

## Public Statement

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# Investors Remain Front of Mind at the SEC: Approach to Allocation of Resources, Oversight and Rulemaking; Implementation of Regulation Best Interest and Form CRS



Chairman Jay Clayton

**April 2, 2020**

Over 57 million American households are invested in our securities markets. The interests of these individuals—our long-term Main Street investors—are the lens through which we evaluate whether we are effectively advancing the SEC’s mission. The 4,500 women and men of the SEC are committed to these investors and the integrity of our markets. The uncertainties caused by COVID-19 have not changed our perspective or commitment.

### Approach to Allocation of Resources, Oversight and Rulemaking

In recent weeks, the Commission has been assisting market participants in their efforts to continue business operations, including investor service operations, in the face of various challenges caused by COVID-19.<sup>[1]</sup> Many of our actions have focused on operational issues, including facilitating the shift to business continuity plans that are consistent with health and safety directives and guidance. For example, we have worked with various market participants to help facilitate the move by securities exchanges to an all-electronic trading environment.<sup>[2]</sup> Other actions have involved targeted, conditional and temporary relief relating to filing deadlines that could be significantly impacted by COVID-19.<sup>[3]</sup>

In addition, as the effects of COVID-19 became more apparent, the public was notified that, although comment periods on a variety of proposed actions had closed (or would close) in March 2020, the Commission would not take final action on those items in the coming weeks to allow potential commenters more time to submit comments for consideration if needed.<sup>[4]</sup> We do not expect to move forward on any of those proposed actions before May 1, 2020.

Our general approach in these unprecedented circumstances is premised on putting health and safety first, as well as our firm message that the law continues to apply. We continue to allocate our resources in the best interests of investors and our capital markets, with investor protection and market integrity front of mind. Recognizing that challenges may impact the timing of certain filings, we also are keenly focused on ensuring that issuers and other registrants continue to provide material information to investors, including information related to the current and expected effects of COVID-19, as promptly as practicable. In this regard, we have reminded public companies and other persons to continue to evaluate their obligations to make materially accurate and complete disclosures

in accordance with the federal securities laws.<sup>[5]</sup> And Commission staff provided guidance to assist issuers as they consider their disclosure obligations in connection with their assessment of the potential effects of COVID-19 on their operations.<sup>[6]</sup>

It is my intent to continue to apply this pragmatic, flexible, facts-and-circumstances approach to our allocation of resources and actions during this uncertain period, taking into account the advice and expertise of my fellow Commissioners and our staff, as well as the views of market participants. In light of the dynamic nature of current circumstances, our allocation of resources may change. In addition, we expect to provide similar, targeted relief, and make similar adjustments to timeframes, where necessary or appropriate. Importantly, we continue to encourage engagement from market participants, including, in particular, investors. For example, at my request, the Investor Advisory Committee will hold a meeting today to discuss, in part, the impact of COVID-19 on investors.<sup>[7]</sup>

## Regulation Best Interest and Form CRS

Financial professionals are required to never put their interests ahead of the interests of their clients and customers; and the confidence that this bedrock principle gives to those more than 57 million households I mentioned is particularly important in these times of economic uncertainty. Understanding this, on June 5, 2019, the Commission adopted Regulation Best Interest (“Reg BI”).<sup>[8]</sup> Reg BI establishes a new standard of conduct for broker-dealers and their associated persons when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer.

At any time, and particularly in times of uncertainty, investment professionals should not put their interests ahead of the interests of their clients and customers. Reg BI codifies this fundamental principle. Investors should also know the services they are receiving and how they will be charged for those services. Form CRS requires that.

Reg BI is a key component of a broader package of rules and interpretations, adopted contemporaneously, to enhance the quality and transparency of retail investors’ relationships with broker-dealers and investment advisers. Form CRS and its related rules require SEC-registered investment advisers and SEC-registered broker-dealers (together, “firms”) to deliver to retail investors a brief customer or client relationship summary that provides information about the firm.<sup>[9]</sup> Firms must file their relationship summaries with the Commission. Collectively, these regulatory actions bring the legal requirements and mandated disclosures for broker-dealers and investment advisers in line with reasonable investor expectations, while preserving retail investor access (in terms of both choice and cost) to a variety of investment services and products.<sup>[10]</sup>

Over the past ten months, the Commission and the staff have engaged extensively with broker-dealers, investment advisers, retail investors and other market participants, as well as FINRA and other regulatory partners, regarding the implementation of Reg BI and Form CRS.<sup>[11]</sup> We believe firms with account relationships comprising a substantial majority of retail investor assets have made considerable progress in (1) adjusting their business practices, (2) supplementing and modifying their policies and procedures, and (3) otherwise aligning their operations and preparing for the requirements of Reg BI and the obligation to file and begin delivering Form CRS.

Based on that engagement—and because the continued implementation of these conduct and transparency initiatives, individually and collectively, will significantly benefit Main Street investors—we believe that the June 30, 2020 compliance date for Reg BI and other requirements, including the requirement to file and begin delivering Form CRS, remains appropriate.

Applying the general approach outlined above to Reg BI and Form CRS, firms should continue to make good faith efforts around operational matters to ensure compliance by June 30, 2020, including devoting resources as necessary and available in light of the circumstances. To the extent that a firm is unable to make certain filings or meet other requirements because of disruptions caused by COVID-19, including as a result of efforts to comply with national, state or local health and safety directives and guidance, the firm should engage with us. I expect that the Commission and the staff 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.

With regard to continued engagement on Reg BI and Form CRS related matters, the SEC is functioning well in a mandatory telework environment. Our staff is continuing to work collectively on Reg BI examination scoping and will continue to work closely with FINRA to help ensure consistency in examining firms and their associated persons for compliance with Reg BI and Form CRS. The Commission and staff also welcome continued engagement from investors and other market participants on the implementation of Reg BI and Form CRS.

During the initial period following the compliance date, SEC examiners will be focusing on whether firms have made a good faith effort to implement policies and procedures necessary to comply with Reg BI, while also providing an opportunity to work with firms on compliance and other questions. SEC staff in the Office of Compliance Inspections and Examinations has informed me that they will be issuing two Risk Alerts in the coming days to provide additional information. One provides broker-dealers with specific information about the scope and content of initial examinations for Reg BI. The other provides broker-dealers and investment advisers with similar information with respect to Form CRS.

In addition, the Commission and its staff have provided a number of other resources to assist firms in understanding the new requirements and working toward implementation:

- A dedicated SEC mailbox for firms and others to submit questions: [IABDquestions@sec.gov](mailto:IABDquestions@sec.gov)
- A Small Entity Compliance Guide on Regulation Best Interest, available [here](#)
- Staff answers to frequently asked questions, available [here](#)
- A Spotlight Page for relevant materials including releases, comment letters, speeches, press releases and transcripts, available [here](#)

In summary, we recognize that Reg BI and Form CRS are significant regulatory enhancements and that firms have dedicated, and are continuing to dedicate, substantial time and resources to comply with the new requirements. Investors have and will continue to benefit from these efforts. These efforts—and importantly their aim: to align conduct and disclosure requirements with reasonable investor expectations—should continue on course to the extent possible under the circumstances. We remain committed to assisting firms and other market participants in completing this important effort.

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[1] See <https://www.sec.gov/sec-coronavirus-covid-19-response> for a discussion of the Commission's efforts in response to the effects of COVID-19.

[2] Relatedly, Commission staff issued a statement indicating that it would not recommend enforcement action against industry members for failure to enforce the CAT implementation deadlines so that attention can be focused on operational readiness and business continuity plans. See Division of Trading and Markets No Action Letter: Consolidated Audit Trail Reporting, available [here](#).

[3] See <https://www.sec.gov/sec-coronavirus-covid-19-response>.

[4] See <https://www.sec.gov/rules/proposed.shtml>.

[5] See <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>.

[6] See <https://www.sec.gov/corpfin/coronavirus-covid-19>.

[7] See <https://www.sec.gov/news/openmeetings/2020/ssamtg040220iac.htm>.

[8] See Regulation Best Interest, Exchange Act Release No. 86031 (June 5, 2019) (adopting rule 15l-1 under the Exchange Act), available [here](#).

[9] See Form CRS Relationship Summary; Amendments to Form ADV, Exchange Act Release No. 86032, Advisers Act Release No. 5247 (June 5, 2019), available [here](#).

[10] Along with adopting Regulation Best Interest and Form CRS, the Commission also provided interpretations: (1) reaffirming and in some cases clarifying standards of conduct for investment advisers, and (2) regarding when a broker-dealer's advisory services are solely incidental to the conduct of the business of a broker or dealer. See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Release No. 5248 (June 5, 2019), available [here](#); Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion to the Definition of Investment Adviser, Advisers Act Release No. 5249 (June 5, 2019), available [here](#). These interpretations are currently effective.

[11] See e.g. staff responses to frequently asked questions on Regulation Best Interest, available [here](#).