

PUBLICATION

SEC Signals How Examinations Will Focus on Compliance with Reg BI and Form CRS

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The countdown to June 30, 2020 is on – the deadline by which broker-dealers with retail customers must comply with Regulation Best Interest (Reg BI), and broker-dealers and investment advisers must comply with Customer Relationship (Form CRS) requirements with respect to their retail customers/investors.

On April 7, the SEC's Office of Compliance Inspections and Examinations (OCIE) issued two Risk Alerts describing the scope and content of initial examinations after the compliance date for Reg BI and Form CRS.

Reg BI Exams

According to OCIE, initial Reg BI exams will focus on assessing whether firms have made a good faith effort to implement policies and procedures reasonably designed to comply with Reg BI, including the effectiveness of those policies and procedures.

The [Reg BI Risk Alert](#) provides that staff conducting an exam may review the content and timing of the broker-dealer's disclosures to assess compliance with Reg BI. Staff may also review information collected from retail customers to develop their investment profiles and the broker-dealer's process for having a reasonable basis to believe that recommendations are in the best interest of the retail customer. Regarding conflicts of interest, staff may focus on whether and how the broker-dealer's policies and procedures identify, disclose, or eliminate certain conflicts.

Form CRS Exams

Form CRS exams will focus on assessing whether firms have made a good faith effort to implement Form CRS. The [Form CRS Risk Alert](#) says that staff conducting an exam may (1) review whether the firm has filed its relationship summary and posted it on the firm's public website, (2) evaluate the process for delivering the relationship summary to existing and new retail investors, and (3) assess the content of the relationship summary, in addition to the policies and procedures for delivering and updating the relationship summary.

FINRA Follows Suit

The day after OCIE issued its Risk Alerts, FINRA announced that it will follow the SEC's approach when examining broker-dealers and their associated persons for compliance with Reg BI and Form CRS. FINRA said in a [statement](#) that its exam approach "will focus primarily on assessing whether firms have made a good faith effort to establish and implement policies and procedures reasonably designed to comply with Reg BI and Form CRS." With that in mind, FINRA further stated that it would take action if it observed suitability violations, or "indications of customer harm or conduct that would have violated current standards."

FINRA has also published a new [report](#) to assist broker-dealer firms with the implementation of Reg BI and Form CRS. The report highlights common practices FINRA observed during reviews that began in late 2019 and through ongoing conversations with firms of all sizes about their preparedness initiatives. FINRA published the report to allow FINRA members to assess their preparedness efforts against their peers.

A Note on COVID-19

On April 2, SEC Chairman Jay Clayton announced that the SEC would not extend the compliance date for Reg BI and Form CRS in light of the COVID-19 pandemic. Following Chairman Clayton's [statement](#), OCIE included in its Risk Alerts for Reg BI and Form CRS that the office "stands ready to work with firms" and other SEC divisions on issues that may arise during exams and "understands that the coronavirus disease 2019 (COVID-19) has created challenges for firms."

With the June 30 compliance date for Reg BI and Form CRS quickly approaching, if you have any questions regarding Reg BI and Form CRS, or need assistance in evaluating your firm's policies and procedures, please contact [Matthew White](#), [Preston Battle](#), or any of the attorneys in Baker Donelson's [Broker-Dealer/Registered Investment Adviser Group](#). For more information and general guidance on how to address legal issues related to COVID-19, please visit the [Coronavirus \(COVID-19\): What You Need to Know](#) information page on our website.