Insights: Alerts

SEC Clarifies Form CRS Relationship Summary Format and Delivery Requirements (Incl. Relief for Fund Advisers)

DECEMBER 9, 2019 Written by Jeffrey T. Skinner and Alexandra M. Fenno

Since releasing new rules in June 2019, the Securities and Exchange Commission's staff has promised to provide resources to assist firms in implementing programs to comply with Regulation Best Interest and Form CRS, including by releasing FAQs on a rolling basis. On November 26, 2019, staff of the Division of Investment Management and the Division of Trading and Markets ("Staff") released an installment of FAQs (the "FAQ") to help registrants prepare for the June 2020 implementation deadline for Form CRS. The FAQ addressed Form CRS's: (1) relationship summary format; and (2) delivery requirements.

The first of the two questions concerning delivery requirements provides guidance regarding the delivery of Form CRS to existing retail clients and customers via June 2020 quarterly account statements, the annual Form ADV update, or other periodic reports.

The second addresses whether "an investment adviser to pooled investment vehicles, such as hedge funds, private equity funds and venture capital funds," is required to deliver a relationship summary to those funds if the funds' investors meet the definition of a "retail investor." Staff clarified that they are not required to do so as follows:

> "**A**: An investment adviser must initially deliver a relationship summary to each retail investor before or at the time the adviser enters into an investment advisory contract with the retail investor. "Retail investor" is defined as "a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes." In the staff's view, the types of pooled investment vehicles described above would not meet this definition and a relationship summary would not be required to be delivered."

This guidance is likely welcome relief to advisers of private investment funds, who in recent years have otherwise seen an increase in their regulatory obligations and duties owed to investors in their funds.[1]

If you have any questions about the FAQ, Form CRS, or the regulation of investment advisers generally, please feel to contact us.

*By the **Investment Management and Broker-Dealer Team at Kilpatrick Townsend & Stockton***

Footnotes

[1] E.g., Rule 206(4)-8, which was adopted in 2007, was designed to enable the Commission to look through

a private fund in order to protect the private fund's investors and prospective investors.

Related People



Jeffrey T. Skinner
t 336.607.7512
jskinner@ktslaw.com



Alexandra M. Fenno
t 336.607.7426
afenno@ktslaw.com