Regulation Best Interest and Form CRS

Note: Throughout the course, you will see terms in **underscore blue bold,** which denotes a hot link to the referenced document or website, and some in **bold purple**, which denotes a pop-up box containing definitional or other additional information regarding the highlighted term. Material in the hot link will NOT be tested on the exam unless it is specifically included in the text of the course. However, material in the **bold purple** pop-up boxes may be tested. (Please note that you must click on the **bold purple** term for the pop-up to appear.)

Introduction

The SEC's Regulation Best Interest ("Reg BI") does much more than simply **codify** what FINRA has said on many occasions (i.e., that **brokers** should make recommendations that are in the customer's "best interest"); Reg BI includes extensive disclosure and conflict-of-interest requirements and describes the "best interest" duty of care at length.

Compliance with Reg BI is mandatory as of June 30, 2020. By that date, your firm will have adopted policies and procedures reasonably designed to ensure compliance with Reg BI, and will have prepared its Form CRS Relationship Summary ("Form CRS") to be delivered to retail investors. This course describes the duties imposed by Reg BI and the types of information to be included in Form CRS, but it is also important that you know your firm's related policies and procedures—which may be more stringent than Reg BI itself—and that you be very familiar with your firm's Form CRS, because the content of that form will determine **what additional disclosures, if any, you may have to make yourself.**

The course also reviews the SEC's interpretation of the "solely incidental" exclusion for brokers under the Investment Advisers Act of 1940, which was issued as part of the same rule package as Reg BI.

The General Obligation and its Four Component Obligations

Reg BI provides that when making a recommendation of a securities transaction or investment strategy to a retail customer, a broker must act in the retail customer's best interest without placing his own interests ahead of the customer's. This is referred to as the "General Obligation." The General Obligation is satisfied only if the broker complies with four specified component obligations, which are:

1. **The Disclosure Obligation**: providing certain prescribed disclosures before or at the time the time of the recommendation, about the recommendation and the relationship between the retail customer and the broker
2. **The Care Obligation:** exercising reasonable diligence, care, and skill in making the recommendation
3. **The Conflict of Interest Obligation:** establishing, maintaining, and enforcing policies and procedures reasonably designed to address conflicts of interest; and
4. **The Compliance Obligation:** establishing, maintaining, and enforcing policies and procedures reasonably designed to achieve compliance with Reg BI.

The Definition of "Retail Customer"

In the final Regulation, the definition of a "retail customer" was revised, but it still does not align entirely with FINRA rules. Reg BI defines the term "retail customer" to mean any natural person (or the legal representative of such natural person) who:

i. **receives a recommendation** of any securities transaction or investment strategy involving securities, and

ii. **uses the recommendation primarily for personal, family or household purposes**.

FINRA does not define a "retail customer" per se, but it does define an "institutional account" to include any natural person with total assets of at least $50 million. The accounts of such high net worth persons are not excluded from Reg BI's requirements, as the SEC said it believes conflicted recommendations can result in harm to anyone, even the very wealthy.

The SEC also made clear that the term "retail customer" in Reg BI includes participants in plans covered by the Employee Retirement Security Act of 1974 and IRAs.

No definition of "Recommendation" or "Best Interest"

The SEC declined to define the term "recommendation." In the **Adopting Release**, the SEC cites the factors that have historically been considered in determining whether a recommendation has been made, such as whether the communication reasonably could be viewed as a "call to action" and reasonably would influence an investor to trade a particular security. The SEC noted that the more individually tailored a communication is to a specific customer or group of customers, the greater the likelihood that such communication may be viewed as a recommendation. But a considerable amount of **education** can be provided without making a "recommendation" that would trigger Reg BI.

The term "best interest" is also not defined; rather, the SEC said it that the four component obligations (and the SEC's interpretations in the Adopting Release) set forth what acting in the "best interest" means.

Purpose and Scope of Reg BI

The SEC said the purpose of Reg BI was to enhance investor protection while at same time preserving, to the extent possible, access and choice for investors who prefer the “pay as you go” model.

Reg BI is not intended to change the varied advice relationships that currently exist between a broker and its/his/her retail customers, ranging from one-time, episodic or more frequent advice. Accordingly, Reg BI does **not**, for example:

- extend beyond a particular recommendation or generally require a broker to have a continuous duty to a retail customer
- impose a duty to monitor the performance of the account
- require the broker to refuse to accept a customer’s order that is contrary to a broker-dealer’s recommendations; or
- apply to self-directed or otherwise unsolicited transactions by a retail customer, who may also receive other recommendations from the broker.

Purpose and Scope of Reg BI (cont'd)

The scope of Reg BI is greater than originally proposed. Among other differences, the term "investment strategy" in the final Regulation was expanded to include recommendations of account types and **rollovers** or the transfer of assets. It also covers implicit "hold" recommendations where the broker and retail customer have an agreement that the broker will monitor the account.

On the other hand, Reg BI is less strenuous than the Department of Labor's fiduciary rule (the "DOL Fiduciary Rule") that was still partially in effect at the time Reg BI was first proposed. The SEC distinguished its Regulation from the (now vacated) DOL Fiduciary Rule by changing the DOL wording that broker-dealers must make recommendations "without regard to the financial or other interest" of the broker, to the phrase "without placing the financial or other interest [of the broker] ahead of the interest of the retail customer"—a change the SEC said makes clear that **brokers are not required to eliminate all conflicts of interest.**

Purpose and Scope of Reg BI (cont'd)

Reg BI does not apply to advice provided by a dual-registrant when acting in the capacity of an investment adviser, even if the person to whom the recommendation is made also has a brokerage relationship with the dual-registrant or even if the dual-registrant executes the transaction. Generally, determining whether a recommendation made by a dual-registrant is in its capacity as broker-dealer requires a facts and circumstances analysis, with no one factor being determinative, but the SEC considers, among other things,

- the type of account
- how the account is described
- the type of compensation, and
- the extent to which the dual-registrant made clear to the customer the capacity in which it was acting.

The next sections focus on each of the four components of the General Obligation.

Which of the following statements regarding Reg BI is **TRUE?**

A. Reg BI is less restrictive than what was originally proposed.
B. Reg BI is more restrictive than the (now vacated) DOL Fiduciary Rule.
C. Reg BI does not require brokers to eliminate all conflicts of interest.
D. Reg BI imposes a duty on brokers to monitor customer accounts.

Text of the Disclosure Obligation

Reg BI provides that a broker satisfies the Disclosure Obligation as follows:

"The broker, dealer, or natural person who is an associated person of a broker or dealer, prior to or at the time of the recommendation, provides the retail customer, in writing, full and fair disclosure of:

A. All material facts relating to the scope and terms of the relationship with the retail customer, including:
   1) That the broker, dealer, or such natural person is acting as a broker, dealer, or an associated person of a broker or dealer with respect to the recommendation;
   2) The material fees and costs that apply to the retail customer's transactions, holdings, and accounts; and
   3) 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; and

B. All material facts relating to conflicts of interest that are associated with the recommendation."

Overview of the Disclosure Obligation

In the **Adopting Release,** the SEC said investors should receive information early enough in the process to give them adequate time to consider and understand the information in order to make informed investment decisions, but not so early that the disclosure fails to provide meaningful information (e.g., does not sufficiently identify material conflicts presented by a particular recommendation, or overwhelms the retail customer with disclosures related to a number of potential options that the retail customer may not be qualified to pursue).

The Disclosure Obligation in the final Regulation is different than what was originally proposed. Originally, the obligation was to "reasonably disclose" information. The final Regulation requires brokers to provide "full and fair" disclosure. Not all facts must be disclosed, however, just the "**material**" facts. And what were simply examples of some of the disclosures contemplated by Reg BI as originally proposed are now specifically set forth as items 2(i)A(1) through (3) in Reg BI.

The required disclosure will be partially made in Form CRS, which must be delivered to retail **investors** at the earliest of:

- A recommendation of an account type, a securities transaction or an investment strategy involving securities;
- Placing an order for the retail investor; or
- The opening of a brokerage account for the retail investor.

Overview of the Disclosure Obligation (cont'd)

Form CRS takes the form of a questions-and-answer format. The questions (some of which must be answered in the form and some of which are provided as "conversation starters") include:

- "What investment services and advice can you provide me?"
- "How will you choose investments to recommend to me?"
- "What fees will I pay?"
- "If I give you $10,000 to invest, how much will go to fees and costs, and how much will be invested for me?"
- "What are your legal obligations to me when providing recommendations" (for broker-dealers) or "What are your legal obligations to me when acting as my investment adviser" (for investment advisers) or "What are your legal obligations to me when providing recommendations as my broker-dealer or when acting as my investment adviser" (for dual registrants)
- How do your financial professionals make money?
- Do you or your professionals have any legal or disciplinary history?

Overview of the Disclosure Obligation (cont'd)

The SEC said broker-dealers should apply plain English principles to written disclosures including, among other things, the use of short sentences and active voice, and avoidance of legal jargon, highly technical business terms, or multiple negatives. Electronic delivery is permitted consistent with **prior SEC guidance.** **Form CRS is limited to two pages for broker-dealers and investment advisers and four pages for dual registrants**.

Because of the prescribed brevity of Form CRS, additional disclosures will be required to satisfy the Disclosure Obligation in full. In fact, Form CRS must state prominently where the retail investor can find additional information. Some of that information may be put on the firm's website, with links to the information in Form CRS, some information may be contained in other documents (such as trade confirmations, prospectuses or other forms prepared by the firm) and some may even have to be made orally (such as in the event you discover additional facts not reasonably known at the time the written disclosure was provided that requires the disclosure to be updated).

This is where your knowledge of your firm's policies, procedures, Form CRS and additional documentation (if any) is crucial.

Overview of the Disclosure Obligation (cont'd)

Regarding oral disclosure, the SEC noted that, for example:

- A dual registrant could disclose that recommendations will be in its broker-dealer capacity unless otherwise expressly stated at the time of the recommendation, and that any such statement will be made orally

- A broker-dealer could disclose that its registered representatives may have conflicts of interest beyond than those disclosed by the broker-dealer, and that associated persons will disclose, where appropriate, any additional material conflicts of interest not later than the time of a recommendation, and that any such disclosure will be made orally.

A record of any oral disclosure must be made and maintained.

Disclosure by Registered Representatives

One commentator to the proposed Regulation requested guidance as to how a registered representative should comply with the Disclosure Obligation. In the Adopting Release, the SEC said that in "many instances," the registered representative may rely on the disclosures made by his or her broker-dealer.

> "However, when an associated person knows or should have known that the broker-dealer's disclosure is insufficient to describe 'all material facts,' the associated person must supplement that disclosure. For example, if an associated person of a broker-dealer that offers a full range of securities products is licensed solely as a Series 6 Registered Representative and can sell only mutual funds, variable annuities and other enumerated products, that limitation on the scope of services provided by the particular associated person must be sufficiently clear in the broker-dealer's disclosures; **otherwise, additional clarifying disclosure by the associated person would be necessary.**"

Whether there is sufficient disclosure in both the initial disclosure and any subsequent disclosure will depend on all the facts and circumstances.

Disclosure of "All Material Facts Relating to the Scope and Terms of the Relationship"

Regarding the scope and terms of the relationship, the SEC clarified that, at a minimum, a broker needs to disclose:

- Whether or not account monitoring services will be provided (and, if so, the scope and frequency of those services)
- Account minimums or similar requirements, and
- Any proprietary product restrictions and/or limitations related to specific asset classes, issuers or third-party arrangements.

Disclosure of facts relating to the scope and terms of the relationship also includes the disclosure of the basis for a broker's recommendations as a general matter (i.e., what might commonly be described as the broker's investment approach, philosophy, or strategy) and the standard risks (as opposed to individualized risks) associated with them.

The SEC stated that it would presume it to be a violation of the Disclosure Obligation if the term "adviser" or "advisor" in a name or title was used by (1) a broker that is not also registered as an investment adviser or (2) an associated person that is not also a supervised person of an investment adviser.

Disclosure of "All Material Facts Relating to the Scope and Terms of the Relationship"

Regarding fees and costs, the Disclosure Obligation does not require individualized product-level disclosure for each retail customer. Rather, standardized product-level disclosures are permitted, such as reasonable dollar or percentages ranges.

However, the SEC noted that it will not be sufficient to rely on Form CRS, due to its short length, for a full discussion of fees and costs. The Disclosure Obligation requires more detailed and quantitative information, which may be delivered through trade confirmations, prospectuses or other existing documents. A more detailed disclosure of fees and costs would include, among other things, a description of:

- How and when fees are deducted form an account (e.g., per-transaction, semi-annually)
- Why a fee is being imposed; and
- Any fees or costs that are unique to the broker's business and may not be captured under Form CRS' general description.

Disclosure of "All Material Facts Relating to Conflicts of Interest Associated with the Recommendation"

The final Regulation contains an express definition of the term "conflict of interest": it means

> "an interest that might incline a broker, dealer or natural person who is associated of a broker or dealer—consciously or unconsciously—to make a recommendation that that is not disinterested."

The SEC noted that while Form CRS requires a high-level description of specified conflicts of interest, the Disclosure Obligation requires more comprehensive disclosure of all material conflicts of interest related to the recommendation to the retail customer.

The Adopting Release provides a list of material conflicts the SEC would expect to be disclosed, including those associated with recommending:

- Proprietary products
- Products of affiliates
- Limited range of products
- One share class versus another share class of a mutual fund

(cont'd)

Disclosure of "All Material Facts Relating to Conflicts of Interest Associated with the Recommendation" (cont.)

- Securities underwritten by the firm or a broker-dealer affiliate
- Rollover or transfer of assets from one type of account to another (such as recommendations to rollover or transfer assets in an ERISA account to an IRA, when the recommendation involves a securities transaction); and
- Allocation of investment opportunities among retail customers (e.g., IPO allocation).

Additionally, the broker must disclose how a registered representative is compensated (including any revenue sharing) and any conflicts relating to such arrangement.

Knowledge Check

Which of the following statements regarding the Disclosure Obligation is **TRUE?**

A. The Disclosure Obligation will be satisfied by Form CRS.
B. Under the Disclosure Obligation, a registered representative will never have to make any separate disclosure from his firm's.
C. The Disclosure Obligation prohibits oral disclosure
D. The Disclosure Obligation restricts the use of the term "advisor" and "adviser."

Overview of the Care Obligation

The Care Obligation requires broker-dealers to "exercise **reasonable diligence, care, and skill**" to meet the three components of the Care Obligation, which are as follows:

1. Understand the potential risks, rewards and costs associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers

2. 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

3. 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.

The three Care Obligation components align with FINRA's three suitability obligations (the reasonable basis suitability requirement; the customer-specific suitability requirement and the quantitative suitability requirement) **except that they substitute "best interest" for "suitable" and, according to the SEC, they add three enhancements discussed on the next screens.**

Enhancements to the Suitability Obligation

First, **the Care Obligation adds "cost" as a factor to consider when making a recommendation.** The SEC said the cost factor is **not determinative** and is not meant to limit or foreclose a recommendation of a more costly or complex product that the broker has a reasonable basis to believe is in the best interest of the retail customer.

The SEC said additional factors "such as those cited by commentators" should also be taken into consideration when conducting either a reasonable-basis or customer-specific determination, and identified those factors in a footnote:

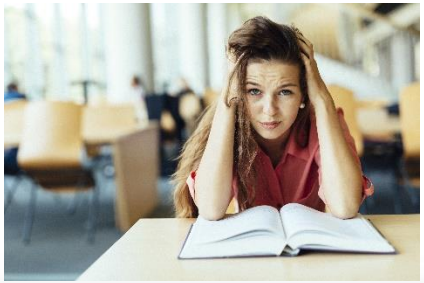
- Product structure
- Investment features
- Liquidity
- Volatility
- Issuer reputation
- Brand and business practices
- Nature and quality of a provider's services (including advantages to the investor of consolidating investments at a single firm, such as higher levels of service that may be offered, and
- "Highly personalized non-economic reasons underlying cross-border investment."

Enhancements to the Suitability Obligation (cont'd)

To that list of factors to be considered when making a recommendation, the SEC added

- Risks and potential benefits
- Special or unusual features
- Likely performance in a variety of market and economic conditions.

The SEC noted that the reasonable basis component of the Care Obligation is especially important when brokers recommend securities and investment strategies that are complex or risky. **A broker could violate the obligation by not understanding the potential risks, rewards or costs of the recommended security even if the security or investment strategy could have been in the best interest of at least some retail customers.**



Enhancements to the Suitability Obligation (cont'd)

The second enhancement added by the Care Obligation components, according to the SEC, is the requirement that the broker have a reasonable basis to believe **both that the recommendation is in the retail customer's best interest AND that it does not place the financial or other interest of the broker ahead of the retail customer's interest.**

Enhancements to the Suitability Obligation (cont'd)

The third enhancement, according to the SEC, is that **a broker should consider "reasonably available alternatives" offered by the broker** as part of having a "reasonable basis to believe" that the recommendation is in the best interest of the retail customer. This enhancement is not expressly stated in Reg BI, but is discussed by the SEC in its **Adopting Release**. The SEC said it is an enhancement "beyond existing suitability expectations."

This does **not** require a broker to analyze **all** possible securities, all other products, or all investment strategies to recommend the single "best" security or investment strategy for the retail customer, nor necessarily require a broker to recommend the least expensive or least remunerative security or investment strategy. Nor does a registered representative need to be familiar with every product the broker-dealer offers, since—as the SEC recognized—such a requirement could encourage broker-dealers to limit their product menus. However, the SEC makes clear that if there is no available option offered by the broker that is in the customer's best interest, no recommendation should be made.

Don't love this one either.

Monitoring the Retail Customer's Account: the "Implicit Hold Recommendation"

As noted earlier, the Care Obligation does not require a broker to continuously monitor a retail customer's account. Whether or not monitoring services are available and whether or not they will be performed for a retail customer's account are matters which require disclosure, as previously discussed, so there should be a clear understanding between the broker and the retail client on this point.

If a broker does agree to provide the retail customer with specified account monitoring services, it is the SEC's view that such an agreement will result in buy, sell or hold recommendations subject to Reg BI, **even when the recommendation to hold is merely implicit,** meaning that at the time the agreed-upon monitoring occurs, no recommendation is made to buy, sell or exchange a particular asset; as to such asset, there is an implicit "hold" recommendation which triggers Reg BI, including the General Obligation's "best interest" standard and the four component obligations.

To avoid any ambiguity over whether or when an implicit hold recommendation has been made, **the SEC urges brokers to disclose with specificity when the agreed-upon monitoring will occur, e.g., annually, semi-annually and so on.**

Which of the following statements regarding the Care Obligation is **TRUE**?

A. A registered representative could violate the Care Obligation by not understanding the risks of a recommended product.
B. The Care Obligation has four components.
C. The Care Obligation requires a registered representative to understand all of the products offered by his or her broker-dealer
D. The Care Obligation requires the registered representative to consider all available options.

Overview of the Conflicts of Interest Obligation

The Conflict of Interest Obligation requires the broker to:

- Establish, maintain and enforce written policies and procedures designed to identify, and at a minimum disclose, or eliminate, all conflicts of interest associated with recommendations to retail customers
- Identify and mitigate any conflicts of interest associated with such recommendations that create an incentive for a natural person who is an associated person to place the interest of the broker or the person ahead of the interest of the retail customer
- Identify and disclose any material limitations placed on the securities or investment strategies that may be recommended to a retail customer and any conflicts of interest associated with such limitations
- Prevent such limitations and associated conflicts of interest from causing the broker to make recommendations that place the interest of the broker ahead of the interest of the retail customer; and
- Identify and **eliminate any sales contests, sales quotas, bonuses and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.**

Overview of the Conflicts of Interest Obligation (cont.)

The Adopting Release provides a non-exhaustive list of measures that a broker might adopt to mitigate conflicts; these include:

- Avoiding compensation thresholds that disproportionately increase compensation through incremental increases in sales
- Minimizing compensation incentives for employees to favor one type of product over another, proprietary or preferred provider product, or comparable product sold on a principal—for example, establishing differential compensation based on neutral factors, e.g., the time and complexity of the work involved
- Eliminating compensation incentives within comparable product lines (e.g., one mutual fund over a comparable fund) by, for example, capping the credit that an associated person may receive across comparable mutual funds or other comparable products across providers
- Implementing supervisory procedures to monitor recommendations that are : near compensation thresholds; involve higher compensating products, proprietary products or transactions in a principal capacity; or involve the rollover or transfer of assets from one type of account to another;

Overview of the Conflicts of Interest Obligation (cont.)

- Adjusting compensation for associated persons who fail to adequately manage conflicts of interest; and

- Limiting the types of retail customers to whom a product, transaction or strategy may be recommended (e.g., certain products with conflicts of interest associated with complex compensation structures).

Reg BI's prohibition on certain forms of incentive compensation does not extend to compensation based on measures such as total products sold, asset growth or accumulation, or customer satisfaction. **The prohibitions on incentive compensation also do not prevent brokers from offering only proprietary products or limiting the products offered, which by contrast would have been very difficult under the Best Interest Contract exemption to the (now vacated) DOL Fiduciary Rule.**

Overview of the Compliance Obligation

The Compliance Obligation requires broker-dealers to establish and enforce policies and procedures—in addition to the policies and procedures required to address conflicts of interest—reasonably designed to achieve compliance with Reg BI. Here again, your knowledge of and adherence to your firm's policies and procedures is essential.

The "Solely Incidental" Exclusion for Brokers in the Advisers Act

Background of the "Solely Incidental" Exclusion

The Investment Advisers Act of 1940 (the "Advisers Act") excludes from the definition of an investment adviser a broker or dealer "whose performance of such advisory services is solely incidental to the conduct of his business as a broker and who receives no special compensation" for those services." This exclusion reflects Congress's recognition that brokers provide some investment advice to customers in the course of their regular business, but that such practice does not put them within the intended scope of the Advisers Act.

In 2005, the SEC established that "investment advisory services are 'solely incidental' to the conduct of a broker-dealer's business when the services are offered in connection with, and are reasonably related to, the brokerage services provided to an account." In 2011, a federal appeals court found this interpretation "persuasive" and stated that the exclusion's applicability turns on the relationship of a broker's advice to its primary business of selling securities, and not "the quantum or importance" of the advice given. In 2019, contemporaneously with the announcement of Reg BI, the SEC adopted the court's language in an updated interpretation of the "solely incidental" exclusion (the "2019 Interpretation").

The 2019 Interpretation

The SEC's 2019 Interpretation includes the following statement: "The quantum or importance of investment advice that a broker-dealer provides to a client is not determinative as to whether or not the provision of advice is consistent to the solely incidental prong. Advice need not be trivial, inconsequential, or infrequent to be consistent with the solely incidental prong." The SEC proceeded to provide guidance regarding a broker's (1) exercise of discretion and (2) account monitoring.

1. Exercising Discretion

The SEC has said that while generally, the exercise of discretion will subject a broker to the Advisers Act, **temporary or limited discretion does not rise to the level of the managerial discretion required to trigger Adviser Act protections.** The SEC describes "temporary or limited discretion" as the type "limited in time, scope or other manner and lack[ing] the comprehensive and continuous character of investment discretion" in a primarily advisory relationship. Specific examples are listed on the next two screens.

The 2019 Interpretation (cont'd)

1. Exercising Discretion (cont'd)

Examples of "temporary or limited" discretion identified by the SEC in its 2019 Interpretation include discretion:

- As to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite amount or quantity of a specified security
- On an isolated or infrequent basis, to purchase or sell a security or type of security when a customer is unavailable for a limited period of time (such as a few months)
- As to cash management, such as to exchange a position in a money market fund for another money market fund or cash equivalent
- To purchase or sell securities to satisfy margin requirements or other customer obligations that the customer has specified

(cont'd)

The 2019 Interpretation (cont'd)

1. Exercising Discretion (cont'd)

Examples of "temporary or limited" discretion identified by the SEC in its 2019 Interpretation include discretion (cont'd):

- To sell specific bonds or other securities and purchase similar bonds or other securities in order to permit a customer to realize a tax loss on the original position
- To purchase a bond with a specified credit rating and maturity, and
- To purchase a security or type of security limited by specific parameters established by the customer.

The 2019 Interpretation (cont'd)

2. Account Monitoring

The SEC declined to establish bright line rules around the circumstances where the scope and frequency of any agreed-upon monitoring is, or is not, "solely incidental" to a broker's primary business, but suggested brokers may want to adopt policies and procedures to help confirm that any agreed-upon monitoring in which they engage is being performed "in connection with and reasonably related to the… primary business of effecting securities transactions. The SEC also recommended that dual registrants adopt policies and procedures that distinguish the level and type of monitoring in advisory and brokerage accounts.

The SEC cautioned that **a broker who separately contracts or charges a separate fee for account monitoring would be providing investment advice that is inconsistent with the "solely incidental" exclusion.**

Which of the following statements regarding the Conflicts of Interest Obligation is **TRUE?**

A. The Conflicts of Interest Obligation prevents a broker-dealer from offering only proprietary products.
B. The Conflicts of Interest Obligation prevents a broker-dealer from paying a bonus based on the sales of specific securities or specific types of securities within a limited period of time.
C. The Conflicts of Interest Obligation is satisfied by disclosure.
D. The Conflicts of Interest Obligation prohibits differential compensation.

FINRA's Resources Regarding Reg BI and Form CRS

What Resources are Included

In October 2019, FINRA announced the creation of certain resources to assist broker-dealers in complying with Reg BI. Those resources include:

- A **webpage** on FINRA's site specifically addressing Reg BI and Form CRS
- A list on that webpage of all SEC resources
- A list of all upcoming Reg BI conferences
- FINRA staff contacts
- A Reg BI and Form CRS Checklist.

FINRA's Reg BI and Form CRS Checklist

FINRA's **checklist** outlines the major requirements of the rules and notes key differences between FINRA rules and SEC's Reg BI and Form CRS. It's a valuable overview of precisely what broker-dealers must do.

The checklist is arranged in a series of questions, such as ""Do you apply a best interest standard to recommendations of **types of accounts**" followed by explanations of why that is necessary and, in this instance, how to apply the best interest standard by considering specific **factors** in deciding which account type to recommend.

Other questions with helpful explanations and advice include:

- "If you agree to provide account monitoring, do you apply the best interest standard to both explicit and **implicit hold recommendations**?"
- "Do you consider the elements of **care, skill and cost** when making recommendations to retail customers?"
- "Do you consider **reasonably available alternatives** to the recommendation?"

Similarly, questions and explanations are given regarding Form CRS.

Conclusion

For the first year or so, the SEC is unlikely to prosecute anyone who makes a good faith attempt to comply with Reg BI (which means complying with your firm's policies and procedures). Over time, additional guidance will be developed regarding Reg BI from the courts, if not from the SEC itself.