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REGULATION BEST INTEREST: EMERGING ARBITRATION, REGULATORY, AND ENFORCEMENT DEVELOPMENTS

In this article, the authors catalogue the latest key developments surrounding Reg BI in both the arbitration and enforcement spaces. They conclude by highlighting important takeaways from recent matters for broker-dealers and practitioners alike.

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In June 2019, the U.S. Securities and Exchange Commission (“SEC”) adopted Regulation Best Interest (“Reg BI”), which set forth “a new standard of conduct for broker-dealers when making a recommendation of any securities transaction or investment strategy (including account recommendations) to a retail customer.”¹ That standard of conduct included Reg BI’s “Best Interest Obligation,” which would require brokers, dealers, and natural persons who are associated persons of a broker or dealer to “act in the best interest of the retail customer at the time the recommendation is made,

without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.”² The SEC set forth parameters and offered some guidance for how broker-dealers and associated persons would comply with the Best Interest Obligation. Namely, broker-dealers and associated persons would be required to adhere to four component obligations: the “Disclosure Obligation,” the “Care Obligation,” the “Conflict of Interest Obligation,” and the “Compliance Obligation.”³

After Reg BI went into effect on June 30, 2020, a period of dormancy followed during which neither the

¹ Chairman Jay Clayton, *Confirmation of June 30 Compliance Date for Regulation Best Interest and Form CRS*, U.S. SECURITIES AND EXCHANGE COMMISSION (June 15, 2020), <https://www.sec.gov/news/public-statement/clayton-compliance-date-regulation-best-interest-form-crs>; *see also* 17 C.F.R. § 240.15l-1 (2022); SEC Rel. No. 34-86031 (2019).

² 17 C.F.R. § 240.15l-1(a)(1) (2022).

³ § 240.15l-1(a)(2)(i)-(iv); *see also* SEC Rel. No. 34-86031, at 13 (2019).

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