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Covid-19 Could Push SEC to Delay Reg BI

By Jill Gregorie March 27, 2020

The Covid-19 pandemic has thrown a wrench into some firms' ability to comply with Regulation Best Interest in time for its June 30 compliance date, according to the **Securities and Exchange Commission**'s head examiner.

"It is certainly something that's been raised and we're aware of it," said Peter Driscoll, director of the agency's Office of Compliance Inspections and Examinations, during a **National Society of Compliance Professionals** call, according to On Wall Street. "It's something that's been passed on."

Still, Driscoll gave no indication of whether the agency would give firms more time to prepare. "I can't answer that right now because I don't know the answer," he said, according to a **report** published Wednesday.

But consultants say the SEC should postpone the enforcement date for its best interest rule package, given the challenges of implementing compliance programs when most businesses are working remotely.

Many broker-dealers are ready to distribute customer relationship summary forms, as **required** by the rule, since those documents can easily be assembled and delivered to clients via vendors, says Mark Alcaide, senior managing director at Foreside.

But many other tasks may need to be completed in person, Alcaide says. And this could be difficult if government officials continue to keep social distancing measures in place, he adds.

"Implementation requires training. It requires context and nuance and meetings, all of which are substantially more difficult because we're all working remotely," he says.

Training is one of the four key components of the rule's compliance obligation, according to SEC **guidelines**. The other three are controls, remediation of issues or violations that arise, and periodic review and testing.

Under the rule, brokers will need to follow new standards of conduct that the SEC **says** will require them to do more to protect the interests of clients.

For example, the regulator will mandate that brokers disclose information about their recommendations, exercise diligence and care when recommending accounts and products, and mitigate potential conflicts of interest in their compensation arrangements.

And since many intermediaries are currently communicating with clients through video and other digital means,
"implementation is made much more challenging" than it would be if brokers were interacting with clients on-site, Foreside's Alcaide says.

Another obstacle is that decades of debate over "fiduciary" and "best interest" standards have caused widespread confusion that the SEC may not be able to address while also handling the coronavirus crisis, says Sander Ressler, managing director of **Essential Edge Compliance Outsourcing Services.**

"As for the language in the rule, people still don't get it, they don't understand it and they don't know how to comply with it," he says. Firms have been patiently waiting for guidance, but since the Covid-19 outbreak, "everybody has pretty much slowed to a turtle's pace," he says.

Even if the SEC can release additional FAQs or other written commentary and guidance, those documents cannot take the place of seminars where regulators explain their expectations for new rules in person, he says.

And firms themselves are pushing off their own national and regional conferences until the second half of 2020, he adds. This will limit their ability to broadly discuss ways to apply the rule to their business, and figure out how to train staff accordingly.

"People are generally not going to want to get on a plane anytime soon and travel for something considered nonessential," Ressler says.

Plus, many distributors are primarily focused now on guiding clients through market turbulence, and may not have the resources needed to prepare for new regulations, he says.

"Markets are gyrating, retirement funds are gyrating, and the industry right now is occupied with trying to help their clientele, as they should be," he says.

As a result, a rule that is largely one that applies to "semantic disclosures… [is] probably not at the forefront right now," Ressler says.

In fact, most firms are coping with the shift to remote work, and figuring out whether or not to keep sending employees to the home office, he says. "Everybody has got their hands full," Ressler says.

Driscoll on Monday acknowledged most firms are struggling with emergency response efforts. "No one's [business continuity] plan is working well right now," he said, according to On Wall Street.

While many firms would say it's not an "absolute necessity" to move the best interest deadline, it would be helpful in this period of turmoil, notes Christopher DiTata, general counsel and vice president of **RIA in a Box**.

If the SEC sticks with the current June 30 compliance date, it may be difficult for the regulator to monitor the activity of investment professionals because many could still be working remotely, he notes.

"Supervising is probably the toughest responsibility to do remotely, because you'll be keeping tabs on people you're used to seeing face-to-face and meeting with on a daily basis," DiTata says. Instead, managers need to rely on technology and routinely checking in with the employees they're supervising by phone.

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