

# Investment Management Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

---

**Michael D. Dorum**

Partner / New York  
212.735.3595  
michael.dorum@skadden.com

**Anastasia T. Rockas**

Partner / New York  
212.735.2987  
anastasia.rockas@skadden.com

**Ryan J. Adams**

Associate / Washington, D.C.  
202.371.7526  
ryan.adams@skadden.com

**Prem Amarnani**

Associate / New York  
212.735.2335  
prem.amarnani@skadden.com

---

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square  
New York, NY 10036  
212.735.3000

## **SEC Adopts Rules and Interpretations Related to Standards of Conduct for Broker-Dealers and Investment Advisers**

On June 5, 2019, the SEC voted to adopt a package of rules and interpretations related to standards of conduct for broker-dealers and investment advisers, including new rule Regulation Best Interest, new Form CRS, an interpretation of the fiduciary duties of investment advisers and an interpretation of the “solely incidental” clause of the broker-dealer exclusion under the Investment Advisers Act of 1940, as amended (the Advisers Act). The SEC approved these items by a 3-1 vote, with Commissioner Robert Jackson as the sole dissenting commissioner. The relevant adopting releases are linked in the title of each item below.

- [Item 1: Regulation Best Interest — Standard of Conduct for Broker-Dealers](#)

The SEC voted to adopt new Regulation Best Interest, which will modify the broker-dealer standard of conduct beyond existing suitability obligations, requiring broker-dealers, among other things, to act “in the best interest of their retail customers when making a recommendation,” including not placing their financial or other interests ahead of the interests of retail customers. The standard of conduct draws from key fiduciary principles and cannot be satisfied through disclosure alone. The rule incorporates disclosure obligations, care obligations and conflict of interest obligations. In addition, the rule requires broker-dealers to establish, maintain and enforce policies and procedures reasonably designed to comply with the rule.

- [Item 2: Form CRS Relationship Summary](#)

The SEC voted to adopt new Form CRS, which will require investment advisers and broker-dealers to deliver to retail investors a relationship summary providing simple information about the services the firm offers, fees, costs, conflicts of interest, legal standard of conduct and whether the firm and its financial professionals have disciplinary history. It also includes disclosure allowing investors to access additional information about the firm. The format allows investors to compare the differences between investment advisers and broker-dealers in a way that is distinct from other required disclosures.

# Investment Management Alert

---

- Item 3: Standard of Conduct for Investment Advisers

The SEC published its interpretation of the standard of conduct for investment advisers that, according to the SEC, reaffirms and in some cases clarifies the SEC's view of the fiduciary duty that an investment adviser owes to its clients. The release reflects decades of interpretations by the SEC and its staff in the area. The release seeks to provide greater clarity about the investment adviser's legal obligations by highlighting principles relevant to the fiduciary duty.

- Item 4: Interpretation of 'Solely Incidental'

The SEC published an interpretation of the "solely incidental" exclusion from the definition of investment adviser under the Advisers Act for broker-dealers. The interpretation confirms and clarifies the SEC's prior interpretation of the "solely incidental" broker-dealer exclusion under the Advisers Act. Specifically,

the interpretation states that a broker-dealer's advice as to the value and characteristics of securities or as to the advisability of transacting in securities is included in the "solely incidental" prong of this exclusion if the advice is provided in connection with, and is reasonably related to, the broker-dealer's primary business of effecting securities transactions.

A press release and fact sheet are available [here](#).

Regulation Best Interest and Form CRS will become effective 60 days after they are published in the Federal Register and will include a transition period until June 30, 2020. The interpretations under the Advisers Act will become effective upon publication in the Federal Register.

We will be sending a more detailed mailing relating to these newly adopted rules.