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Seminar Outline by Carl B. Wilkerson © 2019**

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## **SEC Regulation Best Interest, Form CRS, and Investment Adviser Interpretations**

On June 5, 2019, the U.S. Securities and Exchange Commission adopted four items in its Best Interest initiative by a 3-1 vote:

- Regulation Best Interest-Standard of Conduct for Broker-Dealers
- Form CRS-Customer Relationship Summary
- Standards of Conduct for Investment Advisers
- Interpretation of "Solely Incidental" in the Broker-Dealer Exclusion from the Definition of Investment Adviser

The SEC published [Regulation Best Interest](#) in a 771-page release that adds details and nuances explaining the new rule. The SEC coextensively published a 524-page release explaining new [Form CRS](#) and clarifications to investment adviser standards. Added background appears in the [webcast](#) of the SEC open meeting and in the agency's [press release](#) about the initiatives.

Scope of the Initiatives. Regulation BI governs the activities of broker-dealers. Both investment advisers and broker-dealers must fulfill Form CRS. The SEC's restated and clarified investment adviser standards of conduct affect investment advisers.

Operative Timelines. The SEC's proposals will become effective 60 days after publication in the Federal Register and must be implemented by June 30, 2020.

Life Insurers' Recommendations Implemented. The SEC rulemaking reflected all seven ACLI Board Principles on Best Interest Standard of Care Proposals, the recommendations in ACLI's four submissions and ACLI's advocacy in visits with SEC Commissioners, and specifically referenced ACLI's position thirty-six times.

### **Regulation Best Interest**

Highlights. The SEC retained the overall structure and scope of the proposed rule, made modifications to the text of the final rule and provided interpretations and guidance to address points raised during the comment process.

Reg. BI creates elevated broker-dealer standards built above the foundation of suitability requirements, and establishes four new obligations:

- **Disclosure** - Before or at the time of such recommendation reasonably discloses to the retail customer, in writing, the material facts relating to the scope and terms

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of the relationship, and all material conflicts of interest associated with the recommendation;

- **Care** - In making the recommendation, exercises reasonable diligence, care, and skill;
- **Conflicts of Interest** - Establishes, maintains, and enforces written policies and procedures reasonably designed to (i) identify, disclose and mitigate, material conflicts of interest arising from financial incentives associated with such recommendations, and (ii) identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time; and,
- **Compliance** - Establishes, maintains, and enforces written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.

Reg. BI is a principles-based rule, not a prescriptive formulation like DOL's fiduciary rule. In further contrast with the DOL rule, Reg. BI does not impose a "sole interest" standard of care. Rather, the new rule permits conflicts, so long as the broker-dealer fulfills the disclosure, care, conflict of interest and compliance obligations. The SEC repeatedly emphasized that disclosure alone does not satisfy Reg. BI. All four obligations must be fulfilled.

Reg. BI's conflict of interest obligation requires broker-dealers to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time. This new standard parallels FINRA non-cash compensation Rule 2320 that has governed variable contract sales for 20 years and effectively levels life insurers' regulatory playing field.

### Core Observations Germane to Life Insurers

The term "best interest" is not defined in the rule. Instead, its meaning is contextually derived from the four new conduct obligations. Among other things, the Reg. BI package:

- Preserved the limited scope of the proposal to (i) recommendations (ii) about securities (iii) in the retail market;
- Reconfirmed that a broker-dealer's recommendation under Reg. BI:
  - May include proprietary products,
  - Do not have to be the least expensive product or the "one best product," and
  - Do not require every possible alternative to be considered, subject to the four Reg. BI obligations.
- Doesn't require disclosure of exact amounts of compensation tied to a securities recommendation. The forms and mechanics of "material" fees and costs must be fully and fairly disclosed to consumers in writing.

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Under Reg. BI, a broker-dealer must act in the retail customer's best interest at the time a recommendation is made. The rule does not subject broker-dealers to an on-going fiduciary duty, monitoring or advice.

The SEC interpreted the "solely incidental" limit in the broker-dealer exclusion from the definition of investment adviser to be exceeded when broker-dealers retain full discretionary investment authority over client assets or when they offer on-going account monitoring and advice. A broker-dealer who exceeds the "solely incidental" threshold must register as an investment adviser and fulfill a fiduciary duty.

Reg. BI defines "material conflict of interest" to mean an interest that might incline a securities salesperson, consciously or unconsciously, to make a recommendation that is not disinterested. The SEC declined to provide examples of material conflicts of interest. Under the rule, a fact is "material" if it is substantially likely that a customer would conclude it is important.

Under Reg. BI, broker-dealers must establish, maintain and enforce written policies and procedures reasonably designed to fulfill the rule. This will become a new item on SEC and FINRA examinations of broker-dealers.

Life insurers' compliance departments will be busy over the next 12 months implementing Reg. BI and Form CRS, which requires careful disclosure, documentation and recordkeeping. Enterprise-wide consistency will become operational priorities.

SEC staff, in conversations with ACLI, indicated that the agency has established an "interdivisional coordination team" to address evolving questions about Reg. BI through interpretive guidance. This mechanism should help broker-dealers in fulfilling the rule's mandates.

Reg. BI raises the regulatory bar, providing consumer-focused principles and a template for uniform standards across all regulatory platforms. As such, it should remove pressure from individual states to fill a perceived regulatory void, especially in view of parallel changes underway in the NAIC Suitability in Annuities Transactions Model Regulation.

### **Form CRS**

Both broker-dealers and investment advisers must deliver Form CRS to customers. The SEC designed Form CRS to inform retail investors about:

- The types of client and customer relationships and services the firm offers;
- The fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services;
- Whether the firm and its financial professionals currently have reportable legal or disciplinary history; and
- How to obtain additional information about the firm.

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The SEC substantially modified and simplified Form CRS in response to comments and consumer focus group data. The agency revised the Form's instructions to require a question-and-answer format, give additional support for electronic formats, provide guidance that firms should include white space, and implement other design features to make the relationship summary easier to read.

The form was shortened from four pages to two pages. It allows more flexibility in structure, format and presentation, and permits delivery in writing, electronically or in video streaming.

Form CRS requires broker-dealers and investment advisers to state their name and whether they are "registered with the Securities and Exchange Commission as a broker-dealer, investment adviser, or both. This change addresses clear communication about the operational capacity of financial professionals that are dually licensed as investment advisers and broker-dealers.

### Core Observations for Life Insurers

The SEC responded favorably in amending Form CRS to recommendations from ACLI and its members. The form should better suit insurance affiliated distributors who are different from the full-service broker-dealers around which the form was initially designed. The SEC adopted specific record creation and maintenance requirements that will have to be factored into compliance operations.

### **Investment Adviser Interpretations**

On June 5, 2019, the SEC also issued two interpretive releases concerning:

- The scope of the "solely incidental" prong in the broker-dealer exclusion from the definition of investment adviser (and its associated fiduciary duty). The guidance indicates that a broker-dealer must register as an investment adviser when they have complete investment discretion over client assets or offer account monitoring services. This [guidance](#) should help clarify the line between broker-dealers and investment adviser status.
- Standard of Conduct for Investment Advisers. This [interpretation](#) explains that judicial actions, not the federal securities laws, impose a fiduciary duty. The release provides guidance underscoring an investment advisers' obligations to execute a duty of care, a duty of loyalty, and suitability under the fiduciary duty.

Background: ACLI 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](#)).

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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 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*.

#### Additional Resources

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

Regulation Best Interest and Form CRS provide new standards that strike a reasonable balance between consumer protection and business model neutral regulatory approaches that enable consumers to obtain a wide range of advice and choose from among a variety of retirement and financial security solutions. Broker-dealers distributing life insurers' variable annuities and variable life insurance will have to adjust compliance systems to fulfill the new initiative's many added standards and requirements.

#### **SEC Summary Disclosure Initiative: A Nexus to Regulation Best Interest & Form CRS**

For life insurers, Regulation Best Interest and Form CRS can be further evaluated and implemented in view of a coextensive SEC summary disclosure initiative for variable life insurance and variable annuities. On October 30, 2018, the SEC invited comment on [proposed rule and form amendments](#) that are intended to help investors make informed investment decisions regarding variable annuity and variable life insurance contracts. The proposal would modernize disclosures by using a layered disclosure approach designed to provide investors with key information relating to the contract's terms, benefits, and risks in a concise and more reader-friendly presentation, with access to more detailed information available online and electronically or in paper format on request. The proposed new rule would permit registrants to satisfy their prospectus delivery obligations under the Securities Act of 1933 for a variable annuity or variable life insurance contract

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by sending or giving a summary prospectus to investors and making the statutory prospectus available online.

The proposed rule also would consider registrants to have met their prospectus delivery obligations for any portfolio companies associated with a variable annuity or variable life insurance contract if the portfolio company prospectuses are posted online. In addition, the SEC proposed amendments to the registration forms for variable annuity and variable life insurance contracts to update and enhance the disclosures to investors in these contracts, and to implement the proposed summary prospectus framework.

The SEC's disclosure initiative reflects ACLI's long-advocated approach to summary disclosure: streamlined, simplified plain-English information through layered disclosure and access to more detailed information through supplemental web-based distribution. The resources below provide background on ACLI's positions.

**Background.** On February 15, 2019, ACLI filed a [submission](#) commenting on the SEC's Summary Disclosure Initiative for Variable Annuities and Variable Life Insurance. The SEC's initiative reflects ACLI's long-standing approach to summary disclosure: simplified, plain-English information through a layered process with access to more detailed information through supplemental web-based or paper distribution on request.

**Resources.** ACLI recommended positions on layered disclosure and electronic delivery in submissions to the SEC over many years, including:

#### ACLI Policy Positions

- ACLI [submission](#) on the SEC's Best Interest [Initiative](#) (August 3, 2018) [beginning at page 31];
- ACLI's [response](#) to the SEC Chairman's [Request for Information about Standards of Conduct for Broker-Dealers and Investment Advisers](#) (Oct. 3, 2017) [beginning at page 6].
- ACLI's July 5, 2013 [Submission](#) in response to the SEC's [Request for Data and Information on Brokers, Dealers and Investment Advisers](#) [beginning at page 15];
- 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 [beginning at page 10]; and,
- ACLI's December 13, 2007 [Submission](#) in response to the *RAND Study on Broker-Dealer and Investment Advisory Issues* [beginning at page 6].

#### ACLI Simplified Variable Annuity Disclosure Initiative

One example of ACLI's advocacy for streamlined plain-English disclosure appears in the recommendations of ACLI's CEO Task-Force on Annuities on [disclosure](#) for fixed, index and variable annuities. With this ACLI model, consumers could make apples-to-apples comparisons using a two-page document about core features. As part of this initiative, ACLI also developed instructional guidelines for life insurers on how to prepare this

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streamlined, transparent disclosure. ACLI's membership approved the final project for advancement with regulators. This disclosure initiative remains fresh, vital, and worthwhile even though it was developed some time ago. This [seminar outline](#) summarized ACLI's VA Disclosure Initiative.

#### ACLI Rulemaking Petition on Inaugural Simplified Prospectus Form N-6 for Variable Life Insurance

ACLI filed a [rulemaking petition](#) with the SEC that led to the adoption of Form N-6. This [seminar outline](#) highlighted the VLI prospectus initiative. This [seminar outline](#) explains the administrative history, purpose, intent and design of VLI Registration Form N-6. Form N-6 and these materials provide background for review of the SEC's summary VLI prospectus initiative.

#### NAIC Deferred Annuity Buyers' Guide

The [NAIC's Deferred Annuity Buyers' Guide](#) provides a streamlined, plain-English disclosure allowing comparison of fixed, index and variable annuities, and poses a series of questions for consumers to raise in discussions with salespersons. The NAIC Buyer's Guide must be distributed in 32 states according to ACLI's [law survey 30](#).

# Analysis of ACLI Board Principles Against SEC Regulation Best Interest and Form CRS

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## **1. A RECOMMENDATION MUST REFLECT CARE, SKILL, PRUDENCE, AND DILIGENCE.**

### **Principle in SEC Regulation Best Interest**

Broker-Dealers obligated to “exercise reasonable diligence, care, and skill.”<sup>1,2</sup>

### **Principle in ACLI Submission to the SEC**

ACLI recommended that a “constructive best interest standard would require financial professionals to put a consumer’s interest first by acting with reasonable care, skill, prudence, and diligence in gathering and evaluating information regarding the consumer that is used to make the recommendation.”<sup>3</sup>

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## **2. A PERSON MAKING A RECOMMENDATION MUST ADDRESS MATERIAL FINANCIAL CONFLICTS OF INTEREST.**

### **Principle in SEC Regulation Best Interest**

Under the Disclosure Obligation in Regulation BI, broker-dealers “must disclose material fees and costs that apply to the retail customer’s transactions, holdings, and accounts.” Likewise under the Care Obligation in Regulation BI, “the broker-dealer does not place the financial or other interest of the broker, dealer, or such natural person ahead of the interest of the retail customer profile and the potential risks and, rewards, and costs associated with the recommendation.”<sup>4</sup>

### **Principle in ACLI Submission to the SEC**

ACLI recommended that a “constructive best interest standard would require financial professionals to put a consumer’s interest first by avoiding, disclosing, or otherwise reasonably managing material conflicts of interest.”<sup>5</sup>

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## **3. CONSUMERS SHOULD KNOW THE TYPES AND SCOPE OF SERVICES THEY WILL RECEIVE AS WELL AS THE TYPES OF COMPENSATION TO BE RECEIVED BY THE PERSON MAKING THE RECOMMENDATION.**

### **Principle in SEC Regulation Best Interest**

Under the regulation’s disclosure obligation, the SEC emphasized that salespersons should disclose “the scope and terms of the relationship with the retail customer” and the “material fees and costs that apply to the retail customer’s transactions, holdings, and accounts.” “It is necessary to impose a more explicit disclosure obligation on broker-dealers than what currently exists under the federal securities laws and SRO rules.”<sup>6</sup>

### **Principle in ACLI Submission to the SEC**

ACLI recommended that a “constructive best interest standard would require financial professionals to put a consumer’s interest first by providing full and fair disclosure of the recommended product’s features, fees, and charges and, fairly disclosing how and by whom the financial professional is compensated.”<sup>7</sup>



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**4. THE STANDARD IS TO APPLY WHEN A RECOMMENDATION IS MADE WITH NO FURTHER OR ONGOING OBLIGATION TO THE CONSUMER UNLESS OTHERWISE AGREED TO.**

**Principle in SEC Regulation Best Interest**

The SEC explained that “an investment adviser’s fiduciary duty generally includes a duty to provide ongoing advice and monitoring, while Regulation Best Interest imposes no such duty and instead requires that a broker-dealer act in the retail customer’s best interest at the time a recommendation is made.”<sup>8</sup>

**Principle in ACLI Submission to the SEC**

ACLI recommended that “the uniform standard of care is a transaction based standard that is applied when a recommendation is made, and there is no further or ongoing obligation under the standard.”<sup>9</sup>

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**5. RULES MUST BE NEUTRAL TO BUSINESS MODEL, PRODUCT TYPE, AND COMPENSATION APPROACH SUCH AS COMMISSIONS OR SALES CHARGES, OR OTHER FEES OR VARIABLE COMPENSATION.**

**Principle in SEC Regulation Best Interest**

The SEC explained that under proposed Regulation Best Interest, broker-dealers would have the flexibility to establish systems that are tailored to their business models.” SEC declined to subject broker-dealers to a wholesale and complete application of the existing fiduciary standard under the Advisers Act because it is not appropriately tailored to the structure and characteristics of the broker-dealer business model.<sup>10</sup> SEC stated that the overall intent of Section 913 [of the Dodd-Frank Act] “did not prohibit, mandate or promote particular types of products or business models, and preserved investor choice among such services and products and how to pay for these services and products (e.g., by preserving commission-based accounts, episodic advice, principal trading and the ability to offer only proprietary products to customers).”<sup>11</sup>

**Principle in ACLI Submission to the SEC**

ACLI stated that “Reg. BI should appropriately accommodate different business models, organizational structures, product lines, and compliance and oversight operations.”<sup>12</sup>

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**6. THE FACT THAT AN ADVISOR OR FIRM ONLY OFFERS OR RECOMMENDS PROPRIETARY OR A LIMITED RANGE OF PRODUCTS OR PRODUCT TYPES OR RECEIVES COMMISSIONS OR OTHER VARIABLE COMPENSATION IS NOT INCONSISTENT WITH A BEST INTEREST STANDARD.**

**Principle in SEC Regulation Best Interest**

Adoption release emphasized that that an evaluation of reasonably available alternatives does not require an evaluation of every possible alternative (including those offered outside the firm) nor require broker-dealers to recommend one “best” product. Dodd-Frank Act Section 913 provides that offering only proprietary products by a broker-dealer shall not, in and of itself, violate such a uniform fiduciary standard, but may be subject to disclosure and consent requirements.”<sup>13</sup>

**Principle in ACLI Submission to the SEC**

ACLI observed that “Dodd-Frank Act Section 913 provides that offering only proprietary products by a broker-dealer shall not, in and of itself, violate such a uniform fiduciary standard, but may be subject to disclosure and consent requirements.” ACLI emphasized that “Section 913’s treatment of proprietary products properly reflects Congressional intent and allows consumers to obtain appropriately recommended proprietary products, with appropriate conditions, that buttress Americans’ financial and retirement security.”<sup>14</sup>

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## **7. THE BEST INTEREST STANDARD MUST NOT REQUIRE A RECOMMENDATION OF THE LEAST EXPENSIVE OR “BEST” PRODUCT AVAILABLE.**

### **Principle in SEC Regulation Best Interest**

SEC states that Regulation Best Interest will not necessarily obligate a broker-dealer to recommend the “least expensive” or the “least remunerative” security or investment strategy provided the broker-dealer complies with the Disclosure, Care, and the Conflict of Interest Obligations.”<sup>15</sup>

### **ACLI Recommendations in Submission to the SEC**

ACLI’s submission stated that “insistence on the least expensive or least remunerative choices could ironically undermine the best interest of consumers.”<sup>16</sup>

## Citations to ACLI Positions in SEC Initiatives

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement: “A variety of commenters offered suggestions on the overall structure and scope of the proposed rule, including: whether Regulation Best Interest’s protections should apply to a broader or narrower set of “retail customers.”

### **SEC Reference to ACLI Recommendation**

Direct citation to ACLI Aug. 2, 2018 Submission supporting this outcome.

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement that “commenters expressed differing views on the form of such a uniform standard of conduct, including that the Commission should adopt: standards consistent with the recommendations of the staff’s Section 913 Study.”

### **SEC Reference to ACLI Recommendation**

Direct citation to ACLI Aug. 2, 2018 Submission supporting this outcome.

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC explained that “another commenter stated that any modification to the proposed rules and guidance that would make them “more restrictive” should be repropose for additional public comment.”

### **SEC Reference to ACLI Recommendation**

Direct citation to ACLI Aug. 2, 2018 Submission supporting this outcome.

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement: “a number of commenters opposed eliminating the ‘personal, family or household purposes’ qualifier from the definition of retail customer under Dodd-Frank Section 913.”

### **SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome: ACLI Letter (supporting the provision in Section 913 and positing that Regulation Best Interest appropriately implements this foundational threshold.)

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement: “some commenters recommended that the Commission harmonize the Disclosure Obligation with the broad, firm-level disclosure obligations of Form CRS so that firms can use the Relationship Summary to help satisfy the Disclosure Obligation.”

### **SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome: ACLI Letter (noting that a single disclosure fulfilling Regulation Best Interest and Form CRS would reduce the disclosure burdens and increase the likelihood consumers will read the required information.)

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement: “Most commenters requested an implementation period of 18-24 months.”

### **SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement: “In 2013, FINRA published as guidance a Report on Conflicts of Interest (“FINRA Conflicts Report”) to provide an overview of effective practices that broker-dealers could employ to manage and mitigate conflicts of interest.”

### **SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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### **SEC Regulation Best Interest Reference to ACLI Submission**

SEC statement: “Commenters, however, indicated that commission-based compensation provides benefits to investors.”

### **SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: Regarding the application of a fiduciary duty to broker-dealers, “commenters discussed the viability of this alternative and stated that it would provide superior investor protection benefits relative to the standard that the Commission proposed.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC Statement: “commenters advocated for more flexibility for firms to use their own working to describe their services more accurately”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters advocated for more flexibility for firms to use their own wording to describe their services more accurately.”

**SEC Form CRS Reference to ACLI Submission**

SEC statement:

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**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome: “many of the statements mandated in the Proposed Rule are inaccurate from the perspective of a life insurer-affiliated broker-dealer.”

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters viewed parts of the relationship summary as educational, such as the sections comparing broker-dealers and investment advisers, describing the applicable standard of conduct, and containing key questions investors should ask, and advocated that the Commission should develop and provide educational material separately from firm-specific disclosures, such as in an additional disclosure layer or on the Commission’s website.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters requested more flexibility for firms to provide accurate descriptions of their services.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “A range of commenters asserted that the proposed prescribed wording could be inaccurate or inapplicable.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “For example, various providers of insurance products explained that references to brokerage or investment advisory accounts were not consistent with their business models and could confuse retail investors because customers generally purchase insurance products directly from the issuer, without needing to open a brokerage account.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “Commenters suggested that the length of the relationship summary may be too short to appropriately describe firms’ insurance services or products.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters suggested that the key questions be removed from the relationship summary and placed on the Commission’s website with other educational materials.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters encouraged the SEC to allow firms to disclose services of other affiliates, even if those services are not regulated by the SEC, such as investment advisory services offered by an affiliated thrift savings institution.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome: “ACLI Letter asserting that Form CRS is not flexible enough to describe in a meaningful and accurate way investment advisory services provided by insurance affiliates such as banks or thrifts.”

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters pointed out that the choice of financial services providers is not binary—there are more than two types of services offered that could apply.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome: “ACLI Letter describing the ‘binary approach that the SEC has taken, which is not entirely accurate for the distribution of variable annuity and variable life products.”

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “Insurance and variable annuity providers commented that this focus on accounts would not allow them to accurately describe insurance offerings and would be confusing, particularly to investors whose insurance or annuity products are held directly with an issuing insurance company.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “We agree that this is important for retail investors to understand because many firms offer a number of services that are only available to investors with higher account balances.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “Commenters stated that it was inappropriate for the Commission to require firms to describe products and services that they do not offer and about which they may have limited or no expertise.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “Commenters argued that in many cases the prescribed wording was confusing and not accurate.”<sup>63</sup>

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome; “ACLI Letter (stating that the prescriptive nature of the disclosures does not sufficiently allow for diverse business models to be explained.” and “ACLI Letter stating that the Fees and Costs section is replete with required statements that may be unnecessary/misleading.”

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters also suggested that Regulation Best Interest’s and Form CRS’s conflicts disclosures be coordinated, and that any conflict disclosure obligations under Regulation Best Interest should be satisfied upon delivery of the relationship summary.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters suggested that we remove the requirement that firms disclose whether or not they have disciplinary history.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters opposed the approach of requiring firms to indicate in their relationship summaries whether they or their financial professionals have disciplinary history, questioning the value of the disclosure to retail investors, or citing to prejudicial or competitive concerns.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “These firms recommended that the relationship summary include only a prompt for investors to research the disciplinary history of the firm or financial professional, directing them to Investor.gov/CRS.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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**SEC Form CRS Reference to ACLI Submission**

SEC statement: “commenters opposed including discussions comparing investment advisers and broker-dealers. Some commenters stated that it was inappropriate for the Commission to require firms to describe products and services that they do not offer and about which they may have limited or no expertise.”

**SEC Reference to ACLI Submission**

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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### SEC Form CRS Reference to ACLI Submission

SEC statement: “commenters suggested that we exclude or exempt certain types of broker-dealers that provide limited services to retail investors from the requirement to deliver the relationship summary or from the requirements of Form CRS more generally.”

### SEC Reference to ACLI Submission

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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### SEC Form CRS Reference to ACLI Submission

SEC statement: “commenters were concerned that retail investors may be subject to information overload from reading the relationship summary, reducing the potential benefits to investors because of the cognitive costs of digesting the information.”

### SEC Reference to ACLI Submission

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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### SEC Form CRS Reference to ACLI Submission

SEC statement: “One commenter stated that reporting of legal and disciplinary history “imposes an inappropriate competitive imbalance and inaccurate picture concerning the relative number of disciplinary actions in sales organizations with large number of financial professionals.”

### SEC Reference to ACLI Submission

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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### SEC Form CRS Reference to ACLI Submission

SEC statement: “For example, one commenter suggested using as a potential framework the Buyers Guides developed by the National Association of Insurance Commissioners that insurance companies must deliver under certain circumstances.”

### SEC Reference to ACLI Submission

Direct citation to ACLI’s Aug. 2, 2018 submission supporting this outcome.

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## Endnotes

- <sup>1</sup> SEC Regulation Best Interest requires broker-dealers exercise reasonable diligence, care and skill to understand potential risks and rewards and have a reasonable basis for believing that the recommended transaction or investment strategy is in the best interest of the retail customer. See Regulation Best Interest Release at 267.
- <sup>2</sup> On the SEC’s package of initiatives, ACLI filed a [submission](#) on Proposed Regulation Best Interest, a [submission](#) on Proposed Form CRS, and a [submission](#) on the SEC’s Investment Adviser interpretations. Additional background on the SEC’s final actions and the Proposals can be found in this [memorandum](#). ACLI submitted a [response](#) to the SEC Chairman’s *Request for Information about Standards of Conduct for Broker-Dealers and Investment Advisers* (Oct. 3, 2017) found at <https://www.sec.gov/comments/ia-bd-conduct-standards/cil4-2640466-161282.pdf>. ACLI filed other submissions with the SEC at different stages of similar matters, including: 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*.
- <sup>3</sup> See ACLI comment letter at 3.
- <sup>4</sup> See SEC Regulation Best Interest Release at 98.
- <sup>5</sup> See ACLI comment letter at 10.
- <sup>6</sup> See SEC Regulation Best Interest Release at 131.
- <sup>7</sup> See ACLI comment letter at 3.
- <sup>8</sup> See SEC Regulation Best Interest Release at 18.
- <sup>9</sup> See ACLI comment letter at 8.
- <sup>10</sup> See SEC Regulation Best Interest Release at 20.
- <sup>11</sup> See Reg BI Section 240.15l-1(a) (iii).
- <sup>12</sup> See ACLI Submission at 4, 17, 22.
- <sup>13</sup> See SEC Adoption Release at 39.
- <sup>14</sup> See SEC Adoption Release at 64.
- <sup>15</sup> *Id.* at 8.
- <sup>16</sup> See ACLI Submission at 12, 16.



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