

SEC Guidance Seeks Enhanced Disclosures by Robo-Advisers

June 23, 2017

In February, the SEC staff issued a guidance update focusing on "robo-advisers," i.e., registered investment advisers (RIAs) who provide online, automated investment advice, through the use of an algorithmic program. As RIAs, robo-advisers are subject to the fiduciary and other substantive requirements under the Investment Advisers Act of 1940. Unlike other RIAs, robo-advisers have little, if any, face-to-face interaction with clients. This, among other factors, has led the SEC staff to assert that robo-advisers should consider providing the following disclosures to their clients:

- A statement that an algorithm is used to manage individual client accounts;
- The functions performed by the algorithm;
- The limitations and particular risks of using the algorithm;
- Any circumstances that might cause the robo-adviser to override the algorithm;
- Any third-party involvement in the development, management, or ownership of the algorithm, including an explanation of any related conflicts of interest;
- Fees and costs that the client will pay, directly or indirectly;
- The degree of human involvement in the oversight and management of client accounts; and
- How the robo-adviser uses the information gathered from the client to create recommendations, and how and when a client should update such information.

The guidance update also emphasizes, among other things, that disclosures should be in plain English and reminds robo-advisers to carefully consider whether their disclosures are presented in a way conducive to client understanding. For example, the staff stated that advisers may wish to consider:

- Presenting certain disclosures to prospective clients before they sign up for an account;

- Using design features such as pop-up boxes, and interactive text to emphasize key disclosures or provide additional information; and
- Whether the presentation and formatting of any disclosure made available on a mobile platform have been appropriately adapted for that platform.

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