



# REGULATION BEST INTEREST

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## 1 Introduction – Regulation Best Interest

Effective as of June 30, 2020, the U.S. Securities and Exchange Commission (“Commission”) has implemented Regulation Best Interest (“Reg BI”), which establishes a new standard of conduct under the Securities Exchange Act of 1934 (“Exchange Act”) for broker-dealers and their associated persons when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer.

When making such a recommendation to a retail customer, the Firm must act in the best interest of the retail customer at the time the recommendation is made, without placing its financial or other interest ahead of the retail customer’s interests.

This **general obligation** is satisfied only if the Firm complies with four specified **component obligations**:

- **Disclosure Obligation:** provide certain required disclosures, before or at the time of the recommendation, about the recommendation and the relationship between the Firm and its retail customer;
- **Care Obligation:** exercise reasonable diligence, care, and skill in making the recommendation;
- **Conflict of Interest Obligation:** establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest; and
- **Compliance Obligation:** establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI.

The Firm has appointed a principal who will be primarily responsible for overall compliance with the requirements of Reg BI and these procedures (the “Reg BI Principal”). Throughout these procedures, such Reg BI Principal may delegate certain requirements and duties to other registered securities principals. Overall, the Reg BI Principal is responsible for ensuring that these procedures are appropriately, established, implemented, and executed upon by the Firm.

The following policies and procedures will define various terms and components of Reg BI and will outline how the Firm complies with the rule with respect to making recommendations to retail customers, as well as other implicated areas, such as recordkeeping.

## 2 Recommendations

Regulation Best Interest applies to recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer.

## 2.1 Definition of Recommendation

The determination of whether a broker-dealer has made a recommendation that triggers application of Reg BI turns on the facts and circumstances of each particular situation, and therefore, whether a recommendation has been made is not susceptible to a bright line definition. Factors to be considered in determining whether a recommendation has taken place include, but are in no way limited to, whether the communication “reasonably could be viewed as a “call to action” and “reasonably would influence an investor to trade a particular security or group of securities.” The more individually tailored the communication to a specific customer or targeted group of customers about a security or group of securities, the greater the likelihood that the communication may be viewed as a “recommendation.”

The Firm interprets whether a recommendation has been made to a retail customer (see definition of recommendation below) that triggers the best interest obligation consistent with precedent under the anti-fraud provisions of the federal securities laws as applied to broker-dealers.

Regulation Best Interest does not apply to investment advice provided to a retail customer by a dual-registrant when acting in the capacity of an investment adviser, even if the retail customer has a brokerage relationship with the dual-registrant or the dual-registrant executes the transaction in a brokerage capacity.

- **Account recommendations** include recommendations of securities account types generally (e.g., to open an IRA or other brokerage account), as well as recommendations to roll over or transfer assets from one type of account to another (e.g., a workplace retirement plan account to an IRA). As discussed further below, special considerations exist where the financial professional making the recommendation is dually registered.
- Any securities transaction or investment strategy involving securities includes:
  - explicit hold recommendations; and
  - implicit hold recommendations that are the result of agreed-upon account monitoring between the broker-dealer and retail customer. Special considerations for providing agreed-upon account monitoring are discussed more below.

## 2.2 Application of Regulation Best Interest for those also registered as Investment Advisory Representatives

If the Firm has a financial professional who is dually registered (i.e., an associated person of a broker-dealer and a supervised person of an investment adviser (regardless of whether the financial professional works for a dual-registrant, affiliated firm, or unaffiliated firm)) making an account recommendation to a retail customer, whether Regulation Best Interest or the Advisers Act applies will depend on the capacity in which the Firm is acting when making the recommendation. If the Firm is acting as a broker-dealer or associated person thereof, the Firm must comply with Reg BI and will need to take into consideration all types of accounts that the

Firm offers (i.e., both brokerage and advisory accounts) when making the recommendation of an account that is in the retail customer's best interest.

The financial professional must acknowledge that he/she understands suitability as it relates to account type. The immediate supervisor shall only approve an account if they believe that the account type is suitable in light of the client's investment profile and objectives. Should there be any exceptions, these should be escalated to the next level manager and/or Chief Compliance Officer.

### 2.3 Application of Regulation Best Interest for BD-Only Registrants

If the Firm has a financial professional who is registered with the broker-dealer only (i.e. who does not offer services through a Registered Investment Adviser), Regulation Best Interest applies to all account recommendations made to retail customers. The Firm takes into consideration only the brokerage accounts available. The Firm and its associated persons will only recommend a brokerage account that the broker-dealer offers if the Firm has a reasonable basis to believe that the recommended brokerage account is in the best interest of the retail customer, and the broker-dealer otherwise complies with Reg BI.

The financial professional must acknowledge that he/she understands suitability as it relates to account type. The immediate supervisor shall only approve an account if he/she believes that the account type is suitable in light of the client's investment profile and objectives. Should there be any exceptions, these should be escalated to the next level manager and/or Chief Compliance Officer.

### 2.4 Reasonable Basis and Client Profile

In order to reasonably determine whether a recommendation is appropriate for and in the best interest of a specific client, the Firm creates and monitors a Client Profile by collecting the following information at account inception and when there are any changes to a Client Profile:

- age
- retirement status
- tax status
- annual income (and source(s))
- employment status
- net worth
- risk perception (client ranks various investment vehicles in terms of perceived risk)
- risk tolerance
- investment objective(s)
- time horizon for investment
- source of invested funds
- use of investment or related recommendations for personal, family, or household purposes

- other information, as applicable.

In addition, the Firm shall ensure that it complies with existing books and records requirements that require that clients receive a copy of their agreements and account documentation (i.e. Client Profile, objectives, risk tolerance, etc.). Clients shall also be advised that if they become aware at any time that their financial situation has changed or they believe that any material change has taken place that modifies their respective financial goals or condition in any capacity, they should communicate this information to the Firm as soon as is practicable. The Firm, through its books and records principal, shall ensure that it complies with the requirements to reconfirm the client profile (see Books and Records procedures).

## 2.5 Special considerations for agreed-upon account monitoring

The Firm takes the position that it does not provide account monitoring services. All financial professionals must seek prior approval from the Reg BI Principal should they wish to provide monitoring of the Firm's retail customer's investments on a periodic basis for purposes of recommending changes in investments. Such requests must be pre-approved in writing by the Reg BI Principal. Furthermore, the Reg BI Principal is required to maintain a list of all such accounts approved for account monitoring.

When the Firm agrees to monitor a retail customer's account: (1) the Firm is required to disclose the terms of such account monitoring services (including the scope and frequency of such services) pursuant to the Disclosure Obligation; and (2) such agreed-upon monitoring involves an implicit recommendation to hold (i.e., recommendation not to buy, sell, or exchange assets pursuant to that securities account review) at the time the agreed-upon monitoring occurs.

The Reg BI Principal shall be responsible for ensuring that these conditions are met. The Reg BI Principal will also sign an attestation not less than annually to ensure that it is compliant with these requirements.

### 2.5.1 Scope of monitoring:

Regulation Best Interest does not impose a duty to monitor a retail customer's account. Moreover, it does not change the scope of account monitoring that the Firm may agree to provide. Reg BI also does not change the scope of activities that would come within the "solely incidental" prong of the broker-dealer exclusion to the definition of "investment adviser" in the Advisers Act. Any agreed-upon monitoring must be in connection with and reasonably related to the Firm's primary business of effecting securities transactions as a broker-dealer.

### 2.5.2 Agreed-upon account monitoring:

The Firm does not intend to provide account monitoring services. Should there be any exceptions to this approved by the Reg BI Principal then it must take on an obligation to review and make recommendations with respect to that account (e.g., to buy, sell or hold) on the specified, periodic basis that the Firm has agreed to with the retail customer. For example, if the Firm agrees

to monitor the Firm's retail customer's account on a quarterly basis, the quarterly review and each resulting recommendation to purchase, sell, or hold will be a recommendation subject to Regulation Best Interest.

Each financial professional will be responsible for ensuring that account reviews, if applicable, are appropriately documented. The Reg BI principal shall be responsible for ensuring that each financial professional has a reasonable method to document such reviews and will retain these reviews as part of the Firm's books and record. The Reg BI principal shall periodically review a sample of account reviews to ensure that they are being performed as to the agreed upon frequency and terms (see "Scope of monitoring" section above).

#### 2.5.3 Implicit hold recommendations:

If the Firm has agreed in writing to perform account monitoring services, then Regulation Best Interest applies even where the Firm remains silent (i.e., an implicit hold recommendation). The Reg BI Principal will provide training to all applicable financial professionals to make sure that proper documentation is maintained for implicit hold recommendations. Again, all account monitoring must be pre-approved in writing by the Reg BI Principal.

#### 2.5.4 Voluntary account review:

The Firm may voluntarily, and without any agreement with the Firm's retail customers, review the holdings in the Firm's 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," nor would it in itself create an implied agreement with the retail customer to monitor the customer's account. Any explicit recommendation made to the Firm's retail customer as a result of any such voluntary review would be subject to Regulation Best Interest.

### 3 Definition of Retail Customer

The Firm uses the following definitions to facilitate appropriate identification of Retail Customers under Reg BI.

A "retail customer" is a natural person, or the legal representative of such person, who:

- receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer; and
- uses the recommendation primarily for personal, family, or household purposes.

Any customer identified as a retail customer at account opening is to be identified as such by the financial professional and maintained in a specific list or database of other such retail customer clients of the Firm subject to these Reg BI policies and procedures. The Reg BI Principal is responsible for ensuring that this list is maintained in accordance with this procedural requirement.

### 3.1 Legal Representative

A “legal representative” of a retail customer includes the non-professional legal representatives of such a natural person; for example, a non-professional trustee that represents the assets of a natural person.

### 3.2 “Uses” of a Recommendation

The Firm interprets that a retail customer “uses” a recommendation of a securities transaction or investment strategy involving securities when, as a result of the recommendation:

- the retail customer opens a brokerage account with the broker-dealer, regardless of whether the broker-dealer receives compensation;
- the retail customer has an existing account with the broker-dealer and receives a recommendation from the broker-dealer, regardless of whether the broker-dealer receives or will receive compensation, directly or indirectly, as a result of that recommendation; or
- the broker-dealer 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 broker-dealer.

### 3.3 Personal, Family, or Household Purposes

A retail customer who uses the recommendation primarily for “personal, family, or household purposes” means *any* recommendation to a natural person for his or her account would be subject to Reg BI, other than recommendations to natural persons seeking these services for commercial or business purposes.

## 4 The Disclosure Obligation

The Firm must, prior to or at the time of a recommendation, provide the retail customer, in writing, with full and fair disclosure :

- all material facts relating to the scope and terms of the relationship with the retail customer; and
- all material facts relating to conflicts of interest that are associated with the recommendation.

### 4.1 Material Facts Requiring Disclosure

- Material facts relating to the scope and terms of the relationship with the retail customer include:
  - that the broker, dealer, or such natural person is acting as a broker, dealer, or an associated person of a broker-dealer with respect to the recommendation;
  - material fees and costs that apply to the retail customer’s transactions, holdings, and accounts; and

- the **type and scope of the services** to be provided to the retail customer, **including any material limitations** on the securities or investment strategies that may be recommended to the retail customer.
- Other material facts relating to the **type and scope of services** provided to the retail customer, and that must be disclosed, include:
  - whether or not the Firm will **monitor** the retail customer’s account and the **scope and frequency** of any account monitoring services that the Firm agrees to provide; and
  - whether the Firm has any **requirements** for retail customers to open or maintain an account or establish a relationship, such as a minimum account size.
- Other material facts relating to the **scope and terms of the relationship** with the retail customer that must be disclosed include:
  - **general basis** for the Firm’s recommendations (i.e., what might commonly be described as the Firm’s investment approach, philosophy, or strategy); and
  - **risks** associated with the Firm’s recommendations in standardized terms.
- Additionally, the Firm must consider, based on the facts and circumstances, whether there are other material facts relating to the scope and terms of the relationship with the retail customer that need to be disclosed.

## 4.2 Conflict of Interest Disclosure Requirements

For purposes of Regulation Best Interest, a “**conflict of interest**” is defined to mean “an interest that might incline a broker, dealer, or a natural person who is an associated person of a broker or dealer – consciously or unconsciously – to make a recommendation that is not disinterested.”

Such conflicts include, for example: conflicts associated with proprietary products, payments from third parties, and compensation arrangements. Broker-dealers must disclose all **material facts** relating to conflicts of interest associated with the recommendation. Questions regarding such disclosure should be directed to the Reg BI Principal, who will, in his or her sole discretion, determine what level of disclosure is appropriate under applicable regulation.

Because there are so many conflicts for the Firm to consider and because such conflicts could vary for each financial professional associated with the Firm, the Reg BI Principal shall include conflicts of interest as a part of the Firm’s training with all financial professionals, supervisors, compliance professionals, and other such individuals at the firm who the Reg BI Principal deems to be someone that should be included. Such training should be tailored to the Firm, its business, and incorporate relevant examples and actual conflicts that have been identified.

If an employee or associated person of the Firm becomes aware of a real, perceived, or potential conflict of interest that they believe may not have been disclosed or addressed appropriately, they are required to report such information to the Reg BI Principal. The Firm requires associated persons to report conflicts of interest, as well as certify that they have read and understand the Firm’s definitions of conflict of interest as contained herein and in its training related to this topic.

The Reg BI Principal is responsible for ensuring that the training on conflicts of interest is adequate and that certifications related to completion of such training are maintained in the Firm's books and records.

On a periodic basis, the Firm (through the Reg BI Principal and/or his designee) shall review all known conflicts and require employees and associated persons to report any real, potential, or perceived conflicts that may impact a retail customer client's decision to invest. All such conflicts that are deemed to require disclosure are maintained in a log and are periodically reviewed by the Reg BI Principal. The Reg BI Principal shall periodically survey other supervisors, officers, department heads, compliance professionals, etc. to ensure that the Firm can timely identify new conflicts that may have not been previously identified. Additionally, the Firm (through the Reg BI Principal and/or his designee) shall ensure that the known conflicts are appropriately communicated to the appropriate Firm personnel. Further, the Reg BI Principal shall make sure that the Reg BI disclosure documents are appropriately updated and distributed (per the requirements as outlined herein these procedures).

For purposes of Regulation Best Interest, "material facts" is interpreted consistent with the standard articulated in *Basic v. Levinson*. Accordingly, information is deemed to be "material" if there is a "substantial likelihood that a reasonable shareholder would consider it important." In the context of Regulation Best Interest, the standard is that of a "retail customer," as defined in the rule.

#### 4.3 Full and Fair Disclosure

The Firm will ensure that it and its financial professionals follow a level of disclosure such that it provides sufficient information to enable a retail customer to make an informed decision with regard to a recommendation. The Reg BI Principal will review all such disclosures to ensure that, under applicable regulation and in pursuit of upholding client interests, such disclosures are deemed to be appropriate, full, and fair.

#### 4.4 Fees and Costs

The Disclosure Obligation requires disclosure of material fees and costs relating to a retail customer's transactions, holdings, and accounts. This obligation does not require individualized disclosure for each retail customer. The use of standardized numerical or other non-individualized disclosure (e.g., reasonable dollar or percentage ranges) is permissible where the Firm, in consultation with the Reg BI Principal, has determined it is appropriate.

Fees and costs are material and must be disclosed if there is a substantial likelihood that a retail customer would consider it important. Therefore, with any changes made to fees or costs, the Reg BI Principal will be responsible for ensuring appropriate disclosure is made to retail customers per this requirement.

## 4.5 Time and Substance of Disclosures

As a best practice, all disclosures will be made in advance of or at the time of recommendations and in writing. Any exceptions to this procedure must be approved in advance, in writing, by the Reg BI Principal, who will make the determination in his or her sole discretion.

### 4.5.1 Initial written disclosure

Before supplementing, clarifying, or updating written disclosures in the limited circumstances described above, the Firm must provide an initial disclosure in writing that identifies the material facts and describes the process through which such facts may be supplemented, clarified or updated. For example:

- **Product-level fees:** With regard to product-level fees, the Firm could provide an initial standardized disclosure of product-level fees generally (e.g., reasonable dollar or percentage ranges), noting that further specifics for particular products appear in the product prospectus, which will be delivered after a transaction in accordance with the delivery method the retail customer has selected, such as by mail or electronically.
- **Capacity:** The Firm will disclose a schedule of services provided per the scope of its agreement with the retail customer client, as well as any precluded services.
- **Associated Person Conflicts of Interest:** A broker-dealer could disclose that its associated persons may have conflicts of interest beyond those disclosed by the broker-dealer, and that associated persons will disclose, where appropriate, any additional material conflicts of interest not later than at the time of a recommendation, and that any such disclosure will be made orally.

The Reg BI Principal is responsible for ensuring that the required disclosures are timely made and documentation of the same is maintained as part of the Firm's books and records.

## 4.6 Disclosure Content Requirements

The Reg BI Principal shall be responsible for ensuring that, if required, the supplemental disclosures are made timely and in accordance with all of the requirements of Regulation Best Interest. The Reg BI Principal is encouraged to utilize a committee of others at the Firm to ensure that all required disclosures are appropriately made within the various disclosure documents. Any changes made to the Reg BI disclosures are to be reviewed and approved by the Reg BI Principal, version controlled, and a final copy should be made available to all financial professionals, supervisors, and associated persons of the Firm. The Chief Compliance Officer or designee will be responsible for ensuring that any prior Reg BI disclosures are replaced with the new Reg BI disclosures and appropriately distributed to all financial professionals, supervisors, and associated persons of the Firm. The Chief Compliance Officer or designee will also be responsible for maintaining all versions with the date of the implementation of the new disclosure documents within the Firm's books and records.

## 4.7 Disclosure Delivery Requirements

The financial professional is responsible for delivering the required Reg BI disclosures and Form CRS (see “Form CRS” section below) at the start of any new client relationship, prior to or at the time a recommendation is made to an existing retail customer, when there is a change to any account belonging to a retail customer or when there are changes to any of the disclosures contained within or supplementing the Firm’s Form CRS. The Reg BI Principal shall make sure that training has been delivered, including what documents must be delivered and when, how such documents are to be delivered, and the timing requirements of delivery. Furthermore, the Reg BI Principal shall be responsible for ensuring that there is a means to document and evidence receipt by each retail customer of the required disclosures on a timely basis (and per these procedures). Each financial professional shall be responsible for maintaining documentation of delivery, including the date of delivery. Furthermore, the immediate supervisor of the financial professional shall be responsible for ensuring that such disclosure delivery requirements are met prior to approving a transaction. The Reg BI Principal shall also conduct a spot check of the Firm’s record-keeping related to such delivery requirements and maintain documentation of the same within the Firm’s books and records. Any exceptions and/or corrective actions should be escalated to the Chief Compliance Officer.

## 4.8 Form CRS

The Firm must provide retail customers with information intended to clarify the firm-client relationship through a Relationship Summary (“Form CRS”). The Form CRS must be provided to retail customers, filed with the Commission and made available online. The Reg BI Principal is ultimately responsible for meeting the content requirements (per Form CRS instructions), and ensuring it is filed with the SEC and posted to the Firm’s website in a location easily accessible to investors.

Per Regulation Best Interest, the delivery requirements for new and existing retail investors are as follows:

### Ongoing Delivery to Existing Customers

- Firms are required to deliver Form CRS to existing clients:
  - when a new account is opened that is different from a retail investor’s existing account;
  - when recommendation is made to rollover assets from a retirement account into a new or existing account;
  - when you recommend or provide a new brokerage or investment advisory service that would not be held in an existing account (examples include a first-time purchase of direct-sold mutual fund or variable annuity or a private placement);
  - when any of the disclosures contained within the Form CRS change; and
  - within 30 days of any customer’s request.

### Delivery to New and Prospective Customers after June 30, 2020

- Firms are required to delivery Form CRS to each retail investor before or at the earliest of: (i) a recommendation of an account type, a securities transaction, or an investment strategy involving securities; (ii) placing an order for the retail investor; or (iii) the opening of a brokerage account for the retail investor.

The Reg BI Principal shall ensure that the Firm implements training related to timely delivery of Form CRS. It is the responsibility of each financial professional to ensure that all retail customers and prospective retail customer clients timely receive a copy of Form CRS and other supplemental disclosure items, as applicable, and that the Firm maintains evidence of such deliveries being made. Proof of CRS delivery is sent to principal with account opening documents. Principal puts PDF in CRS Delivered folder and maintains log as well.

## 5 The Care Obligation

Under the Care Obligation, the Firm must exercise **reasonable diligence, care, and skill** when making a recommendation to a retail customer to:

- understand potential risks, rewards, and costs associated with a recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;
- have a reasonable basis to believe the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the interest of the broker-dealer ahead of the interest of the retail customer; and
- have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile.

All financial professionals and supervisors will be required to certify on an annual basis that they have read, understood, and complied with the Care Obligation.

### 5.1 Components of the Care Obligation

The Firm must exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with a recommendation.

#### 5.1.1 Reasonable Diligence, Care and Skill

What would constitute reasonable diligence, care, and skill will vary depending on, among other things, the complexity of and risks associated with the recommended security or investment strategy and the Firm's familiarity with the recommended security or investment strategy.

While every inquiry will be specific to the Firm and the recommended security or investment strategy, the Firm generally should consider **important factors** such as:

- the security's or investment strategy's:
  - investment objectives;
  - characteristics (including any special or unusual features);
  - liquidity;
  - volatility; and
  - likely performance in a variety of market and economic conditions;
- the transaction costs of the security or transaction(s);
- the expected return of the security or investment strategy; and
- any financial incentives to recommend the security or investment strategy.

#### 5.1.2 Risks Rewards and Costs

The Firm must consider the risks, rewards, and costs in light of the particular retail customer's investment profile and have a reasonable basis to believe that the recommendation is in that particular customer's best interest and does not place the Firm's interest ahead of the retail customer's interests.

In order to allow for such determinations, the Firm will collect such information in writing at the time of new account inception or at the time of or prior to a recommendation being made, as applicable. Retail customers must also be advised that they are required to update their profile when there is a change to their respective profile.

#### 5.1.3 Transactions in a Series

When recommending a series of transactions, the Firm must have a reasonable basis to believe that the transactions taken together are not excessive, even if each is in the retail customer's best interest when viewed in isolation. This requirement applies irrespective of whether the Firm exercises actual or *de facto* control over a customer's account.

What would constitute a "series" of recommended transactions shall depend upon the facts and circumstances at hand and will need to be evaluated with respect to a particular retail customer. The Reg BI Principal shall also ensure that the Firm's training provide examples of transactions in a series and utilize examples to ensure that financial professionals and supervisors further understand the meaning of transactions in a series.

The Reg BI Principal shall implement appropriate surveillance to identify transactions in a series and ensure that they meet the requirements of this procedure. Any exceptions shall be escalated to the Chief Compliance Officer.

## 5.2 Reasonably Available Alternatives

When applicable (especially for complex products and/or products that can be sold via different fee structures), the financial professional should consider all reasonably available alternatives, if

any, offered by the Firm in determining whether the Firm has a reasonable basis for making the recommendation. The purpose of this requirement is to ensure that the recommendation being presented is in the retail customer's best interest, and that there is not a more appropriate alternative that could prove to be more in line with the client's best interest.

The requirement for reasonably available alternatives is fairly subjective and the concept should be further communicated based on the Firm's applicable business activities. The Reg BI Principal shall utilize training and other communications to best establish Firm guidelines. The Reg BI Principal shall also communicate to supervisors which products would require considering reasonably available alternatives for customers or such supervisors would not be able to approve such transactions. Supervisors are instructed not to approve any products that would fall under this requirement without verifying that reasonably available alternatives were considered for the retail customer.

This requirement shall apply to any alternative product offered by the Firm, save those products sponsored by the Firm's affiliate Alexander Capital Ventures ("ACV"). The Reg BI Principal will provide additional training as it relates to how this applies to particular situations and transactions. The Reg BI Principal shall be responsible for communicating these standards to financial professionals and supervisors.

When a financial professional recommends any alternative investment, other than one sponsored by ACV, to any customer, that financial professional shall compare the recommended product to at least two other products in which the customer could choose to invest. This comparison shall be used by the financial professional to evaluate whether or not the recommended investment is in the customer's best interest. This comparison shall be provided to the financial professional's supervisor along with the required Regulation D Form. Further, if at any time prior to a customer's making an investment there is a material change to the recommended investment, the financial professional shall perform a new comparison of the recommended product to ensure that the investment remains in the customer's best interest, inform the customer of the change, and advise the customer of the financial professional's recommendation in light of the change. The new comparison of the recommended investment must be provided to the financial professional's supervisor before the investment can be approved.

### 5.3 Account Type Recommendations

- With respect to account type recommendations, financial professionals should generally consider:
  - the services and products provided in the account;
  - the projected cost to the retail customer of the account;
  - alternative account types available;
  - the services requested by the retail customer; and
  - the retail customer's investment profile.
- When making recommendations to open an IRA, or to roll over assets into an IRA, the

Firm should consider a variety of factors including, but not limited to:

- fees and expenses;
- level of services available;
- available investment options;
- ability to take penalty-free withdrawals;
- application of required minimum distributions;
- protections from creditors and legal judgments;
- holdings of employer stock; and
- any special features of the existing account.

#### 5.4 Considerations Relative to Cost of Recommendations

While the Firm must understand and consider costs when making a recommendation, it is only one factor among many factors to be considered. Thus, the Firm would not satisfy the Care Obligation by simply recommending the least expensive or least remunerative security without any further analysis of the other factors and the particular retail customer's investment profile.

For example, depending on the facts and circumstances, the Firm may be able to recommend a more expensive security or investment strategy if there are other factors about the product or strategy that reasonably allow the Firm to believe it is in the best interest of the Firm's retail customer, based on that retail customer's investment profile.

## 5.5 Implementation of the Care Obligation

Financial professionals shall be required to complete training related to the Care Obligation. The Care Obligation standards (see above) should be considered at the time of each recommendation to a retail customer. Each financial professional shall document the care obligation standards that were applicable and considered relevant for recommendations to retail customers that were triggered by the care obligation guidelines (see above). Such documentation shall include not just suitability of the transaction, but which factors under the care obligation will help to support that the recommendation is truly in the best interest of the client. For example, should such recommendation be subject to transactions in a series and/or have reasonably available alternatives to be compared against.

The Reg BI Principal shall tailor training for both financial professionals and supervisors to ensure that there is a method to document the applicable considerations under the Care Obligation.

## 6 Conflict of Interest Obligation

Under the Conflict of Interest Obligation, a broker-dealer must establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest associated with its recommendations to retail customers.

Specifically, the Reg BI Principal will ensure that supervisors are trained and mindful of supervisory considerations, including, but not limited to, the following considerations:

- Identify and at a minimum disclose, pursuant to the Disclosure Obligation, or eliminate all conflicts of interest associated with such recommendations;
- Identify and mitigate any conflicts of interest associated with such recommendations that create an incentive for the Firm's associated persons to place their interests or the interests of the Firm ahead of the retail customer's interests;
- Identify and disclose any material limitations, such as a limited product menu or offering only proprietary products, placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations, and prevent such limitations and associated conflicts of interest from causing the Firm or the associated person to place the interests of the Firm or the associated person ahead of the retail customer's interests; and

- Identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time.

The Reg BI Principal shall be responsible to ensure that the required conflicts are disclosed to retail customers. The Reg BI Principal shall be responsible for training financial professionals and supervisors related to the various methods for identifying and handling of such conflicts.

The Reg BI Principal shall ensure that the Supervisors are using appropriate methods to review for such conflicts, including trade surveillance, exception reports, email reviews, gifts and entertainment reviews, audits, certifications, and other reviews. Supervisors shall be on the lookout for other potential conflicts that have not been previously identified.

## 6.1 Policies to Mitigate Incentives

The Firm has established a product review process 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 the Firm cannot effectively mitigate the conflict, and identifying which retail customers would qualify for recommendations from this product menu.

The product review process shall include, but not be limited to:

- the restriction of retail customers to whom a product may be sold based upon Client Profile data;
- requiring product-specific training for any employee or associated person who is permitted to recommend a product; and
- conducting conflict of interest reviews, as outlined herein.

### 6.1.1 Specific Mitigation Measures

There are a number of different kinds of incentives and, depending on the specific characteristics of an incentive, different levels and types of mitigation measures may be necessary.

For example, incentives tied to asset accumulation generally would present a different risk and require a different level or kind of mitigation, than variable compensation for similar securities, which in turn may present a different level or kind of risk and may require different mitigation methods than differential or variable compensation or financial incentives tied to broker-dealer revenues.

In certain instances, compliance with existing supervisory requirements and disclosure may be sufficient, for example, where a broker-dealer may develop a surveillance program to monitor sales activity near compensation thresholds.

### 6.1.2 Potential Mitigation Measures

The following non-exhaustive list of practices could be used as potential mitigation methods for broker-dealers to comply with the mitigation requirement:

- avoiding compensation thresholds that disproportionately increase compensation through incremental increases in sales;
- minimizing compensation incentives for employees to favor one type of account over another; or to favor one type of product over another, proprietary or preferred provider products, or comparable products sold on a principal basis, for example, by establishing differential compensation based on neutral factors;
- eliminating compensation incentives within comparable product lines by, for example, capping the credit that an associated person may receive across mutual funds or other comparable products across providers;
- implementing supervisory procedures to monitor recommendations that are:
  - near compensation thresholds;
  - near thresholds for broker-dealer recognition;
  - involve higher compensating products, proprietary products, or transactions in a principal capacity; or,
  - involve the roll over or transfer of assets from one type of account to another (such as recommendations to roll over or transfer assets in an ERISA account to an IRA) or from one product class to another;
- adjusting compensation for associated persons who fail to adequately manage conflicts of interest; and
- limiting the types of retail customer to whom a product, transaction, or strategy may be recommended.

## 6.2 Material Limitations on Recommendations

A “material limitation” placed on the securities or investment strategies involving securities that may be recommended would include, for example, recommending only:

- proprietary products, that is, any product that is managed, issued, or sponsored by the Firm or any of its affiliates;
- a specific asset class;
- or products with third-party arrangements, that is, revenue sharing.

In addition, the fact that the Firm recommends only products from a select group of issuers could also be a material limitation.

We recognize that, as a practical matter, almost all broker-dealers limit their offerings of securities and investment strategies to some degree. We do not believe that disclosing the fact that a broker-dealer does not offer the entire possible range of securities and investment strategies would convey useful information to a retail customer, and therefore we would not consider this fact, standing alone, to constitute a material limitation. Rather, consistent with the examples of a “material limitation” provided above, whether the limitation is material will depend on the facts and circumstances of the extent of the limitation.

### 6.2.1 Mitigation Specific to Material Recommendations

The Firm has flexibility to develop and tailor reasonably designed policies and procedures to prevent such limitations and the associated conflicts from causing the Firm or an associated person from placing their interest ahead of the retail customer's interest.

The Reg BI Principal is responsible for establishing a product review process and approval 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 the Firm cannot effectively mitigate the conflict, and identifying which retail customers would qualify for recommendations from this product menu.

As part of this process, the Firm may consider:

- evaluating the use of "preferred lists;"
- restricting the retail customers to whom a product may be sold;
- prescribing minimum knowledge requirements for associated persons 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.

### 6.3 Conflicts that Require Elimination

It is the Firm's policy to eliminate sales contests, sales quotas, bonuses and non-cash compensation that are based on the sales of specific securities and specific types of securities within a limited period of time. These practices, when coupled with a time limitation, create high-pressure situations for associated persons to engage in sales conduct contrary to the best interest of retail customers.

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

This elimination requirement would not prevent a broker-dealer 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 elimination requirement 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;
- Receipt of certain employee benefits by statutory employees, as we do not consider these benefits to be non-cash compensation for purposes of Regulation best Interest.

### 6.4 Implementation of Conflicts of Interest Obligation

The Reg BI Principal is responsible for overall implementation of the Conflicts of Interest Obligations. The Reg BI Principal shall be responsible for ensuring that the financial professionals understand the various conflicts that have been identified and follow further directives on how to handle such conflicts. Furthermore, each respective supervisor shall ensure that any known conflicts are escalated to the Reg BI Principal and further strategy be developed with the best way to mitigate and/or eliminate such conflict. Additionally, conflicts that have not been disclosed to clients must be eliminated in their entirety.

## 7 The Compliance Obligation

The Reg BI Principal is responsible for ensuring that the Firm provides periodic training to all employees relative to recommendations to retail customers. The Reg BI Principal shall ensure that the training is comprehensive and covers all pertinent areas. The Firm will conduct reviews to ensure compliance with all controls surrounding recommendations. In the event of non-compliance, issues will be investigated, remediated as necessary, and impacted employees will be retrained or reprimanded as necessary, up to and including termination.

## 8 The Use of “Adviser” or “Advisor”

The SEC presumes that the use of the terms “adviser” and “advisor” in a name or title by (i) a broker-dealer that is not also registered as an investment adviser or (ii) an associated person that is not also a supervised person of an investment adviser to be a violation of the capacity disclosure requirement under Regulation Best Interest. As such, the Firm does not use either term in the Firm name or title of Firm employees or associated persons not fitting the above description. Any exceptions to this policy will be reviewed and approved by the Reg BI Principal in advance. He or she will make the determination in his or her sole discretion.

The Reg BI Principal shall be responsible for ensuring that this requirement is understood by all Firm financial professionals and incorporated as part of the Firm’s training. The Reg BI Principal shall also make sure that supervisors are reviewing correspondence, emails, business cards, business communications, etc. and escalating any instances whereby these terms are used without prior approval.

## 9 Record-making and Recordkeeping

The Firm must meet new record-making and recordkeeping requirements with respect to certain information collected from or provided to retail customers in connection with Regulation Best Interest. This builds upon existing record-making and recordkeeping obligations.

- For each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided, the Firm must keep a record of all information collected from and provided to the retail customer pursuant to Regulation Best Interest, as well as the identity of each natural person who is an associated person, if any, responsible for the account.

- The Firm must retain all records of the information collected from or provided to each retail customer for at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated.

The Reg BI Principal will take responsibility to ensure that the required documents, reviews, and supervisory reviews are maintained as part of the firm's Books & Records.