

[Securities Regulation Daily Wrap Up, BROKER-DEALERS—NASAA says Reg BI hasn't remedied conflict of interests, \(Nov. 8, 2021\)](#)

Securities Regulation Daily Wrap Up

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Especially in light of continuing compensation conflicts of interest, NASAA looks forward to working with the SEC and FINRA to bring more broker-dealer firms into Reg BI compliance.

The North American Securities Administrators Association, Inc. (NASAA) has released a phase two follow up to its 2020-issued phase one report documenting the effect of the SEC's adopted Regulation Best Interest Rule (Reg BI) on broker-dealer firms, finding that Reg BI, for the most part, has not prevented broker-dealers from putting their [own financial interests](#) ahead of their customers' interests.

Ohio's Securities Commissioner and NASAA's Reg BI Implementation Committee Chair Andrea Seidt, said "Some firms are headed in the right direction but Reg BI has a long way to go to close the investor protection gap separating broker-dealers from investment advisers when it comes to conflicted advice."

Melanie Senter Lubin, NASAA's current president and Maryland's securities commissioner declared, moreover, "The examination [report] reveals that while there were some improvements, most firms are operating in the same manner as they were under the suitability rule, especially when it comes to harmful compensation conflicts." The report, in fact, found that compensation conflicts were concentrated in firms that recommended complex, costly, and risky products—after Reg BI took effect. And 24 to 30 percent of broker-dealer firms surveyed were still using product-agnostic sales contests, differential compensation, and extra forms of compensation.

NASAA revealed that on the contrary, these compensation conflicts are rarely seen in fiduciary firms, observed in only 0.5 to three percent of investment advisers examined in phase one.

Phases One and Two. The Phase One report issued in early 2020 assessed industry practices before Reg BI was implemented. Phase Two [examined](#) 443 broker-dealer firms from 35 jurisdictions, focusing on the progress made by 225 firms serving more than 77.5 million retail accounts and employing over 316,000 registered representatives. These firms were: (1) examined in both phases; and (2) transitioned from the suitability standard to Reg BI.

Aside from the statistical finding on compensation, the report also disclosed the following metrics, evidencing continued conflicts of interest:

- The percentage of broker-dealer firms surveyed that were offering complex, costly, and risky products increased by 11 percent after Reg BI took effect;
- When recommending complex, costly, and risky products, 65 percent of broker-dealer firms surveyed were not mentioning alternative lower-cost or lower-risk products;
- No more than 4 percent of broker-dealer firms surveyed had enhanced investor profile forms (in any key metric measured) to more carefully match investors with products after Reg BI took effect; and
- 3 percent of broker-dealer firms surveyed took a step backward from their prior suitability procedures, by dropping customer education, longevity risk, and tolerance for alternative products from the investor profile forms.

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