

August 9, 2018

## **ACLI Files Submissions on SEC Best Interest Initiatives**

ACLI filed three submissions with the SEC on Proposed Regulation Best Interest ([link](#)), Proposed Form CRS ([link](#)), and Investment Adviser Interpretations ([link](#)). The SEC's proposed rulemakings and interpretations were designed to enhance the quality and transparency of investors' relationships with investment advisers and broker-dealers while preserving access to a variety of types of advice relationships and investment products.

- Proposed Regulation Best Interest “requires a broker-dealer to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.”
- Proposed Form CRS “would provide retail investors with simple, easy-to-understand information about the nature of their relationship with their investment professional, and would supplement other more detailed disclosures.”
- Proposed interpretation “reaffirm SEC positions about the fiduciary duty investment advisers owe to their clients.” Through the reconfirmed interpretations, “investment advisers and their clients would have greater clarity about advisers' legal obligations.”

ACLI's Board developed seven core principles for guidance on regulatory developments involving a standard of care that were successfully reflected in the SEC's actions, and the SEC initiatives specifically referenced ACLI input in several significant instances. A [chart](#) summarizes how the Board's seven principles were echoed in the SEC's initiatives.

ACLI's submissions reflect the input and guidance of the Regulation Best Interest Working Group, the Form CRS Working Group, and the Investment Adviser Interpretations Working Group that all developed recommendations reflecting ACLI Board Policy and ACLI's four previous submissions to the SEC on these subjects. ACLI's Committee on Securities Regulation unanimously approved drafts of the three letters prior to submission.

**Background.** ACLI filed the following submissions with the SEC at different stages of similar standard of care initiatives:

- ACLI's October 3, 2017 [Submission](#) in response to SEC Chairman's [Request for Information on Standards of Conduct for Investment Advisers and Broker-Dealers](#);
- ACLI's July 5, 2013 [Submission](#) in response to the SEC's [Request for Data and Information on Brokers, Dealers and Investment Advisers](#);
- ACLI's August 30, 2010 [Submission](#) in response to the SEC's request for information on its [Study on the Responsibilities of Brokers, Dealers, and Investment Advisers](#) in fulfillment of Section 913 of the Dodd-Frank Act; and
- ACLI's December 13, 2007 [Submission](#) in response to the *RAND Study on Broker-Dealer and Investment Advisory Issues*.

### **Summary of ACLI's Positions on Regulation Best Interest ("Reg. BI")**

- Reg. BI is a largely sensible, principles-based rule governing broker-dealer conduct. The proposed rule properly implements Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act"). Reg. BI is vastly superior to the prescriptive, and now vacated, DOL Fiduciary Rule and its BIC exemption. Finalization of Reg. BI should retain its neutral approach to business models, operations, compensation and products.
- ACLI is on record that a constructive best interest standard would require financial professionals to put a consumer's interest first by (i) acting with reasonable care, skill, prudence, and diligence in gathering and evaluating information regarding the consumer that is used to make the recommendation; (ii) making no misleading statements; (iii) providing full and fair disclosure of the recommended product's features, fees, and charges; (iv) fairly disclosing how and by whom the financial professional is compensated; and (v) avoiding, disclosing, or otherwise reasonably managing material conflicts of interest. Reg. BI fulfills these objectives.
- The SEC's depth and decades of experience about investment adviser and broker-dealer regulation dovetails with developing a constructive best interest standard that can be uniformly applied across all regulatory platforms, including state insurance regulations. As a result, consumers will enjoy a consistent level of protection and will be able to obtain access to a wide range of retirement products and advice.
- ACLI agrees with the Chairman's statement that the SEC "should lead—but not dictate—our federal and state regulatory efforts in this area" to "minimize the effects of regulatory complexity, and potentially inconsistent legal standards applied to financial advice, due to the number of regulators in this space."
- Clarity, consistency and coordination across all regulatory platforms will best serve investors, and thwart regulatory arbitrage. The SEC's inclusive outreach to state regulators and the National Association of Insurance Commissioners (NAIC) as partners in the development of a best interest standard is an essential element of effective oversight and regulation.

- Life insurers strongly support protections serving the best interests of customers, which can be meaningfully safeguarded with disclosure about services and material conflicts of interest. This approach provides an effective means to shield consumers and facilitate informed purchase decisions.
- To meet their financial and retirement security needs, retirement savers deserve standards ensuring continued access to a wide variety of retirement products, retirement savings information and related financial guidance from financial professionals acting in their best interest.
- A full assessment about the current regulatory framework is important to the SEC's thorough evaluation of potential approaches under Reg. BI and should include the comprehensive network of state insurance regulation.
- Joint collaborative efforts between the SEC, FINRA, DOL and state insurance regulators will generate a uniform best interest standard across all regulatory platforms that properly protects consumers while advancing financial and retirement security.
- Conscientious evaluation of the many different business models operating in this space and the economic impact of potential modifications will contribute to efficient, effective regulation. Cost-benefit and competitive impact analysis will help achieve this objective.
- Disclosure required under Reg. BI will need careful coordination to properly mesh with amendments to Form CRS. A single disclosure fulfilling Reg. BI and Form CRS would reduce disclosure burdens and increase the likelihood consumers will read the required information.
- The application of Reg. BI's obligations should dovetail with FINRA requirements governing non-cash compensation practices.
- A reasonable implementation period of 18 months following adoption of the SEC initiatives will best enable broker-dealers to implement enterprise-wide compliance and operational practices.

### **Summary of ACLI Position on Form CRS**

The disclosure obligation under Reg. BI provides an important means for consumers to understand the material facts relating to the scope and terms of the relationship, and all material conflicts of interest associated with the recommendation. The SEC's approach here properly advances informed consumer decision making, and equitably allows broker-dealers to create disclosure tailored to their specific business model, product line, and operation. This framework wisely avoids a "one-size-fits-all" approach to regulation recently noted by SEC Chairman Clayton.

The disclosure standards in Form CRS, however, do not mesh well with the disclosure proposed in Reg. BI. Further, the creation of two new disclosure events may frustrate the worthwhile goals of consumer understanding by enlarging the already significant number of disclosure documents a consumer would face. The volume of disclosure currently delivered can, unfortunately, dilute the value of meaningful disclosure essential to understanding and informed decision making. Increased disclosure documents also thwart the SEC's commendable emphasis on streamlined, simplified, user-friendly, plain-English information. A single disclosure fulfilling Reg. BI and Form CRS would reduce

disclosure burdens and increase the likelihood consumers will read the required information. We encourage the SEC to clarify that broker-dealers can appropriately elect to merge required disclosure under Reg. BI and Form CRS in a single document.

The disclosure under Reg. BI and Form CRS should fulfill parallel philosophies and avoid conflicting or confusing consumer information. Suggested conforming changes are discussed in greater detail in our comment letter on Form CRS, which notes that, among other things, that the proposed form:

- Is built on the template of a full-service broker-dealer and fits limited purpose broker-dealers or investment advisers affiliated with life insurers poorly;
- Stipulates a length that may be too short for broker-dealer or investment adviser information in the insurance world;
- Is overly prescriptive, in contrast with the appropriate custom tailoring for disclosure under Reg. BI;
- Imposes an inappropriate competitive imbalance and inaccurate picture concerning the relative number of disciplinary actions in sales organizations with large numbers of financial professionals;
- Establishes unnecessarily restrictive formatting standards for dual (broker-dealer/investment adviser) registrants;
- Is not flexible enough to fully describe in a meaningful and accurate way investment advisory services provided by insurance affiliates that are not registered investment advisers, such as banks or thrifts;
- Requires statements that are inapplicable, inaccurate or misleading; and,
- Establishes conflict of interest disclosure unsynchronized with that in Reg. BI.

The disclosure standards and objectives should be consistent and parallel in Form CRS and Reg. BI to avoid confusion and to promote clear understanding. A more flexible approach to required disclosure is preferable and would serve consumers better. In addition, greater flexibility in content and length of Form CRS will allow life insurers to more fully describe products which are often more complex than those offered by full service broker-dealers.

### **Summary of ACLI Position on Proposed Investment Adviser Interpretations**

- The SEC must consider the impact of any future proposals on the unique business models of life insurance companies. Life insurers with associated investment advisers and broker-dealers are subject to multiple layers of regulation from state insurance commissioners, state securities regulators, the SEC, and FINRA.
- In lieu of any proposed regulation, the SEC should continue to provide interpretative guidance and rely upon the voluminous existing guidance and case law regarding the duties of investment advisers, rather than attempting to codify this body of existing law.
- Additional licensing and continued education under review would be duplicative of existing state securities licensing and continuing education requirements for investment adviser representatives. Such proposed “enhancements” are aiming to fill a perceived gap that does not exist.

## Resources

- [Outline](#): *Multiple Long-Term Catalysts for the SEC's Regulation Best Interest, Form CRS & Potential Investment Adviser Interpretations*
- Background [Materials](#)

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