A One-Page Overview of Regulation Best Interest, Form CRS and Two Interpretations of the US Investment Advisers Act

On June 5, 2019, the SEC approved a package of rulemakings and interpretations designed to enhance protection of investors when interacting with investment advisers and broker-dealers (together, "firms"). The package consists of four components which we review in our white paper, The New Standards for Investor Protection: An Analysis of Regulation Best Interest, Form CRS and Two Interpretations of the Advisers Act. Below is a one-page summary of the four components and certain "action items" firms should consider that arise from each component.

Click here to read the complete analysis that provides an in depth look at how firms can navigate and comply with each component.

1. Regulation Best Interest (Applies to Broker-Dealers; Compliance Date June 30, 2020)

Regulation Best Interest enhances the broker-dealer standard of conduct beyond the previous suitability obligation. When making a recommendation to a retail customer of any securities transaction or investment strategy involving securities, a broker-dealer must now act in the retail customer's best interest and cannot place its own interests ahead of a customer. Action items include:

- Determining whether the rule applies to your firm—is your firm a broker-dealer that recommends securities or investment strategies involving securities to *retail customers*?
- Updating your firm's policies and procedures to achieve compliance with the rule's three main sub-components: (i) Disclosure Obligation, (ii) Care Obligation and (iii) Conflict of Interest Obligation.
- Maintaining a record of all information collected from and provided to *retail customers* pursuant to the rule. Examples of new recordkeeping include the "retail customer investment profile" and all written disclosures provided to retail customers.

2. Form CRS (Applies to Broker-Dealers and Registered Investment Advisers; Compliance Date June 30, 2020)

Form CRS is a disclosure document meant to reduce *retail investor* confusion about fees, conflicts of interest and the required standard of conduct for a particular firm. Action items include:

- Determining whether the rule applies to your firm—is your firm a registered investment adviser or broker-dealer that provides services to *retail investors*?
- Updating your firm's policies and procedures to ensure compliance with the form's maintenance, filing and investor delivery requirements.

3. Fiduciary Interpretation (Applies to *all* Investment Advisers; Effective July 12, 2019)

The Fiduciary Interpretation reaffirms and clarifies certain aspects of an investment adviser's fiduciary duty under the Advisers Act such as the duty of care and loyalty. Action items include:

- Updating disclosure documents that indicate an Investment Adviser "may" have a conflict of interest if that conflict actually exists.
- Updating disclosure documents regarding conflicts of interest that arise from trade allocation including how the adviser allocates investment opportunities.
- Reevaluating limitations of liability "hedge clauses" in advisory contracts (in particular, for *retail clients*).

4. Solely Incidental Interpretation (Applies to Broker-Dealers; Effective July 12, 2019)

The Solely Incidental Interpretation clarifies the exclusion provided to broker-dealers under the Advisers Act when a broker-dealer's advisory services are considered "solely incidental" to their brokerage business. Action items include:

- Reevaluating investment discretion over customer accounts to ensure discretion is limited.
- Updating your firm's policies and procedures regarding account monitoring to ensure continuous monitoring is forbidden and that any monitoring occurs at specific time frames.

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