

## The SEC's Reg BI Risk Alert

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**PRACTICES** Capital Markets and Securities, Fund Formation and Management, Investment Management, Litigation

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After completing additional examinations for Regulation Best Interest (Reg BI) and related Form CRS compliance, the SEC staff of the Division of Examinations has highlighted some of the most common deficiencies in a recent Risk Alert. As summarized below, the Risk Alert makes clear that the staff expects broker-dealers with retail customers to not only adopt specific written policies and procedures with respect to each of Reg BI's component obligations — (1) disclosure; (2) care; (3) conflicts of interest; and (4) compliance — but also to effectively implement those policies and procedures in connection with recommendations and transactions. In light of the Risk Alert, now is a good time for broker-dealers and dual registrants to review Reg BI policies and procedures with a view towards minimizing the likelihood of future examination deficiencies, investigations or enforcement actions.

SEC examination staff observed deficiencies in the following areas, among others:

### Disclosure Obligation

- Posting Form CRS and Reg BI disclosures to firm websites or referencing the disclosures in other documents delivered to retail customers without actually delivering the disclosures to customers.
- Failing to ensure that financial professionals disclosed to retail customers the capacity in which they were acting and conflicts stemming from acting in multiple capacities.
- Permitting financial professionals to make oral disclosures without providing adequate instruction or requiring documentation that relevant disclosures were made.

### Care Obligation

- Policies that directed financial professionals to consider reasonably available alternatives or costs, without providing any specific guidance as to how to do so, such as establishing the scope of alternative investments to consider, or supplying access to systems to enable research.
- Creating systems for evaluating reasonably available alternatives or costs, without mandating or tracking use of the systems by financial professionals.
- Failing to provide sufficient instructions to financial professionals as to when documentation of their consideration of the care obligation was required.

### Conflicts of Interest Obligation

- Failing to establish clear internal processes to identify and address conflicts, including not assigning those responsibilities to specific individuals or units.
- Failing to prohibit sales contests, sales quotas, bonuses and other compensation based upon the sales of specific securities or securities types within limited periods of time.
- Policies that identified high-level, possible conflicts, without specifying actual, known conflicts.

- Improperly relying on disclosure alone to mitigate conflicts that appeared to create incentives for financial professionals to place their interests ahead of retail customers.

## **Compliance Obligation**

- Policies that did not specify when Reg BI disclosures should be created, updated for material changes, or delivered to customers and the applicable personnel responsible for the preparation, updating and delivery of disclosures.
- Policies that identified a task or consideration without any specific guidance as to how or when to do so.
- Policies that relied on existing monitoring systems or focused only on review of transactions and were not sufficiently tailored to have systems modified for Reg BI compliance, including review of hold and rejected recommendations instead of only completed transactions.
- Offering training which did not adequately identify the tools and methods personnel should use as part of their Reg BI compliance.

We encourage clients to review the entire [Risk Alert](#).

For more information concerning compliance with Reg BI or related SEC examination or enforcement inquiries, please contact one of the following Haynes Boone lawyers.