

Reg BI and Form CRS Firm Checklist

Compliance Date is June 30, 2020

FINRA is providing this checklist to help members assess their obligations under the SEC’s Regulation Best Interest (Reg BI) and Form CRS Relationship Summary (Form CRS). This checklist explains key differences between FINRA rules and Reg BI and Form CRS. The checklist is not a substitute for any rule. Only the rule can provide definitive information regarding its requirements. Interpretive questions should be directed to the SEC, at IABDQuestions@sec.gov. You should carefully review the SEC’s new rules and interpretations, related *Federal Register* notices and the SEC’s Small Entity Compliance Guides, which provide important information on the new obligations.¹

REG BI

1 Do you have procedures and training in place to assess recommendations using a **best interest** standard?



Securities recommendations must be in the retail customer’s best interest. The firm and the associated person (AP) may not place their interests ahead of the retail customer’s. This is a change from FINRA’s suitability standard, which does not have an explicit best interest requirement. The best interest standard is an overarching obligation, which is satisfied only if you comply with four component obligations: Care, Disclosure, Conflict of Interest and Compliance.

2 Do you apply a best interest standard to recommendations of **types of accounts**?



Unlike FINRA’s suitability rule, the best interest standard explicitly applies to recommendations of types of accounts. A broker-dealer (BD) or AP must have a reasonable basis to believe that a recommendation of a securities account type (e.g., brokerage or advisory, or among the types of accounts offered by the firm, including IRAs) is in the retail customer’s best interest at the time of the recommendation and does not place the financial or other interest of the BD or AP ahead of the interest of the retail customer.

In general, when considering recommendations of types of accounts, you should consider: (a) services and products provided in the account; (b) projected cost of the account; (c) alternative account types available; (d) services the retail customer requests; and (e) the retail customer’s investment profile.

With regard to IRAs, in addition to the factors above, you should consider: (a) fees and expenses; (b) level of services available; (c) ability to take penalty-free withdrawals; (d) application of required minimum distributions; (e) protections from creditors and legal judgments; (f) holdings of employer stock; and (g) any special features of the existing account.

¹ The SEC’s *Federal Register* notices for *Reg BI*, *Form CRS*, *Interpretation of Solely Incidental and Interpretation of Investment Advisers’ Obligations* are available at <https://www.sec.gov/rules/final.shtml>. The SEC’s *Regulation Best Interest*, *A Small Entity Compliance Guide* is available at <https://www.sec.gov/info/smallbus/secg/regulation-best-interest>, and *Form CRS Relationship Summary*; *Amendments to Form ADV*, *A Small Entity Compliance Guide* is available at <https://www.sec.gov/info/smallbus/secg/form-crs-relationship-summary>.

3

If you agree to provide **account monitoring**, do you apply the best interest standard to both explicit and **implicit hold recommendations**?



Reg BI imposes no duty to monitor a customer's account following a recommendation. However, if you agree to perform account monitoring services, you are taking on an obligation to review and make recommendations regarding the account (*e.g.*, to buy, sell or hold) on the specified, periodic basis that you have agreed to with the retail customer. In such circumstances, Reg BI would apply even where you remain silent (*i.e.*, an implicit hold recommendation).

For example, if you agree to monitor a retail customer's account on a quarterly basis, the quarterly review and resulting recommendation will be subject to Reg BI, including an implicit recommendation to hold if you are silent as to the securities in the account. In addition, if you agree to monitor the customer's account, you are required to disclose the terms of such account monitoring services (including the scope and frequency of such services) pursuant to the Disclosure Obligation. IA registration requirements also might apply if a BD agrees to conduct ongoing monitoring in a manner not reasonably related to providing buy, sell or hold recommendations.

Importantly, you may voluntarily, and without any agreement with your customer, review the holdings in your retail customer's account for the purposes of determining whether to provide a recommendation to the customer. This voluntary review is not considered to be "account monitoring," and would not create an implied agreement with the customer to monitor the account.

4

Do you consider the elements of **care, skill and costs** when making recommendations to retail customers?



Reg BI incorporates FINRA's reasonable-basis (*i.e.* knowing the product and having a reasonable basis to believe it is appropriate for at least some investors) and customer-specific (*i.e.* knowing the customer and having a reasonable basis to believe a particular recommendation is appropriate for a specific customer based on that customer's investment profile) suitability obligations with important enhancements.

Care, skill and costs (in addition to applying a best interest standard) are new express elements for consideration when making recommendations to retail customers.

Cost must *always* be considered when making a recommendation. Moreover, consideration of cost includes not only the cost of purchase, but also any costs that may apply to the future sale or exchange of the security, such as deferred sales charges or liquidation costs. However, while cost must always be considered, it is not dispositive, and its inclusion in the rule text is not intended to limit or foreclose a recommendation of a more costly product if there is a reasonable basis to believe that product is in the best interest of a particular retail customer.

5

Do you guard against **excessive trading**, irrespective of whether the BD or AP "**controls**" the account?



Reg BI incorporates FINRA's quantitative suitability obligation (that a series of recommended transactions are appropriate and not excessive). However, in a change from FINRA's quantitative suitability obligation, Reg BI applies the best interest standard to a series of recommended transactions, irrespective of whether the BD exercises actual or de facto control over a customer's account.

6

Do you consider **reasonably available alternatives** to the recommendation?Status
Completed

You should consider reasonably available alternatives, if any, offered by your BD in determining whether you have a reasonable basis for making the recommendation. An evaluation of reasonably available alternatives does not require an evaluation of every possible alternative (including those offered outside the firm) nor require BDs to recommend one “best” product.

A BD should have a reasonable process for establishing and understanding the scope of such “reasonably available alternatives” that would be considered by particular APs or groups of APs (e.g., groups that specialize in particular product lines) in fulfilling the reasonable diligence, care and skill requirements under the Care Obligation.

7

Do you consider how to ensure that **high-risk or complex products** are in a retail customer’s best interest?Status
Completed

Although not a rule requirement, BDs should consider, as a best practice, applying heightened scrutiny as to whether high-risk or complex investments, such as inverse and leveraged ETFs, are in a retail customer’s best interest.

8

Prior to or at the time of the recommendation, do you provide retail customers with full and fair written disclosure of all material facts relating to the scope and terms of the relationship with the retail customer, including:

Status
Completed **The capacity in which you are acting (BD or IA)?**

A standalone BD generally may satisfy this requirement by delivering the Form CRS to the retail customer.

For BDs who are dually registered, and APs who are either dually registered or who are not dually registered but only offer BD services through a firm that is dually registered, providing Form CRS will not be sufficient to disclose their capacity, and they must disclose if they are acting as a BD when making a recommendation.

In addition, an AP of a dual registrant who does not offer investment advisory services must disclose that fact as a material limitation. Similarly, an AP registered in a limited capacity (e.g., a Series 6) must disclose that limitation (i.e., she cannot recommend all available products).

 Material fees and costs that apply to the retail customer’s transactions, holdings, and accounts?

This should build upon the fees and costs disclosure in Form CRS, with more particularity, such as whether fees are deducted from the customer’s account per transaction or quarterly. This obligation would not require individualized disclosure for each retail customer. Rather, the use of standardized numerical or other non-individualized disclosure (e.g., reasonable dollar or percentage ranges) is permissible.

- The type and scope of services – whether or not the BD will monitor the retail customer’s account and, if so, the scope and frequency of those services?**

Although Form CRS may disclose that the firm provides account monitoring services, Reg BI requires disclosure about whether or not account monitoring would occur for the particular retail customer and the scope and frequency of those services.

- Any requirements for retail customers to open or maintain an account or establish a relationship (e.g., minimum account size)?**

This would include any requirements for retail customers to open or maintain an account, or to avoid additional fees when a threshold is crossed, such as a low account balance.

- Any material limitations on the securities or investment strategies involving securities that may be recommended to the customer?**

Material limitations include recommending only proprietary products or a specific asset class; products with third-party arrangements (revenue sharing, mutual fund service fees); products from a select group of issuers; the fact that IPOs are available only to certain clients; and that an AP of a dually registered firm does not offer investment advisory services or is registered in a limited capacity (e.g., Series 6).

- The general basis for the recommendation (i.e., what might commonly be described as the firm’s investment approach, philosophy, or strategy)?**

This may be standardized or a summary; however, the disclosure should also address circumstances when a standardized basis does not apply, and how the BD will notify the customer when that is the case.

As a best practice, firms should encourage APs to discuss the basis for any particular recommendation with their retail customers and the associated risks, particularly when the recommendation is significant to the customer (e.g., the decision to roll over a 401(k) into an IRA).

- Risks associated with the recommendation?**

Standardized disclosure is permitted.

9

At or prior to making a recommendation, do you make full and fair written disclosure of all material facts relating to conflicts of interest?



Material facts regarding conflicts of interest include, for example: conflicts associated with proprietary products, payments from third parties and compensation arrangements. BDs must disclose all material facts relating to conflicts of interest associated with the recommendation. This does not require that information regarding conflicts be disclosed on a recommendation-by-recommendation basis. Standardized written disclosure of this information may be made, provided that it sufficiently identifies the material facts relating to conflicts of interest associated with a particular recommendation.

10

Do you ensure that you do not use the term “advisor” or “adviser” unless you are a registered investment adviser, a registered municipal advisor, a registered commodity trading advisor or an advisor to a special entity?



Status
Completed
✓

Use of the terms “advisor” or “adviser” in a name or title by: (a) a BD that is not also an RIA; or (b) a financial professional that is not a supervised person of an RIA, would presumptively violate Reg BI. Exceptions would include a BD/AP that acts on behalf of a municipal advisor or commodity trading advisor, or an advisor to a special entity. In addition, an RR of a dually registered BD may use firm materials when the BD/IA firm has the term “advisor” or “adviser” in its title.

11

Do APs supplement written disclosures with subsequent oral disclosure?



Status
Completed
✓

Oral disclosure of a material fact may be required to supplement, clarify or update written disclosure made previously. BDs must maintain a record that oral disclosure was provided to the retail customer (but not the substance of the disclosure).

Although not required by Reg BI, the SEC encourages, as a best practice, following oral disclosures with timely, written disclosure summarizing the information conveyed orally.

12

Do you have policies and procedures to **identify** and **address** the firm’s conflicts of interest?



Status
Completed
✓

Firms must have written policies and procedures reasonably designed to identify and, at a minimum, disclose or eliminate all conflicts of interest associated with recommendations covered by Reg BI.

A conflict of interest is an interest that might incline a BD or AP – consciously or unconsciously – to make a recommendation that is not disinterested.

13

Do you have policies and procedures to **identify** and **mitigate** the AP’s conflicts?



Status
Completed
✓

Conflicts that create an incentive for the AP to place the BD’s or AP’s interest ahead of the retail customer’s interest must be mitigated.

Mitigation measures will depend on the nature and significance of the incentives and a variety of factors related to a BD’s business model, such as its size and retail customer base, and the complexity of the security or investment strategy that is being recommended.

14

Do you have policies and procedures to **identify** and **disclose** material limitations on products recommended?



Status
Completed
✓

Material limitations include, for example, recommending only proprietary products or a specific asset class; products with third-party arrangements; products from a select group of issuers; or making IPOs available only to certain clients.

15

Do you have policies and procedures to **prevent** material limitations from causing the BD or AP to make recommendations that place the BD's or AP's interest ahead of the retail customer's interest?



Policies and procedures to prevent harm from material limitations could consist of establishing product review processes for products that may be recommended, including establishing procedures for identifying and mitigating the conflicts of interests associated with the product, or declining to recommend a product where you cannot effectively mitigate the conflict, and identifying which retail customers would qualify for recommendations from the product menu.

As part of this process, firms may consider: evaluating the use of "preferred lists"; restricting the retail customers to whom a product may be sold; prescribing minimum knowledge requirements for APs who may recommend certain products; and conducting periodic product reviews to identify potential conflicts of interest, whether the measures addressing conflicts are working as intended, and to modify the mitigation measures or product selection accordingly.

16

Do you have policies and procedures to **identify and eliminate** sales contests, bonuses, non-cash compensation and quotas based on the sale of specific securities or specific types of securities within a limited time?



Reg BI bans these practices. This requirement does not apply to compensation practices based on, for example, total products sold, or asset growth or accumulation, and customer satisfaction.

This requirement would not prevent a BD from offering only proprietary products, placing material limitations on the menu of products, or incentivizing the sale of such products through its compensation practices, so long as the incentive is not based on the sale of specific securities or types of securities within a limited period of time.

The requirement also is not intended to prohibit: training or education meetings, provided that these meetings are not based on the sale of specific securities or types of securities within a limited period of time; or receipt of certain employee benefits by statutory employees, as these benefits would not be considered to be non-cash compensation for purposes of Reg BI.

17

Have you updated your policies and procedures to ensure **compliance** with Reg BI?



Reg BI's Compliance Obligation requires that BDs establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI.

In addition to the required policies and procedures, depending on the BD's size and complexity, a reasonably designed compliance program generally would also include: controls, remediation of non-compliance, training, and periodic review and testing.

Firms may be able to satisfy the Compliance Obligation by adjusting their current systems of supervision and compliance, rather than creating new ones.

18

Have you updated your policies and procedures and systems to ensure Reg BI's **recordkeeping** obligations are satisfied?



SEA Rules 17a-3(a)(35) and 17a-4(e)(5) codify the recordkeeping requirements associated with Reg BI.

Current recordkeeping practices will not fully satisfy Reg BI. For example, BDs must provide retail customers with additional disclosures that require records. Firms may use a risk-based approach to documenting compliance with Reg BI.

19

Have you implemented **training** to ensure that APs are aware of Reg BI's requirements?



The SEC noted that training generally is an important vehicle to communicate firm culture, specific requirements of a firm's code of conduct and its conflicts management framework.

20

Have you aligned your policies and procedures to the **definitions** in Reg BI?



Retail Customer

Reg BI only applies to recommendations to "retail customers." Reg BI defines a "retail customer" as a natural person, or the **legal representative** of such person, who: (a) receives a **recommendation** for any securities transaction or **investment strategy** from a BD or AP; and (b) **uses** the recommendation primarily for **personal, family or household purposes**.

Legal Representative

"Legal representative" includes the non-professional legal representatives of such a natural person, *e.g.*, a non-professional trustee that represents the assets of a natural person. Reg BI would not apply when the legal representative is acting in a professional capacity as a regulated financial services industry professional retained to exercise independent professional judgment. Therefore, recommendations to registered IAs and BDs or corporate fiduciaries would not trigger Reg BI. On the other hand, recommendations to non-professional trustees, executors, conservators and persons holding power of attorney that represent natural persons are covered.

Recommendation

The final rule release for Reg BI states that this is keyed off of the guidance for FINRA's suitability rule.

Investment Strategy

The final rule release for Reg BI states that this is keyed off of the guidance for the FINRA's suitability rule; however, this will include recommendations of types of accounts.

○ **Receives and Uses**

The SEC has stated that “use” means when, as a result of the recommendation:

- the retail customer opens a brokerage account with the BD, regardless of whether the BD receives compensation;
- the retail customer has an existing account with the BD and receives a recommendation from the BD, regardless of whether the BD receives or will receive compensation, directly or indirectly, as a result of the recommendation; or
- the BD receives or will receive compensation, directly or indirectly, as a result of that recommendation, even if that retail customer does not have an account at the firm.

○ **Personal, Family, or Household Purposes**

The phrase “primarily for personal, family, or household purposes” covers any recommendation to a natural person for his or her account, other than recommendations to a natural person seeking these services for commercial or business purposes. Reg BI would not cover, for example, an employee seeking services for an employer or an individual seeking services for a small business or on behalf of another non-natural person entity, such as a charitable trust.

○ **Conflict of Interest**

A conflict of interest is an interest that might incline a BD or AP – consciously or unconsciously – to make a recommendation that is not disinterested.

○ **Full and Fair**

Sufficient information to enable a retail customer to make an informed decision with regard to a recommendation.

1

Have you developed a two-page (four for dual registrants) **relationship summary known as Form CRS?**Status
Completed
✓

This applies to both IAs and BDs. Firms must write their relationship summaries in plain language, taking into consideration retail investors' level of financial experience. Firms are encouraged, but not required, to use electronic and graphical formatting.

2

Does your **relationship summary** include:Status
Completed
✓ **An introduction to the firm?**

This must include: (a) the name of the BD or IA, and whether the firm is registered with the SEC as a BD, IA or both; (b) an indication that BD and IA services and fees differ and that it is important for the retail investor to understand the differences; and (c) a statement that free and simple tools are available to research firms and financial professionals on the SEC's investment education website (Investor.gov/sec), which provides educational materials about BDs, IAs and investors.

 A description of services and advice that can be provided?

The relationship summary must describe all relationships and services offered to retail investors, even if the investor at issue does not qualify for or is not being offered a particular service currently.

 A description of fees and costs, applicable standard of conduct, and examples of how the firm makes money and conflicts of interest?

Firms must summarize the principal fees and costs that retail investors incur with respect to their BD and IA accounts, and the conflicts they create.

 Relevant disciplinary history?

The relationship summary must include a separate section about whether a firm and its financial professionals have reportable disciplinary history and where investors can conduct further research on these events.

 How additional information may be obtained?

Firms must state where retail investors can find additional information about their BD and IA services.

 Prescribed "conversation starters" for investors to ask?

If a required disclosure or conversation starter is inapplicable to your business, or specific wording required by the Form's instructions is inaccurate, you may omit or modify that disclosure or conversation starter.

3

Do you have a process in place to **file** the Form CRS?Status
Completed

Firms must file the relationship summary through Web CRD® (dual registrants will be required to file their relationship summaries using both IARD™ and Web CRD®).

4

Do you have a process in place to **update** the Form CRS?Status
Completed

Firms must update Form CRS and file it within 30 days whenever any information becomes materially inaccurate.

Firms must communicate any changes in the updated relationship summary to retail investors who are existing clients or customers within 60 days after the updates are required to be made and without charge. Firms can make the communication by delivering the amended relationship summary or by communicating the information through another disclosure that is delivered to the retail investor.

Form CRS General Instruction 8 sets forth requirements for updating the relationship summary, including filing and delivering an exhibit that highlights changes to an updated relationship summary.

5

Are you **delivering** Form CRS to each **new or prospective customer** who is a retail investor before or at the earliest of:Status
Completed

(a) a recommendation of an account type, a securities transaction or an investment strategy involving securities; (b) placing an order for the retail customer; or (c) the opening of a brokerage account for the retail customer?

If included in a packet of information, the relationship summary must be placed first. If the relationship summary is delivered electronically, it must be presented prominently in the electronic medium, for example, as a direct link or in the body of an email or message, and must be easily accessible for retail investors.

6

Do you have a process in place to **deliver** the relationship summary to **existing retail customers**?Status
Completed

Firms must deliver the relationship summary to existing retail investor customers before or at the time firms open a new account that is different from the retail investor's existing account. In addition, firms must deliver the relationship summary when they recommend that the retail investor roll over assets from a retirement account, or when they recommend or provide a new service or investment outside of a formal account (*e.g.*, variable annuities or a first-time purchase of a direct-sold mutual fund through a "check and application" process). With respect to existing customers, firms should deliver the relationship summary in a manner consistent with the firm's existing arrangement with that customer and with the SEC's electronic delivery guidance.

Firms must initially deliver the relationship summary to each existing retail investor customer within 30 days after the date by which they are first required to electronically file the relationship summary with the SEC.

7

Are you posting the relationship summary on your **public website**?



Firms must post the current version of the relationship summary prominently on your public website, if you have one. The instructions set forth requirements, including design requirements, for a relationship summary that is posted on your website.

8

Have you adjusted your **recordkeeping procedures** to reflect the relationship summary?



BDs must make and keep current a record of the date that each relationship summary was provided to each retail investor, including any relationship summary that was provided before such retail investor opens an account.

BDs must maintain and preserve, in an easily accessible place, the following records until at least six years after such record or relationship summary is created: (a) all records of the dates that each relationship summary was provided to each retail investor, including any relationship summary that was provided before such retail investor opens an account, as well as (b) a copy of each relationship summary.