinations for Compliance with Reg BI and Form CRS

The Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) has issued two risk alerts providing broker-dealers and investment advisers with advance information about the expected scope and content of the initial examinations for compliance with Regulation Best Interest ("Reg BI") and Form CRS.[\[1\]](#) These examinations, which are expected to occur within the first year following the June 30, 2020 compliance date, are designed to assess whether firms have made a good faith effort to comply with the rules. OCIE indicates that it is coordinating with FINRA to harmonize Reg BI examination efforts.[\[2\]](#) Both risk alerts note, at their outset, that OCIE stands ready to

work with firms and the staff in the SEC's Division of Trading and Markets on issues that may arise in the course of examinations and understands that the COVID-19 pandemic has created challenges for firms.[\[3\]](#)

Reg BI Risk Alert

The Reg BI Risk Alert explains that, after the June 30, 2020 compliance date, OCIE will begin examinations of broker-dealers to assess implementation of Reg BI. OCIE will evaluate whether firms have established policies and procedures reasonably designed to achieve compliance with Reg BI, and "whether they have made reasonable progress in implementing those policies and procedures as necessary or appropriate, including making such modifications as may be necessary or appropriate, in light of information gained from the implementation process and other facts and circumstances."

The Reg BI Risk Alert details the areas that OCIE's initial exams will focus on with respect to each of the four component obligations of Reg BI: Disclosure Obligation, Care Obligation, Conflict of Interest Obligation, and Compliance Obligation. For each component obligation, OCIE provides examples of the specific disclosures (in the case of the Disclosure Obligation), or documents (in the case of the other obligations), the staff may review to assess compliance with the rule.

OCIE includes, as an appendix to the Reg BI Risk Alert, a sample document request list to help firms with their Reg BI implementation. Importantly, the sample document request list states that the "Scope Period" will differ for each examination and may include a time period prior to the compliance date. This may be relevant, as the sample document request list asks about a range of issues including, but not limited to, a description of available retail account types, schedules of fees and charges, compensation grids and methods (including payments by third parties), lists of proprietary products sold to retail customers, and documentation that identifies and analyzes all conflicts of interest associated with recommendations to retail customers. The sample document request list indicates that the firm must identify any changes to these items made over the Scope Period.

Form CRS Risk Alert

The Form CRS Risk Alert states that, after the June 30, 2020 compliance date, OCIE will begin examinations of broker-dealers and investment advisers to assess their compliance with Form CRS. The Form CRS Risk Alert provides examples of the areas the staff will focus on in these initial exams including, but not limited to:

- *Delivery and filing of Form CRS* – review of records of the dates that each Form CRS relationship summary was provided to retail investors to validate whether the firm complied with its delivery obligations.
- *Content* – review of a firm's relationship summary to assess whether it (i) includes all required information; and (ii) contains true and accurate information and does not omit any material facts necessary in order to make the required disclosures, in light of the circumstances in which they were made, not misleading.
- *Formatting* – review of a firm's relationship summary to assess whether it is formatted in accordance with the instructions to Form CRS.
- *Updates* – review of a firm's policies and procedures for updating the relationship summary to assess their consistency with the updating requirements for Form CRS.
- *Recordkeeping* – review of a firm's records related to delivery of the relationship summary, and its policies and procedures regarding record-making and recordkeeping, to ensure they are consistent with recordkeeping requirements

applicable to Form CRS.

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endnotes

[1] The risk alerts are *available at* <https://www.sec.gov/files/Risk%20Alert-%20Regulation%20Best%20Interest%20Exams.pdf> (“Reg BI Risk Alert”) and <https://www.sec.gov/files/Risk%20Alert%20-%20Form%20CRS%20Exams.pdf> (“Form CRS Risk Alert”).

[2] See <https://www.sec.gov/news/press-release/2020-82>.

[3] SEC Chairman Jay Clayton recently stated that he does not expect the Commission to delay the June 30, 2020 compliance date for Reg BI and Form CRS and that firms that encounter compliance challenges as a result of the COVID-19 pandemic should engage with the Commission and staff, which “will take the firm-specific effects of such unforeseen circumstances (and related operational constraints and resource needs) into account in our examination and enforcement efforts.” See ICI Memorandum No. 32350 (Apr. 3, 2020), *available at* https://www.ici.org/covid19/member_resources/memos/memo32350.

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