

THIS MONTH IN COMPLIANCE

FORM CRS, USE OF INVERSE ETFs

MONTHLY COMPLIANCE TASKS

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks.

REMINDER: CCO Checklist – Finding it hard to login and document your monthly tasks and review oversight on SmartRIA? We have a solution – refer to the attached checklist, print out, and work through them on the task reminders. Be sure to retain in your “Testing” Compliance Files. If you are not using the SmartRIA portal, please let us know!

ANNUAL AMENDMENT FILING

Please finalize the Annual Amendment filing with your designated CRP Partner. We will consider firms who have not responded to our reach out requests for information by March 16th will be responsible for filing the Annual Amendment. The filing is due by March 31st.

FORM CRS (SEC REGISTERED FIRMS ONLY) - Keeping it Simple and Straightforward!

Beginning March 1st, CRP will be working with each firm individually to prepare, customize, and file their firm's Form CRS by the SEC's deadline (June 30, 2020). Because of the additional consulting time involved, **this will be billed as an additional fee from our base monthly retainer**. Our Form CRS offering will include the following:

CREATION OF FORM CRS TAILORED TO YOUR FIRM

CRP will DRAFT your firm's Form CRS using information from the most recently filed ADV Annual Amendment. CRP will begin working on the tailoring of services, fees, and conflicts associated with your firm. Our goal is to limit the time for you in this process so you can stay focused on your firm and its clients.

FILING OF FORM CRS BY JUNE 30, 2020

- **May 1, 2020** – Filing Period Begins
- **June 30, 2020** – Deadline to Filing Form CRS
- **Deliver to existing clients within 30 days** of filing Form CRS (*Maintain proof of delivery to clients including identifying the specific version of Form CRS and the date it was provided*)
- **For new clients after June 30, 2020** – practice is consistent with the Form ADV, Part 2A brochure, Form CRS will be delivered to clients before or at the time of entering into an investment advisory contract.

TRAINING MEMO FOR IARS

CRP will provide your firm with a Sample training Memo to provide to your firm's employees. This will address FAQ, delivery requirements, policies, and procedures and more.

POLICIES AND PROCEDURES FOR REG BI

CRP will provide sample Policies and Procedures for your further tailoring and adoption.

THIS MONTH IN COMPLIANCE

FORM CRS, USE OF INVERSE ETFs

FORM CRS – LET'S ADDRESS FIRM CONFLICTS

Several business practices create conflicts of interest between an advisory firm and its clients. Below is a list of some of the more common ones that affect many firms. Let's review what applies to your firm—check all that apply:

Discretionary Management

- Does your firm charge different advisory fees based on investment strategies or types of clients?
- Does your firm invest clients in securities that provide additional compensation or benefit the firm or its employees?
- Does your firm manage a Private Fund or Mutual Fund?

Allocation of Investments

- Does your firm allocate to proprietary accounts and/or performance fee accounts?
- Does your firm allocate limited offerings (e.g., IPOs and private investments)?

Trading Practices

- Does your firm use soft dollars and or benefits from the recommended Custodians?
- Does your firm conduct Principal and/or cross transactions?
- Does your Firm sponsor a Wrap Fee Program, including transaction costs within your advisory fee?

Code of Ethics

- Are your IARs/employees investing in the same securities as your advisory clients?

Broker-Dealer Affiliation

- Do your IARs also serve as registered representatives at a Broker Dealer?
- Does your firm place advisory client transactions at the broker dealer for execution?

Service Provider Relationship

- Does your firm have any fee/revenue sharing arrangements?
- Does your firm have any commonly owned business and/or ownership affiliations?

Valuation and Billing

- Fair valuation of private investment
- Charging fees inclusive of margin balances

Compensation Arrangements

- Is your firm receiving fees and/or commissions on recommended investment products?
- Is your firm obtaining indirect benefits from custodian arrangements?

Other Affiliations

- Does your firm have IARs that are Insurance Agents, CPAs?

THIS MONTH IN COMPLIANCE FORM CRS, USE OF INVERSE ETFs

USE OF LEVERAGE ETFs

We have provided guidance and concern about leverage ETFs in earlier communication. We thought this would be of interest.

SEC CHARGES WELLS FARGO IN CONNECTION WITH INVESTMENT RECOMMENDATION PRACTICES

FOR IMMEDIATE RELEASE 2020-43 Washington D.C., Feb. 27, 2020

The Securities and Exchange Commission today announced settled charges against Wells Fargo Clearing Services and Wells Fargo Advisors Financial Network for failing reasonably to supervise investment advisers and registered representatives **who recommended single-inverse ETF investments to retail investors, and for lacking adequate compliance policies and procedures with respect to the suitability of those recommendations.** The SEC ordered Wells Fargo to pay a **\$35 million penalty**, which will be distributed to harmed investors.

As noted in the SEC's order and reflected in Wells Fargo's internal guidance, **when single-inverse ETFs are held for longer than a day**, particularly in volatile markets, investors may experience large and unexpected losses. The SEC's order finds that from April 2012 through September 2019, Wells Fargo's policies and procedures were not reasonably designed to prevent and detect unsuitable recommendations of single-inverse ETFs. Further, Wells Fargo failed adequately to supervise its employees' recommendations regarding single-inverse ETFs, and did not adequately train them concerning those products. The order finds that some Wells Fargo brokers and advisers did not fully understand the risk of losses these complex products posed when held long term. As a result, certain Wells Fargo investment advisers and registered representatives made **unsuitable recommendations to certain clients to buy and hold single-inverse ETFs for months or years. According to the order, a number of these clients were senior citizens and retirees who had limited incomes and net worth, and conservative or moderate risk tolerances.**

"Firms must maintain effective compliance and supervisory programs to ensure that the securities they recommend are suitable for their clients," said Antonia Chion, Associate Director of the SEC Enforcement Division. "As a result of Wells Fargo's failure to meet these important obligations, some of its employees recommended complex instruments to retail investors who did not understand the risks involved."

The order finds that Wells Fargo failed to adopt written compliance policies and procedures reasonably designed to prevent unsuitable recommendations of single-inverse ETFs, and failed adequately to implement its existing written policies and procedures. The order also finds that Wells Fargo failed reasonably to supervise its financial professionals with a view to preventing their unsuitable recommendations. Without admitting or denying the findings, Wells Fargo agreed to pay a \$35 million penalty and distribute the funds to certain clients who were recommended to buy single-inverse ETFs and suffered losses after holding the positions for longer periods. The order also censures Wells Fargo and requires Wells Fargo to cease and desist from committing or causing any future violations of the relevant provisions.

Source: <https://www.sec.gov/news/press-release/2020-43>