

Reg BI+

Presentation for Financial Regulation in Cyberspace panel, AALS 2025

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Financial Regulation in Cyberspace

Regulation of non-*recommendation*, non-advice financial *advice*

- The SEC's approach and fixes?
- Fin Reg in cyberspace in the Trump administration
- FINRA and the states

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SEC DEP rulemaking

- Gap in “advice” (RIAs) and “recommendations”
- SEC proposal (2023) on “gamified” stock trading apps (“DEPs”)
 - Would have targeted “investor interactions” involving, e.g., computers
 - Would have required BDIAIs to identify COIs in these interactions and neutralize or eliminate them

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Why DEPs?

- Choi (2004) on the financing problem: it's costly to produce but many (unsophisticated or low-income) have low WTP
- Many firms have solved financing by cross subsidy (PFOF)
- Opposition to DEP rule in large part because it targeted conflicts, a form of compensation
- Sautter and Ricci were right on one of our points of disagreement (🤪)

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Reg BI+ option

- Forthcoming Mich St L Rev
- Stop targeting conflicts and focus on sales practices
- Apply subset of Reg BI's four component obligations to “investor interactions”

	Example of conflict	Regulatory baseline	PDA rule proposal	This article's proposal	2025 agenda
Put own interest first	A/B testing to encourage more trading without regard to quantitative suitability	Prohibited for advice (FD) and recommendations (Reg BI)	Prohibited for investor interactions involving covered technologies Subject to compliance and evaluation framework	Reg BI+: Prohibited for certain sales practices in investor interactions involving covered technologies	
Consider interest without putting it first	Higher-revenue product included among menu of choices but not given more prominence	Permitted under fiduciary duty and Reg BI, subject to disclosure and knowing consent	Maybe permissible Subject to compliance and evaluation framework	No effect on baseline where the sales practices do not result in placing the firm's interest first	Impose nationwide fiduciary standard
Put customer's interest first	Can't offer higher-revenue product that isn't otherwise better for client	Not required; rejected in 2019			
Entirely unconflicted	Adviser has, e.g., no economic or leisure self-interest	Not feasible under delegation			

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The future of regulation in this space

- Atkins SEC: Not likely to move the DEP proposal, *maybe* something less ambitious
- FINRA
- The states

Questions?