

Regulation Best Interest

FINRA Highlights Available Guidance and Resources Related to Regulation Best Interest

Summary

This *Notice* discusses the guidance and other resources available to assist members with their compliance efforts in connection with the Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI). In particular, FINRA highlights the SEC's series of Staff Bulletins (Bulletins) reiterating standards of conduct for broker-dealers (BDs or members) and investment advisers (IAs): [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Account Recommendations for Retail Investors](#); [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest](#); and [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations](#). FINRA encourages members to review these Bulletins closely, along with the Reg BI Adopting Release and the other guidance and resources identified in this *Notice*, as part of their ongoing efforts to meet their best interest obligations.

This *Notice* does not create new legal or regulatory requirements or new interpretations of existing requirements, nor does it relieve firms of any existing obligations under federal securities laws and regulations.

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Background and Discussion

Reg BI¹ requires a member or associated person, when making a recommendation² to a retail customer³ of any securities transaction or investment strategy involving securities (including account recommendations) to act in the best interest of the retail customer

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Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Regulation Best Interest

Referenced Rules & Notices

- ▶ Form CRS
- ▶ Regulation Best Interest
- ▶ Regulatory Notices 01-23, 11-02, 12-25, 19-26, 20-18, 23-08

without placing the financial or other interest of the member or associated person ahead of the interest of the retail customer.⁴ This general obligation is satisfied only by complying with four specified component obligations: the Care Obligation,⁵ the Disclosure Obligation,⁶ the Conflict of Interest Obligation⁷ and the Compliance Obligation.⁸ Concurrent with the adoption of Reg BI, the SEC also published an interpretation concerning IAs' standard of conduct under the Investment Advisers Act of 1940 (Advisers Act).⁹

SEC Guidance and Resources

The SEC and its staff have provided guidance and other resources to assist BDs in understanding and implementing the Reg BI requirements. Among these resources are a [Small Entity Compliance Guide](#), [Frequently Asked Questions](#),¹⁰ a [No Action Letter](#), a [2020 Risk Alert](#) and a [2023 Risk Alert](#). Additionally, in 2022 and 2023, SEC staff published a series of three Bulletins addressing standards of conduct for BDs and IAs.¹¹

The Bulletins emphasize that both Reg BI (for BDs) and the fiduciary standard under the Advisers Act (for IAs) are “drawn from key fiduciary principles” that impose an obligation to act in a retail investor’s¹² best interest and, although the specific application of the two standards may differ in some respects, they “generally yield substantially similar results in terms of the ultimate responsibilities owed to retail investors.”¹³ The Bulletins address three separate topics: account recommendations, conflicts of interest and care obligations. For each of these topics, the Bulletins reiterate the standards of conduct and provide SEC staff views, in the form of questions and answers, on how BDs and IAs, and their associated persons, can satisfy their obligations under Reg BI and the fiduciary duty, respectively.

[SEC Staff Bulletin on Account Recommendations](#)

The first Bulletin focuses on obligations that apply when making account recommendations. The Bulletin is designed to assist firms and their financial professionals with considering reasonably available alternatives and costs, addressing conflicts of interest, and adopting and implementing reasonably designed policies and procedures when making account recommendations. The Bulletin also discusses issues related to investor characteristics and preferences, account characteristics, the capacity of the registered person making the account recommendation (*i.e.*, whether acting as a representative of a BD or IA),¹⁴ retirement account rollovers¹⁵ and documentation of the basis for account recommendations.¹⁶

[SEC Staff Bulletin on Conflicts of Interest](#)

The second Bulletin addresses conflicts of interest, emphasizing SEC staff’s view that identifying and addressing conflicts should be a “robust, ongoing process that is tailored to each conflict.”¹⁷ The Bulletin provides guidance to firms on steps they can

take to identify conflicts of interest, as well as guidance on how firms can address those conflicts through elimination, mitigation or disclosure, as appropriate. The Bulletin also addresses particular topics, such as conflicts of interest associated with product menus,¹⁸ proprietary products and compensation practices.

The Bulletin reminds firms that “[d]isclosure of conflicts alone does not satisfy the obligation to act in the retail investor’s best interest,” and that “even if conflicts are sufficiently addressed, under both Reg BI and the IA fiduciary standard, firms and their financial professionals can provide recommendations or advice only when they have a reasonable basis to believe that the recommendation or advice is in the retail investor’s best interest.”¹⁹ SEC staff further advises that firms should monitor conflicts over time and assess periodically the adequacy and effectiveness of their policies and procedures to help ensure continued compliance with their conflicts obligations.²⁰

[SEC Staff Bulletin on Care Obligations](#)

The third Bulletin focuses on the Care Obligation, including relevant factors in understanding the investment or investment strategy; consideration of costs and reasonably available alternatives; and gathering and assessing the retail investor’s investment profile information. The Bulletin also discusses special considerations such as recommendations of complex or risky products and recommendations by dual registrants.

For example, with respect to considering reasonably available alternatives, which SEC staff believes “is a key component of satisfying the care obligations of broker-dealers and investment advisers,” the Bulletin includes discussion of the scope of alternatives that should be considered; consideration of reasonably available alternatives in the context of open architecture firms and, conversely, firms that have limited product menus; consideration of the risks, rewards and costs of the alternatives; and circumstances when a firm may want to consider documenting the evaluation of alternatives considered.

In addressing recommendations of complex or risky products, the Bulletin states that firms and their financial professionals generally should apply heightened scrutiny to whether a risky or complex product is in the retail investor’s best interest, including by considering whether lower risk or less complex alternatives can achieve the same investment objectives.²¹ The Bulletin also identifies recommendations of complex or risky products among the circumstances in which firms should consider documentation of the basis for the recommendation.²²

FINRA Assistance to Firms

FINRA has also provided a variety of resources to assist members with their Reg BI compliance efforts, such as:

- ▶ hosting a dedicated Reg BI conference, presenting Reg BI panels during other conferences, and making past Reg BI events available to the public [on-demand](#) at no cost;
- ▶ creating a [Reg BI webpage](#) that includes links to relevant materials concerning Reg BI and Form CRS, including the [rules](#), [notices](#), [FINRA and SEC enforcement matters](#), and [various media](#) and [news releases](#);
- ▶ issuing *Regulatory Notices* [19-26](#) (Regulation Best Interest), [20-18](#) (FINRA Amends Its Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest), and [23-08](#) (FINRA Reminds Members of Their Obligations When Selling Private Placements);²³
- ▶ developing and updating a compliance [checklist](#);²⁴
- ▶ publishing Reg BI podcasts in [2019](#), [2020](#) and [2022](#); and
- ▶ providing detailed findings, effective practices and related considerations concerning Reg BI in our annual examination and risk monitoring reports in [2021](#), [2022](#) and [2023](#).

Conclusion

FINRA is issuing this *Notice* to highlight key regulatory developments and resources to assist members in their compliance efforts under Reg BI.

Endnotes

- 1 The SEC Adopted Reg BI under the Securities Exchange Act of 1934 (Exchange Act) on June 5, 2019. See Exchange Act Rule 15l-1; Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33375 (July 12, 2019) (Reg BI Adopting Release). Concurrent with the adoption of Reg BI, the SEC also adopted Form CRS and related rules, which require SEC-registered BDs and IAs to deliver to retail investors a brief customer or client relationship summary that provides information about the firm. See Form CRS Relationship Summary; Amendments to Form ADV, Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).
- 2 For purposes of Reg BI, whether a “recommendation” is made is interpreted consistent with precedent under the federal securities laws and with how the term has been applied under FINRA rules. See Reg BI Adopting Release, *supra* note 1, at 33337. As the SEC explained, “the determination of whether a broker-dealer has made a recommendation that triggers application of Regulation Best Interest should turn on the facts and circumstances of the particular situation and therefore, whether a recommendation has taken place is not susceptible to a bright line definition. Factors considered in determining whether a recommendation has taken place include whether the communication ‘reasonably could be viewed as a call to action’ and ‘reasonably would influence an investor to trade a particular security or group of securities.’ The more individually tailored the communication to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood that the communication may be viewed as a recommendation.” *Id.* at 33335 (citation omitted). See also [Notice to Members 01-23](#) (March 2001); [Regulatory Notice 11-02](#) (January 2011); [Regulatory Notice 12-25](#) (May 2012). Also, where a BD agrees to provide a retail customer with specified account monitoring services, under Reg BI, such an agreement will result in buy, sell or hold recommendations even when the recommendation to hold is implicit. See Reg BI Adopting Release at 33325.
- 3 “Retail customer” is defined in Exchange Act Rule 15l-1(b)(1) as “a natural person, or the legal representative of such natural person, who: (i) [r]eceives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (ii) [u]ses the recommendation primarily for personal, family, or household purposes.”
- 4 Exchange Act Rule 15l-1(a)(1).
- 5 The Care Obligation requires the member or associated person, in making the recommendation, to exercise reasonable diligence, care and skill to:
 - understand the nature of the recommended security or investment strategy involving a security—as well as the potential risks, rewards and costs of the recommended security or investment strategy—and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers based on that understanding;
 - have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer’s investment profile and the

- potential risks, rewards and costs associated with the recommendation and does not place the financial or other interest of the member or associated person ahead of the interest of the retail customer;
- have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the member or associated person ahead of the interest of the retail customer. Exchange Act Rule 15c-1(a)(2)(ii).
- 6 The Disclosure Obligation requires the member or associated person, prior to or at the time of the recommendation, to provide the retail customer, in writing, full and fair disclosure of all material facts relating to the scope and terms of the relationship with the retail customer and all material facts relating to conflicts of interest that are associated with the recommendation. Material facts relating to the scope and terms of the relationship with the retail customer that must be disclosed include, but are not limited to:
- that the member or associated person is acting in the capacity of a BD or associated person with respect to the recommendation;
 - the material fees and costs that apply to the retail customer's transactions, holdings and accounts; and
 - the type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer. Exchange Act Rule 15c-1(a)(2)(i).
- 7 The Conflict of Interest Obligation requires a member to identify and address conflicts of interest that may incline the member or its associated persons—consciously or unconsciously—to make a recommendation that is not disinterested. Specifically, members must establish, maintain and enforce written policies and procedures reasonably designed to:
- identify and at a minimum disclose, pursuant to the Disclosure Obligation, or eliminate, all conflicts of interest associated with recommendations;
 - identify and mitigate any conflicts of interest associated with recommendations that create an incentive for the member's associated persons to place their interest or the interest of the member ahead of the retail customer's interest;
 - identify and disclose any material limitations (e.g., a limited product menu) placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations and prevent such limitations and associated conflicts of interest from causing the member or the associated person to make recommendations that place the interest of the member or the associated person ahead of the retail customer's interest; and
 - identify and eliminate sales contests, sales quotas, bonuses and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time. Exchange Act Rule 15c-1(a)(2)(iii).
- 8 Under the Compliance Obligation, a member must establish, maintain, and enforce written policies and procedures reasonably designed to

- achieve compliance with Reg BI. Exchange Act Rule 15c-1(a)(2)(iv).
- 9 See Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019) (“Fiduciary Interpretation”). In addition, the SEC adopted an interpretation concerning the “solely incidental” prong of the BD exclusion from the Advisers Act. Investment Advisers Act Release No. 5249 (June 5, 2019), 84 FR 33681 (July 12, 2019) (“Solely Incidental Interpretation”).
 - 10 The FAQs address the following topics: Retail Customer; Recommendation; Disclosure Obligation; Care Obligation; Conflict of Interest Obligation; Compliance Obligation.
 - 11 See [SEC Staff Bulletin on Standards of Conduct for Broker-Dealers and Investment Advisers Account Recommendations for Retail Investors](#) (March 30, 2022) (SEC Staff Bulletin on Account Recommendations); [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Conflicts of Interest](#) (Aug. 3, 2022) (SEC Staff Bulletin on Conflicts); and [SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations](#) (April 20, 2023) (SEC Staff Bulletin on Care). These resources and others (including resources concerning Form CRS, the Fiduciary Interpretation and the Solely Incidental Interpretation) are available on the [SEC’s website](#).
 - 12 For purposes of the Bulletins, the term “retail investor” is used to mean any person who qualifies as a “retail customer” under Reg BI or a natural person client of an investment adviser. See SEC Staff Bulletin on Account Recommendations, *supra* note 11 at note 2.
 - 13 See *supra* note 11.
 - 14 See SEC Staff Bulletin on Account Recommendations, *supra* note 11 at Question 1.a. (“The standard you must follow depends on the capacity in which you are acting (*i.e.*, broker-dealer, investment adviser, or both). In addition, the antifraud provisions of the Advisers Act apply to investment advisers in connection with current and prospective clients. Accordingly, in many cases, both Reg BI and the Advisers Act apply as you assess an account type recommendation for current and prospective retail investors.”); Question 1.b. (“Where you have not yet established the capacity in which you will be acting, you should assume that both standards apply and disclose to the investor, prior to or at the time of the recommendation, that you are acting in both capacities. Firms should provide clear guidance, through policies and procedures and other instructions to their financial professionals, on how to disclose capacity to retail investors.”) (citation omitted).
 - 15 *Id.* at Question 4.a. (“In addition to the factors discussed above, the staff believes that there are specific factors potentially relevant to rollovers that you should generally consider when making a rollover recommendation to a retail investor. These factors include, without limitation, costs; level of services available; features of the existing account, including costs; available investment options; ability to take penalty-free withdrawals; application of required minimum distributions; protection from creditors and legal judgments; and holdings of employer stock.”); Question 4.b. (“In the staff’s view, it would be difficult to form a reasonable basis to believe that a rollover recommendation is in the retail investor’s best interest and does not place your or your firm’s interests ahead of the retail investor’s interest, if you do not consider the alternative of leaving the retail investor’s investments in their employer’s plan, where that is an option.”).

- 16 *Id.* at note 26 (“In adopting Reg BI, the Commission determined not to require broker-dealers to document the basis for any recommendations, but encouraged them to take a risk-based approach when deciding whether to document certain recommendations.”); Question 6 (“Broker-dealers and investment advisers are subject to recordkeeping rules that may affect their decisions or obligations to document the basis for account recommendations. Additionally, in the staff’s view, it may be difficult for a firm to assess periodically the adequacy and effectiveness of its policies and procedures or to demonstrate compliance with its obligations to retail investors without documenting the basis for certain recommendations.”) (citation omitted); Question 3.c. (“The existence of special features or other potential benefits would not alone support a reasonable belief that an account recommendation is in an investor’s best interest. Rather, such factors should be considered in light of the investor’s needs, investment objectives, and preferences, and your account recommendation must not place your interests or the interests of your firm ahead of the retail investor’s interest. It is the staff’s view that it may be difficult for a firm to assess periodically the adequacy and effectiveness of its policies and procedures or to demonstrate compliance with its obligations to retail investors without documenting the basis for such conclusions.”); Question 4.a. (“In the staff’s view, when making a rollover recommendation, it may be difficult for a firm to assess periodically the adequacy and effectiveness of its policies and procedures or to demonstrate compliance with its obligations to retail investors without documenting the basis for the recommendation.”); Question 5 (“In the staff’s view, however, if the retail investor ultimately directs you to open an account that is contrary to your recommendation, you would not be required to refuse to accept the investor’s direction. In such instances, the staff believes that it may be difficult for a firm to assess periodically the adequacy and effectiveness of its policies and procedures or to demonstrate compliance with its obligations to retail investors without documenting the basis for opening the account.”) (citation omitted); note 13 (“If you determine not to obtain or evaluate information that would normally be contained in an investor profile, the staff believes you should consider documenting the basis for your belief that such information is not relevant in light of the facts and circumstances of the particular account recommendation.”).
- 17 See SEC Staff Bulletin on Conflicts, *supra* note 11.
- 18 *Id.* at Question 10 (“For example, firms should evaluate whether a limited product menu or otherwise limiting the range of products offered, such as share classes offered, (either by the firm or an affiliate) creates a conflict that could incline the firm or its financial professionals to offer advice or make recommendations that place the interests of the firm or its financial professionals ahead of the retail investor’s interest. In the staff’s view, firms should consider establishing product review processes for the products they offer (or that are offered by an affiliate). Such a product review process could include, for example:
- identifying and mitigating the conflicts of interest associated with the product, such as payments for inclusion on a firm’s menu of products offered (sometimes referred to as shelf space);
 - declining to recommend or provide advice with regard to a product where the firm cannot effectively mitigate the conflict;

- evaluating the use of “preferred lists”;
 - restricting the retail investors to whom certain products may be recommended;
 - prescribing minimum knowledge and/or training requirements for financial professionals who may provide recommendations or advice with regard to certain products; and
 - conducting periodic product reviews to identify potential conflicts of interest, whether the measures addressing conflicts are working as intended, and to modify the measures or product selection accordingly.” (citations omitted).
- 19 *Id.* at Question 5 (asking: “My firm has identified all of its conflicts of interest. Once the firm discloses the conflicts to retail investors, have we satisfied our obligations under Reg BI and the IA fiduciary standard?” and responding: “No. Disclosure of conflicts alone does not satisfy the obligation to act in a retail investor’s best interest. Further, as discussed below, certain conflicts should (and in some cases, must) be addressed through mitigation. Where such conflicts cannot be effectively addressed through mitigation, firms may need to determine whether to eliminate the conflict or refrain from providing advice or recommendations that are influenced by that conflict to avoid violating the obligation to act in a retail investor’s best interest in light of the investor’s objectives. Moreover, even if conflicts are sufficiently addressed, under both Reg BI and the IA fiduciary standard, firms and their financial professionals can provide recommendations or advice only when they have a reasonable basis to believe that the recommendation or advice is in the retail investor’s best interest.”) (citations omitted); Question 12.c. (“While firms should disclose the existence and potential effects of such conflicts, the staff reminds firms that disclosure of conflicts alone does not satisfy a firm’s obligation to act in the retail investor’s best interest.”).
- 20 *Id.* at Question 13 (“The staff believes that identifying and addressing conflicts is not a “set it and forget it” exercise. Firms should monitor conflicts over time and assess periodically the adequacy and effectiveness of their policies and procedures to help ensure continued compliance with Reg BI and the IA fiduciary standard. Reasonably designed policies and procedures that address conflicts may later cease to be reasonably designed based on subsequent events or information obtained, such as through supervision (e.g., exception testing of recommendations), and the actual experience of the firm.”).
- 21 See SEC Staff Bulletin on Care, *supra* note 11 at Question 17 (“In the view of the staff, firms and financial professionals should consider whether less complex, less risky or lower cost alternatives can achieve the same objectives for their retail customers as part of their overall reasonable basis analysis. Moreover, firms and their financial professionals generally should apply “heightened scrutiny” to whether a risky or complex product is in the retail investor’s best interest.”); Question 18 (“Examples of products where heightened scrutiny may be necessary include, but are not limited to, inverse or leveraged exchange-traded products, investments traded on margin, derivatives, crypto asset securities, penny stocks, private placements, asset-backed securities, volatility-linked exchange-traded products, and reverse-convertible notes.”).
- 22 *Id.* at Question 19 (“In the staff’s view, firms that make recommendations of, or provide advice about, complex or risky products to retail

investors should also consider documenting the process and reasoning behind the particular recommendation or advice, including consideration of less complex alternatives, and how it fits within the retail investor's broader goals or strategy.").

- 23 In *Regulatory Notice 23-08*, FINRA updated and supplemented prior guidance concerning private placements to highlight a member's obligation under Reg BI, when recommending a security, to conduct a reasonable investigation of the security.
- 24 On August 1, 2019, FINRA published a Reg BI and Form CRS Checklist to help members assess their obligations under Reg BI and Form CRS, and understand key differences between FINRA Rules and Reg BI and Form CRS. An updated version of the checklist was published on October 18, 2023.