



Regulation BI and Form CRS

Best Interest

Regulation Best Interest (Reg BI) requires broker-dealers to act in their clients' best interests when making an investment recommendation by meeting four core obligations:

1. *Disclosure.* A broker-dealer must provide certain prescribed disclosures before or at the time of a recommendation regarding the investment and the relationship between the retail customer and the broker-dealer.
2. *Care.* A broker-dealer must exercise reasonable diligence, care, and skill in making the recommendation. The Care Obligation mirrors FINRA's Suitability Rule, with the caveat that under Reg BI, in addition to suitability, the obligation also considers whether the broker-dealer's standards avoid placing the financial interests of the broker-dealer ahead of the customer.
3. *Conflicts of Interest.* Establishing, maintaining, and enforcing policies and procedures reasonably designed to address conflicts of interest.
4. *Compliance.* Establishing, maintaining, and enforcing policies and procedures for the brokerdealer's Disclosure and Care Obligations.

Under Reg BI, broker-dealers will have an obligation to "act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer," and may not put their financial interests ahead of the customer's while making these recommendations.

Though the SEC did not define "best interests," the Commission has pointed out that "best interests" pertains to a recommendation in the context of a client's entire situation and applies only at the time of the recommendation itself. A broker-dealer does not need to find the one "best" product, evaluate all possible alternatives, or even focus on the lowest cost alone. In addition, brokers do not have to refuse a customer's order if it's contrary to the broker's recommendation—the Care Obligation will not apply to self-directed or unsolicited transactions by a retail customer. Further, broker-dealers will be allowed to retain their existing conflicts of interest as long as they are disclosed to customers and the broker dealer takes steps to mitigate conflicted incentives for their registered representatives.

Recommendation

Whether a recommendation is made that triggers Reg BI will be based on the facts and circumstances of the situation. The determination generally will be made based on whether the communication "could reasonably be viewed as a 'call to action'" to the customer, whether it "reasonably would influence an investor to trade a particular security or group of securities," and that "the more individually tailored the communication to a specific customer or targeted group, the greater the likelihood that the communication may be viewed as a recommendation."

Reg BI applies not only to the recommendation of a securities transaction itself, but also to investment strategies, which may include recommendations such as to invest in a bond ladder, to engage in day trading, to liquidate home equity to invest, or to engage in margin investing. Recommendations as to the type of account, whether to roll over or transfer assets from an employer retirement plan to an IRA, or to take a plan distribution will also trigger Reg BI.

Brokers do not have to refuse a customer's order if it's contrary to the broker's recommendation—the Care Obligation will not apply to self-directed or unsolicited transactions by a retail customer.

We are required to provide disclosure (Form CRS) before or at the time of a recommendation regarding the investment and the relationship between the retail customer and broker-dealer. To comply with the rule, Portsmouth Form CRS was delivered to its existing clients around June 30, 2020. Form CRS will also be required to be delivered to all new accounts and upon an investor's request.

Retail Customer

The SEC has defined “retail customer” as “a natural person, or the legal representative of such natural person, who: (A) receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer; and (B) uses the recommendation primarily for personal, family, or household purposes.” The definition of “retail customer” does not exclude high-net worth natural persons and natural persons that are accredited investors.

Form CRS

In addition to Regulation Best Interest, the SEC is also requiring a Form CRS (Customer/Client Relationship Summary) that broker-dealers must provide to their prospective retail clients. Form CRS must explain the types of client/customer relationships and the services the firm offers, the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services, and whether the firm and its financial professionals currently have any reportable legal or disciplinary history.

To help make Form CRS easier to compare between firms, the SEC has created five sections, along with certain language or questions to be answered in each section, that must be addressed: an Introduction, a description of Relationships & Services, a summary of Fees, Costs, Conflicts, and Standard of Conduct, Disciplinary History, and where to go for Additional Information. Portsmouth will update the relationship summary and file it in accordance with Form CRS instructions within 30 days whenever any information in the relationship summary becomes materially inaccurate. We will deliver the relationship summary within 30 days upon a client's request.

A complete SEC FAQ can be found <https://www.sec.gov/tm/faq-regulation-best-interest>.