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PREDICTING REGULATION BEST INTEREST ENFORCEMENT PRIORITIES

Regulation BI has required broker-dealers to implement substantial changes across their businesses to comply with their new obligations. In this article, the author discusses how the new regulation builds on existing suitability requirements established by FINRA Rule 2111, and how it is likely to be interpreted and applied in light of enforcement experience with FINRA rules.

By Susan Schroeder *

The impact of Regulation Best Interest (“Regulation BI”),¹ newly in effect for registered broker-dealers as of June 30, 2020, is difficult to overstate. When it was announced, industry leaders noted that “compliance with the rule will not be easy for the industry,” and would

¹ Regulation Best Interest: The Broker Dealer Standard of Conduct, 84 Fed. Reg. 33318 (Jun. 5, 2019) (to be codified at 17 C.F.R. pt. 240) <https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12164.pdf> (“Regulation BI Adopting Release”). In addition to adopting the standard of conduct set forth in Regulation Best Interest, the SEC also adopted a new set of disclosure requirements, obligating SEC-registered broker-dealers and investment advisers to deliver retail customers a client relationship summary (“Form CRS”) designed to assist retail investors with the process of deciding whether to (i) establish an investment advisory or brokerage relationship, (ii) engage a particular firm or financial professional, or (iii) terminate or switch a relationship or specific service. Form CRS Relationship Summary; Amendments to Form ADV, 84 Fed. Reg. 33492 (Jun. 5, 2019) (to be codified at 17 CFR pt. 200) <https://www.sec.gov/rules/final/2019/34-86032.pdf>. This article focuses on aspects of Regulation Best Interest and does not discuss the separate requirements of Form CRS.

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require substantive changes and impose significant costs.² The Securities and Exchange Commission declined to extend the implementation date despite the Covid-19 pandemic, underscoring the SEC’s sense of urgency and its expectation that Regulation BI will “significantly benefit Main Street investors.”³ Accordingly, Regulation BI has required broker-dealers to implement substantial changes across their businesses to comply with their new obligations.

But in some ways, compliance with Regulation BI is not new. Aspects of Regulation BI build on pre-existing obligations imposed by Financial Industry Regulatory Authority Rule 2111, the “suitability” rule. FINRA, a

² SIFMA Statement on the SEC’s Final Regulation Best Interest Rule (June 5, 2019), <https://www.sifma.org/resources/news/sifma-statement-on-the-secs-final-regulation-best-interest-rule/>.

³ *Investors Remain Front of Mind at the SEC: Approach to Allocation of Resources, Oversight and Rulemaking; Implementation of Regulation Best Interest and Form CRS* (Apr. 2, 2020), <https://www.sec.gov/news/public-statement/statement-clayton-investors-rbi-form-crs> (“SEC Public Statement”).

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