

**MEMO# 32387**

April 13, 2020

## **FINRA Publishes Report on Practices from Reg BI Preparedness Reviews**

[32387]

April 13, 2020 TO: ICI Members

Bank, Trust and Retirement Advisory Committee

Broker/Dealer Advisory Committee

Internal Sales Managers Roundtable

Investment Adviser and Broker-Dealer Standards of Conduct Working Group

Investment Advisers Committee

Operations Committee

Pension Committee

Pension Operations Advisory Committee

Sales and Marketing Committee

SEC Rules Committee

Transfer Agent Advisory Committee

Variable Insurance Products Advisory Committee SUBJECTS: Advertising

Compensation/Remuneration

Compliance

Disclosure

Distribution

Fees and Expenses

Investment Advisers

Operations

Pension

Recordkeeping RE: FINRA Publishes Report on Practices from Reg BI Preparedness Reviews

The Financial Industry Regulatory Authority (FINRA) recently published a report on common practices its examination staff observed in the course of its Regulation Best Interest (“Reg BI”) preparedness reviews and other ongoing conversations with FINRA member firms (“FINRA Report”).[\[1\]](#) FINRA explains that, starting in late 2019, it began a review of small, mid-size, and large FINRA member firms to assess their preparedness for Reg BI and Form CRS. These assessments were undertaken to assess firms’ ongoing compliance efforts and potential challenges. The FINRA Report is intended to assist firms in assessing their Reg BI and Form CRS compliance as they prepare for the June 30, 2020 compliance date. FINRA recognizes that implementation is ongoing, and firms likely have made further progress in their preparation since the time of FINRA’s reviews.

The FINRA Report highlights several categories of practices FINRA staff observed during the reviews, along with examples, including:

1. **Governance and Implementation Management** – Firms developed governance structures to lead and manage Reg BI and Form CRS compliance requirements, including the use of project teams and working groups, timelines, and training programs.
2. **Written Supervisory Procedures (WSPs) and Supervisory Systems** – Firms developed written policies and procedures and implemented technological tools to meet their obligations under Reg BI and Form CRS, including (i) creating an inventory of changes; (ii) planning to or making changes to policies and procedures, although FINRA noted that there was significant variation in the scope of these changes and firms' approaches to them;[\[2\]](#) and (iii) initiating efforts to identify and develop supervisory system modifications.
3. **Conflicts of Interest**– Firms addressed the rules' conflicts of interest requirements by, for example:
  - *Conflicts inventory* – creating or updating inventories or logs of conflicts; implementing automated tools to track, report, and document existing conflicts; and initiating reviews of controls to mitigate or eliminate those conflicts.
  - *Conflict committees*– relying on existing or creating new conflicts committees.
  - *Limitations on products* – addressing conflicts of interest related to products, including by (i) creating automatic point-of-sale alerts or “product menus” to organize products by risk; (ii) narrowing the selection of products available to registered representatives; (iii) placing additional restrictions on less experienced registered representatives; and (iv) prohibiting sales of specified products to all firm customers.
  - *Compensation* – addressing product sales that could result in the payment of differential compensation. FINRA noted that sales of proprietary products or products within a particular product category (e.g., mutual funds or variable annuities) may offer higher compensation rates than other products. It stated that firms addressed these conflicts, including by (i) adding compensation caps; (ii) leveling the compensation across comparable products within a category; (iii) making changes to compensation for certain product lines; and (iv) addressing concerns about compensation directly with the product manufacturer or issuer. FINRA also noted that certain firms put in place changes to prepare for the DOL Fiduciary Rule that they believed could be leveraged to comply with Reg BI.
  - *Surveillance* – updating existing account surveillance or creating new surveillance tools to, for example, (i) review for excessive trading or unusual commissions; and (ii) address conflicts of interest requirements, including compensation and other forms of recognition.
  - *Disclosure* – reviewing and updating, or creating new, account documentation and customer disclosure forms.
  - *Use of the terms “adviser” or “advisor”* – implementing restrictions relating to the use of the terms “adviser” or “advisor,” depending on the registration status of the firm or its associated persons.
  - *Sales contests* – prohibiting sales contests, sales quotas, bonuses, and non-cash compensation practices based on the sales of specific securities or specific types of securities within a limited time period.
4. **Form CRS** – FINRA notes that firms had started developing their Form CRS and

related delivery timelines.

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#### **endnotes**

[1] See <https://www.finra.org/rules-guidance/key-topics/regulation-best-interest/preparedness>.

[2] FINRA noted that firms that previously had updated their policies and procedures, including to implement the now-vacated Department of Labor Fiduciary Rule, generally believed they could utilize this work and make limited modifications.

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