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# Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Account Recommendations for Retail Investors [\[1\]](#)

**Introduction:** The following is a staff bulletin styled as questions and answers reiterating the standards of conduct for broker-dealers and investment advisers when they are making account recommendations to retail investors.[\[2\]](#) Both Regulation Best Interest (“Reg BI”) for broker-dealers and the fiduciary standard for investment advisers under the Investment Advisers Act (the “IA fiduciary standard”) are drawn from key fiduciary principles that include an obligation to act in the retail investor’s best interest and not to place their own interests ahead of the investor’s interest. Although the specific application of Reg BI and the IA fiduciary standard may differ in some respects and be triggered at different times, in the staff’s view, they generally yield substantially similar results in terms of the ultimate responsibilities owed to retail investors.

This staff bulletin should be read in conjunction with, among other sources, the specific Commission releases discussing Reg BI and the IA fiduciary standard.[\[3\]](#) In addition, the staff has made available other resources, including a variety of staff FAQs addressing compliance with Form CRS, Reg BI and the IA fiduciary standard, risk alerts, and other statements highlighting relevant compliance practices and staff observations.[\[4\]](#)

This staff bulletin provides staff views on how broker-dealers, investment advisers, and their associated persons can satisfy their obligations to retail investors when making account recommendations. Selection of an account type is a consequential decision for retail investors and is associated with potentially significant conflicts of interest and raises particular issues for financial professionals operating within dually registered or affiliated firms, as well as dually licensed financial professionals.[\[5\]](#) This staff bulletin is designed to assist firms and their financial professionals with considering reasonably available alternatives and cost, addressing conflicts of interest, and adopting and implementing reasonably designed policies and procedures when making account recommendations.

## Questions:

### 1. **Dually licensed financial professionals’ obligations when recommending accounts to prospective retail investors.**

#### a. **How do I know which standard to follow when making account recommendations?[\[6\]](#)**

Both Reg BI and the IA fiduciary standard require your account recommendations to be in the retail investor’s best interest and require you not to place your or your firm’s interests ahead of the retail investor’s interest. The staff believes that, unless you obtain and evaluate sufficient information about a retail investor, you will not have the ability to form a reasonable basis to believe your account recommendations are in the retail investor’s best interest.[\[7\]](#)

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.[\[8\]](#)

**b. Do I need to disclose my capacity under both Reg BI and the IA fiduciary standard when making a recommendation?**

Yes. Under Reg BI, when making an account recommendation, you must disclose all material facts relating to the scope and terms of your relationship with the retail investor, including the capacity in which you are acting. Investment advisers have a similar obligation under the duty of loyalty to disclose all material facts relating to the advisory relationship, including the capacity in which they are acting. Where you have not yet established the capacity in which you will be acting, you should assume that both standards apply<sup>[9]</sup> 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.

**c. Do I need to consider reasonably available alternatives when making account recommendations?**

Yes. Under both Reg BI and the IA fiduciary standard you may recommend an account to a retail investor only when you have a reasonable basis to believe that the account is in the retail investor's best interest. For example, if you are a dually licensed financial professional, you need to make a best interest evaluation taking into consideration the spectrum of accounts you offer (*i.e.*, both brokerage and advisory accounts, subject to any eligibility requirements such as account minimums).<sup>[10]</sup>

Moreover, you cannot recommend an account that is not in a retail investor's best interest solely based on your firm's limited product menu or arising from limitations on your licensing. Any limitations on account types considered, in the staff's view, are material facts that should be disclosed (along with other relevant material facts, including services, fees, and conflicts of interest) to retail investors.

**2. Factors to consider before making an account recommendation<sup>[11]</sup>**

Both Reg BI and the IA fiduciary standard require you to have a reasonable basis for an account recommendation, based on a reasonable understanding of the retail investor's investment profile and the account characteristics.

**a. What are examples of investor characteristics I should consider to have a reasonable basis to believe the recommendation is in the retail investor's best interest?**

As part of establishing a reasonable understanding of the retail investor's investment profile, the staff believes that you should consider, without limitation, the retail investor's: financial situation (including current income) and needs; investments; assets and debts; marital status; tax status; age; investment time horizon; liquidity needs; risk tolerance; investment experience; investment objectives and financial goals; and any other information the retail investor may disclose to you in connection with an account recommendation.<sup>[12]</sup> The staff also believes that you should consider, without limitation, the retail investor's: anticipated investment strategy (*e.g.*, buy and hold versus more frequent trading); level of financial sophistication; preference for making their own investment decisions or relying on advice from a financial professional; and the need or desire for account monitoring or ongoing account management.

You must, in any case, obtain and evaluate enough information about the retail investor to have a reasonable basis to believe the account recommendation is in the best interest of that retail investor and that your recommendation is not based on materially inaccurate or incomplete information.

**b. What if investor information is unavailable?**

Where investor information is unavailable despite your reasonable diligence, the staff believes you should carefully consider whether you have a sufficient understanding of the investor to evaluate if any account recommendation is in that investor's best interest. The staff believes you will not be able to have a reasonable belief that an account recommendation is in an investor's best interest under Reg BI or the IA fiduciary standard without sufficient information about the retail investor and therefore should generally decline such account recommendations until you obtain the necessary investor information.<sup>[13]</sup>

**c. What are examples of account characteristics I should consider to have a reasonable basis to believe the account recommendation is in the retail investor's best interest?**

In order to establish a reasonable understanding of the characteristics of a particular type of account, the staff believes that you should consider, without limitation, factors such as the services and products provided in the account (including ancillary services provided in conjunction with an account type, account monitoring services, etc.); the projected costs to the retail investor; alternative account types available; and whether the account offers the services requested by the retail investor.<sup>[14]</sup> The staff believes that in assessing whether a particular account recommendation is in a retail investor's best interest, a financial professional also should consider whether these factors are consistent with the retail investor's investment profile and stated investment goals.

### **3. Consideration of Costs in Account Recommendations**

#### **a. Are costs always a relevant factor to consider when making account recommendations?**

Yes, you must always consider cost as a factor when making an account recommendation.<sup>[15]</sup> While Reg BI and the IA fiduciary standard do not always obligate you to recommend the least expensive type of account, both require you to have a reasonable basis to believe that the account 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. As discussed further below, if you recommend a higher cost account, you must have a reasonable basis to believe the account recommendation is nonetheless in the retail investor's best interest based on other factors and in light of the particular situation and needs of the retail investor. The Commission has pursued enforcement actions against investment advisers for recommending higher-cost products to clients when similar, lower-cost products were available.<sup>[16]</sup>

#### **b. What are examples of costs that I should consider when recommending an account?**

In the staff's view, you should consider the total potential costs when evaluating whether an account is in a retail investor's best interest, including indirect costs that could be borne by the retail investor.<sup>[17]</sup> Examples of costs can include account fees (e.g., asset-based, engagement, hourly), commissions and transaction costs (e.g., markups and markdowns), tax considerations, as well as indirect costs, such as those associated with payment for order flow and cash sweep programs. When applicable, cost of an account also includes fees associated with the investment products that are available through the account, such as the internal expenses of funds, including management fees, distribution and servicing fees, and the costs of investing in funds, including front-end and back-end fees. The effect of certain costs, such as distribution and servicing fees and transaction costs related to purchasing fund shares, may depend on the investor's anticipated investment horizon. In these cases, you should consider the potential impact of those costs on the investor's account based on an understanding of that horizon.

#### **c. What are examples of other factors that may be considered alongside cost?**

As discussed above, you must have a reasonable basis for believing the account recommendation is in the retail investor's best interest. Some examples of factors, alongside cost, that you may consider can include the investor's need for certain services or certain types of investment products or strategies that are only available in certain account types; the account's characteristics, including any special or unusual features requested by the retail investor, such as tax advantages; potential benefits and risks;<sup>[18]</sup> time horizon; and anticipated composition of investments in the investment account. 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.

### **4. Retirement Account Rollover Recommendations<sup>[19]</sup>**

#### **a. Are there additional factors that I should consider when making a rollover recommendation in order to have a reasonable basis to believe the recommendation is in the retail investor's best interest?**

Yes. When making a rollover recommendation to a retail investor, you must have a reasonable basis to believe both that the rollover itself and that the account being recommended are in the retail investor's best interest. 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.[\[20\]](#)

As with account recommendations more generally, relevant factors should be considered in light of, among other things, the retail investor's investment profile to develop a reasonable belief that the retirement account or rollover recommendation is in the retail investor's best interest.[\[21\]](#) 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.

In addition to Reg BI and the IA fiduciary standard, some rollovers also are subject to regulation by the Department of Labor. If you are relying on Prohibited Transaction Exemption 2020-02 ("PTE 2020-02"), you may want to review guidance from the Department of Labor on factors to consider in making a rollover recommendation, as well as relevant documentation requirements.[\[22\]](#)

**b. When considering a rollover recommendation, do I have to consider the option of leaving the retail investor's investments in the employer's plan?**

As discussed above, you must have a reasonable basis to believe that an account 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. 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. To evaluate any recommendation to transfer assets out of an employer's plan, or between individual retirement accounts, you would need to obtain information about the existing plan, including the costs associated with the options available in the investor's current plan.[\[23\]](#)

**5. If a retail investor expresses a preference for a particular type of account, would making an account recommendation on the basis of that preference satisfy the standards?**

No. Although the retail investor's preference should be considered, you would not satisfy the standards based on the retail investor's preference alone. For example, a retail investor may express a preference for a brokerage account during an initial conversation, but may not fully understand what the differences between brokerage and advisory accounts actually are in terms of costs and available products and services. As stated above, when making an account recommendation to a retail investor, you must have a reasonable basis to believe that the recommendation is in the retail investor's best interest based on, among other things, a reasonable understanding of the retail investor's investment profile and the account characteristics. Where a retail investor expresses a preference for a particular type of account, the staff believes that factor should be considered. You would not, however, be relieved of the obligation to consider reasonably available alternatives and recommend an account you reasonably believe is in the retail investor's best interest.

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.[\[24\]](#) 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.

**6. Should firms document the basis for the account that was recommended to a retail investor?**

Broker-dealers and investment advisers are subject to recordkeeping rules that may affect their decisions or obligations to document the basis for account recommendations.[\[25\]](#) 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.<sup>[26]</sup> Reg BI's Compliance Obligation requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. Similarly, the Advisers Act compliance rule requires investment advisers registered or required to be registered under the Advisers Act to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act, which include preventing breaches of the IA fiduciary standard in violation of section 206 of the Advisers Act.<sup>[27]</sup>

#### **7. What are some examples of practices that can assist firms in meeting their obligations to address conflicts of interest associated with account recommendations?**

Both Reg BI and the IA fiduciary standard require firms to act in the retail investor's best interest and not place the firm's interests ahead of the retail investor's interest. The following is a non-exhaustive list of practices that can help firms meet their obligations with respect to conflicts of interest associated with account recommendations:

- Avoid compensation thresholds that disproportionately increase compensation through openings of certain account types;
- Adopt and implement policies and procedures reasonably designed to minimize or eliminate incentives, including both compensation and non-compensation incentives, for employees to favor one type of account over another;
- Implement supervisory procedures to monitor recommendations that involve the roll over or transfer of assets from one type of account to another (such as recommendations to roll over or transfer assets in an ERISA account to an IRA); and
- Adjust compensation for financial professionals who fail to adequately manage conflicts of interest associated with account recommendations.<sup>[28]</sup>

In the staff's view, firms should exercise particular care when creating incentives that could have the effect of encouraging account recommendations that would place the interests of the firm or financial professional ahead of the interest of the retail investor. The staff strongly encourages firms to eliminate or mitigate any incentive that poses a risk of causing the firm or its financial professionals to place their interests ahead of the retail investor's interest. The Commission has previously brought a settled enforcement action in connection with compensation incentives for financial professionals making account recommendations.<sup>[29]</sup>

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<sup>[1]</sup> This staff bulletin represents the views of the staff of the Securities and Exchange Commission ("Commission") and is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved this staff bulletin. The staff bulletin, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

<sup>[2]</sup> For the purposes of this staff bulletin, we use the term "retail investor" to mean any person who qualifies as a "retail customer" as defined in Exchange Act rule 15c-1(b)(1), or a natural person client of an investment adviser.

<sup>[3]</sup> See [Regulation Best Interest: The Broker-Dealer Standard of Conduct](#), Exchange Act Release No. 86031, 84 FR 33318 (June 5, 2019) ("Reg BI Adopting Release"); [Commission Interpretation Regarding Standard of Conduct for Investment Advisers](#), Investment Advisers Act Release No. 5248, 84 FR 33669 (June 5, 2019) ("Fiduciary Interpretation").

<sup>[4]</sup> See SEC Spotlight, Regulation Best Interest, Form CRS and Related Interpretations, *available at* <https://www.sec.gov/regulation-best-interest>.

<sup>[5]</sup> For the purposes of this staff bulletin, we use the term "dually licensed financial professional" to mean any natural person who is both an associated person of a broker-dealer registered under Exchange Act § 15, as defined in Exchange Act § 3(a)(18), and a supervised person of an investment adviser registered under Advisers Act § 203, as defined in Advisers Act § 202(a)(25).

[6] See also Frequently Asked Questions on Regulation Best Interest (“Reg BI FAQs”) (discussing how to determine capacity in which a dual-registrant is making a recommendation), *available at* <https://www.sec.gov/tm/faq-regulation-best-interest#care>.

[7] In the staff’s view, because each standard is drawn from key fiduciary principles, you should generally collect similar information, perform a similar analysis, and arrive at a similar conclusion about which account type(s) would be in the retail investor’s best interest, regardless of the capacity that you end up serving in. See *supra* note 3. Under Reg BI, broker-dealers must obtain and analyze enough customer information to have a reasonable basis to believe that the recommendation is in the best interest of the particular retail customer. See Reg BI Adopting Release, *supra* note 3, at 33379. For investment advisers, the duty to provide advice that is in the best interest of the client based on a reasonable understanding of the client’s objectives and a reasonable investigation into the investment is a critical component of the duty of care, which includes obtaining a range of personal and financial information about the client. See Fiduciary Interpretation, *supra* note 2, at nn. 35-36 and accompanying text.

[8] Fiduciary Interpretation, *supra* note 3, at n. 44 (citing Reg BI Adopting Release).

[9] See *supra* note 6.

[10] See also *supra* note 6 (discussing account recommendation considerations for dually registered financial professionals and a financial professional only registered as an associated person of a broker-dealer, where the firm is a dual registrant), *available at* <https://www.sec.gov/tm/faq-regulation-best-interest#recommendation>. In addition to the financial professional’s obligations, the staff also reminds firms that they too have related obligations under Reg BI and the Advisers Act, including, for example, the obligation to adopt and implement reasonably designed policies and procedures to comply with Reg BI, in the case of brokers-dealers, and to prevent violations of the Advisers Act and the rules issued thereunder, in the case of investment advisers registered or required to be registered.

[11] These factors are not meant to be exhaustive, and their relative importance will vary depending on the particular facts and circumstances of each recommendation. The relevant factors should be considered with respect to the particular retail investor to whom the account recommendation is being made before either a financial professional or the financial professional’s firm can form a reasonable belief that the account (or, if the financial professional is recommending both a brokerage and advisory account, the accounts) they recommend would be in the retail investor’s best interest and does not place the interests of the firm or financial professional ahead of the interest of the retail investor.

[12] See Reg BI Adopting Release, *supra* note 3, at 33492; Fiduciary Interpretation, *supra* note 3, at 33673.

[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.

[14] See Reg BI Adopting Release, *supra* note 3, at 33382-83.

[15] See Exchange Act rule 15l-1(a)(2)(ii) (explicitly requiring consideration of cost under Reg BI’s Care Obligation); see also Fiduciary Interpretation, *supra* note 3, at 33674 (noting that cost would generally be one of many important factors to consider when determining if a security or investment strategy is in the client’s best interest).

[16] See In the Matter of Centaurus Financial, Inc., Investment Advisers Act Release No. 5744 (June 2, 2021), *available at* <https://www.sec.gov/litigation/admin/2021/34-92095.pdf> (settled action); In the Matter of Cowen Prime Advisors, LLC, Investment Advisers Act Release No. 5874 (Sept. 27, 2021), *available at* <https://www.sec.gov/litigation/admin/2021/ia-5874.pdf> (settled action); In the Matter of O.N. Investment Management Company, Investment Advisers Act Release No. 5944 (Jan. 11, 2022), *available at* <https://www.sec.gov/litigation/admin/2022/ia-5944.pdf> (settled action); In the Matter of Rothschild Investment Corp., Investment Advisers Act Release No. 5860 (Sept. 13, 2021), *available at* <https://www.sec.gov/litigation/admin/2021/34-92951.pdf> (settled action).

[17] See *supra* note 15.

[18] Under Reg BI, broker-dealers must consider potential risks, rewards, and costs associated with a recommendation in light of a retail customer's investment profile and have a reasonable basis to believe that the recommendation is in the customer's best interest and does not place the broker-dealer's interest ahead of the retail customer's interest. See Reg BI Adopting Release, *supra* note 3, at 33321.

[19] The staff of the Division of Trading and Markets also has published an FAQ regarding the roll over or transfer of assets more generally under Reg BI, such as from a brokerage account to an advisory account. See Reg BI FAQs, *supra* note 6, available at <https://www.sec.gov/tm/faq-regulation-best-interest#care>.

[20] See Reg BI Adopting Release, *supra* note 3, at 33383.

[21] For example, the Commission has cautioned broker-dealers not to rely on an IRA having "more investment options" as the basis for recommending a rollover. See *id.*

[22] See Prohibited Transaction Exemption 2020-02, Improving Investment Advice for Workers & Retirees, 89 Fed. Reg. 82798, (Dec. 18, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-12-18/pdf/2020-27825.pdf>; see also New Fiduciary Advice Exemption: PTE 2020-02 Improving Investment Advice for Workers & Retirees Frequently Asked Questions (Department of Labor), available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption.pdf>.

[23] The staff believes that a financial professional should take all reasonable efforts to obtain such information, which may include requesting the information from the retail investor or the investor's agent.

[24] Reg BI does not apply to a retail investor's selection of an account without a recommendation by a broker-dealer, regardless of whether the retail investor also receives recommendations of transactions from the broker-dealer that are subject to Reg BI.

[25] See Exchange Act rule 17a-4 (requiring broker-dealers to preserve, among other records, all communications sent or received relating to the firm's business, including written communications with retail customers); Exchange Act rule 17a-3(a)(35)(i) (requiring broker-dealers to keep a record of all information collected from and provided to the retail customer pursuant to Reg BI, as well as the identity of each person who is an associated person responsible for the account); and Advisers Act rule 204-2(a)(7) (requiring investment advisers registered or required to be registered to retain all written communications related to any recommendation made or proposed to be made and any advice given or proposed to be given).

[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. See Reg BI Adopting Release, *supra* note 3, at 33360. The Commission has not specifically addressed such documentation for investment advisers.

[27] In addition, in complying with Advisers Act compliance rule, investment advisers registered or required to be registered should adopt policies and procedures addressing the maintenance of required records, which include records related to the adviser's recommendations and investment advice. See Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003); see also Advisers Act rule 204-2(a)(7).

[28] The staff notes that certain of these practices are required under Reg BI and the Advisers Act. See, e.g., Exchange Act rule 15c-1(a)(2)(iii) (requiring broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to disclose and mitigate (i.e., reasonably reduce), or eliminate, certain conflicts); Reg BI Adopting Release, *supra* note 3, at 33391 (providing guidance on mitigation methods); Advisers Act rule 206(4)-7 (requiring any investment adviser registered or required to be registered under the Advisers Act to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the adviser and its supervised persons). Cf. also Fiduciary Interpretation, *supra* note 3, at 33676-78 ("In all of these cases where an investment adviser cannot fully and fairly disclose a conflict of interest to a client such that the client can provide informed consent, the adviser should either eliminate the conflict or adequately mitigate (i.e., modify practices to reduce) the conflict such that full and fair disclosure and informed consent are possible.").

[29] See In the Matter of TIAA-CREF Individual & Institutional Services, LLC, Investment Advisers Act Release No. 5772 (July 13, 2021), *available at* <https://www.sec.gov/litigation/admin/2021/33-10954.pdf> (settled action).

*Modified: March 30, 2022*