

A FIRM'S GUIDE TO THE IMPLEMENTATION OF REGULATION BEST INTEREST AND THE FORM CRS RELATIONSHIP SUMMARY

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Deloitte.



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Preface: How to use this Guide

This Guide provides an overview of Regulation Best Interest (“Reg BI”)² and the Form CRS Relationship Summary (“Form CRS”)³, as adopted by the U.S. Securities and Exchange Commission (“SEC”), and provides a summary of considerations for firms to satisfy compliance with the respective rule amendments.⁴ The Guide aims to assist firms in understanding the various Reg BI and Form CRS requirements and their potential impacts. The Guide begins with recommendations for developing a Reg BI implementation governance program and an outline for and their potential impact on firms.

The subsequent chapters of the Guide elaborate on specific Reg BI obligations and also address the requirements for Form CRS filing and delivery. Considerations for implementation are embedded within these chapters and are specific to the Reg BI obligation being addressed in the respective chapter. The chapter on the Reg BI Compliance Obligation describes a potential framework for firms to achieve compliance with the respective rules. The Guide closes with details on recordkeeping obligations for firms under amendments made to industry recordkeeping rules.⁵

This Guide provides an overview of Reg BI and Form CRS requirements as well as considerations for implementation; however, **this Guide is not meant to serve as a replacement for the regulatory requirements described in the SEC Final Rule releases as communicated on www.sec.gov**. The final texts for Reg BI and Form CRS contain a number of specific and detailed requirements along with related clarifications. Firms are encouraged to read the two adopting releases to familiarize themselves with specific examples and determine if, and how, such examples might apply to their businesses when preparing an implementation plan.⁶

The SEC has also recently published two compliance guides for small firms: *Regulation Best Interest: A Small Entity Compliance Guide*⁷ and *Form CRS Relationship Summary; Amendments to Form ADV: A Small Entity Compliance Guide*⁸. Firms are encouraged to read these compliance guides as well to familiarize themselves with the SEC guidance provided therein.

Note: This Guide attempted to standardize terminology between the use of the terms “retail customer”, “retail client”, and “retail investor” as the terms are defined and used differently between the Reg BI and Form CRS adopting releases given their applicability and scope. In certain sections of this Guide, a particular term may be used for alignment in terminology with the respective adopting release and for this reason may appear to be inconsistent from section to section. Firms should defer to the SEC guidance and rule language for clarity on definitions and usage in particular contexts.

² Securities and Exchange Commission. 17 CFR Part 240. Release No. 34-86031; File No. S7-07-18. Regulation Best Interest: The Broker-Dealer Standard of Conduct.

³ Securities and Exchange Commission. 17 CFR Parts 200, 240, 249, 275, and 279. Release Nos. 34-86032; IA-5247; File No. S7-08-18. Form CRS Relationship Summary; Amendments to Form ADV.

⁴ Regulation Best Interest amended the Securities Exchange Act of 1934 and applies to registered Broker-Dealers (see CFR 17a-14). Form CRS Relationship Summary amended both the Securities Exchange Act of 1934 and the Investment Adviser’s Act of 1940 and applies to both broker-dealers and registered investment advisers (e.g., see CFR 204-5).

⁵ For Broker-Dealers, Rule 17a-3 and 17a-4 under the Securities Exchange Act of 1934. For registered investment advisers, Rule 204-2 under the Investment Adviser’s Act of 1940.

⁶ The SEC also published interpretative guidance entitled, *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* and *Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser*. See SEC website for access to these releases.

⁷ Securities and Exchange Commission. <https://www.sec.gov/info/smallbus/secg/regulation-best-interest>. 2019.

⁸ Securities and Exchange Commission. <https://www.sec.gov/info/smallbus/secg/form-crs-relationship-summary>. 2019.

1. Introduction

On June 5, 2019, the U.S. Securities and Exchange Commission (“SEC”) adopted new regulations governing the conduct of broker-dealers (interchangeably, “Broker-Dealers” or “Firms”) and their natural persons who are associated persons (“Associated Persons”), particularly with regard to the manner in which these Firms provide investment recommendations to their customers.⁹ Regulation Best Interest (“Reg BI”) amends the Securities Exchange Act of 1934 (the “Exchange Act”) and imposes principles-based standards on recommendations to retail customers, requiring that Broker-Dealers and their Associated Persons, among other things, act in “the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the Broker-Dealer ahead of the interests of the retail customer.”¹⁰

To meet their best interest obligations, Broker-Dealers that provide investment recommendations to their retail customers must adhere to a number of requirements, including the above principles-based standard (referred to also as the “General Obligation”), as well as specific disclosure, care, conflict of interest, compliance obligations. Firms must also adhere to enhanced recordkeeping requirements. Reg BI aims to provide retail customers with full and fair disclosure about the products and services offered by Broker-Dealers, including relevant conflicts of interest, to allow these customers to make appropriate investment decisions pertinent to their investment goals and needs while understanding the associated risks with such decisions.¹¹

Broker-Dealers and registered investment advisers (“RIAs”, and together with Broker-Dealers, “Registrants”) are also required to file with the SEC and deliver to retail customers a Customer Relationship Summary Form to meet the obligations imposed by the Form CRS Relationship Summary (“Form CRS”).¹² Under Form CRS, in no more than two pages, a Registrant is required to disclose information to its retail customers about the Registrant’s business practices, including its registration status, its relationship and services to the retail customer, the fees, costs, conflicts of interests, and standards of conduct as it relates to those services, and the disciplinary history of the Registrant.¹³ This disclosure requirement is intended to provide retail customers with an understanding of a Registrant’s relationship and business practices to allow them to make informed decisions when selecting a Registrant with which to conduct business.

The compliance date for Reg BI, the Form CRS rule amendments, and their associated recordkeeping requirements (hereafter, referred to collectively as the “Reg BI Rule Package”) is June 30, 2020, and this Guide is meant to provide Registrants with frameworks and considerations for designing, implementing, and managing their obligations. This Guide is not meant to provide a prescriptive framework for implementation or interpretative guidance under the Reg BI Rule Package. The below graphic illustrates these differences:

⁹ See Securities and Exchange Commission Release Nos. 34-86031; 34-86032; IA-5247

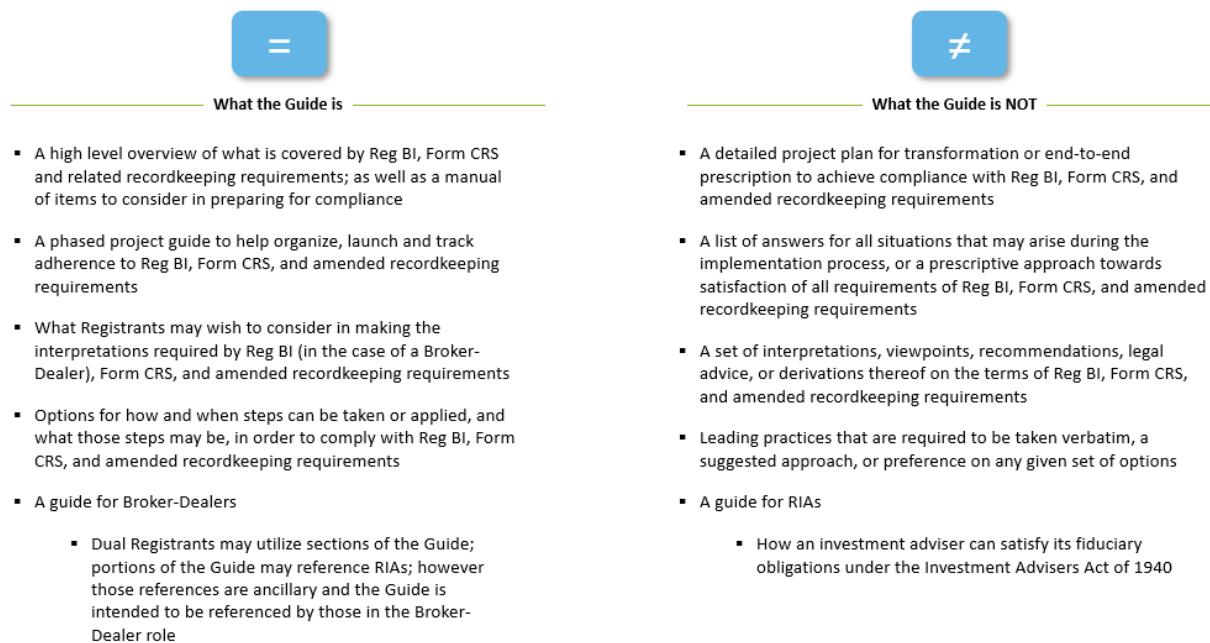
¹⁰ See Executive Summary. *Regulation Best Interest: The Broker-Dealer Standard of Conduct*. SEC. 2019.

¹¹ See page 213. *Regulation Best Interest: The Broker-Dealer Standard of Conduct*. SEC. 2019.

¹² For registered investment advisers, the SEC also amended the Investment Adviser’s Act of 1940 for purpose of Form CRS (see CFR 204-5).

¹³ For registered investment advisers, the SEC also amended the Investment Adviser’s Act of 1940 for purposes of Form CRS (see CFR 204-5).

Figure 1: Purpose of this Guide



2. Program Governance

This section is intended to identify key design, implementation, and ongoing delivery considerations for developing an implementation plan for a Reg BI Rule Package program (a “Reg BI Program”), specifically:

- (1) Identifying key stakeholders, business functions, roles, and responsibilities;
- (2) Assessing organizational readiness for Reg BI Program requirements;
- (3) Developing a workforce and customer change management and communication strategy;
- (4) Acknowledging other regulatory considerations in tandem with Reg BI Program implementation;
- (5) Providing an illustrative timeline for program implementation; and
- (6) Providing considerations for estimating program implementation costs

2.1. Identifying key stakeholders, business functions, roles, and responsibilities

Successful implementation of a Reg BI Program should consider the identification, engagement, and management of multiple legal, compliance, business, and shared services stakeholders in order to design, implement, and manage an effective rule implementation program with appropriate program governance. Given the multiple and complex requirements within Reg BI, it is imperative that an appropriate stakeholder analysis is conducted by Broker-Dealers implementing such an implementation program. Understandably, Firms vary in size, organizational structure, and the degree of responsibility among different stakeholders and functions. As such, the following list is not intended to prescribe all necessary stakeholders and their required functions for a robust implementation program. Firms should assess their organizational structure and identify such stakeholders as necessary and appropriate for their business model given differences in roles and responsibilities across Firms.

Below are considerations for Broker-Dealers in conducting such stakeholder analysis.

2.1.1. *Line of Business Leadership*

Primary Role:

Serve as decision-maker for business or product strategy and operational impact questions as identified and recommended by program management.

Primary Responsibilities:

- (1) Approve and lead business strategy implicating products and services offered, customer acquisition and management, and employee performance management;
- (2) Approve financial or revenue drivers for the business, including sales strategy and practices implicating product pricing, customer services and associated fees, marketing and distribution, and employee or financial advisor compensation;
- (3) Oversee the assessment and resolution of conflicts of interest, including compensation and incentives
- (4) Ensure program management meets continuous delivery milestones; and
- (5) Approve program budgets and allocate resources as necessary to meet program deadlines.

2.1.2. Legal

Primary Role:

Advise compliance and business functions on interpretative questions throughout the Reg BI Program implementation.

Primary Responsibilities:

- (1) Advise on applicability of rule and scope of impact on business(es), subsidiaries, and contracted third-party service providers in consideration of other applicable regulatory obligations;
- (2) Review contractual and service agreement obligations for customers, employees, third-party service providers, and other market participants;
- (3) Review, amend, or advise Compliance on regulatory registrations, licensures, filings, disclosures, and/or third-party or customer agreements;
- (4) Perform legal responsibilities as necessary for ongoing purposes post-implementation; and
- (5) Review, identify, and amend applicable disclosures.

2.1.3. Compliance

Primary Role:

Create or enhance existing compliance program to address Reg BI Rule Package requirements; Serve as liaison between legal and business functions; Advise business function on compliance requirements throughout the rule implementation program.¹⁴

Primary Responsibilities:

- (1) Develop and revise Firm compliance policies and procedures, in coordination with relevant business and other stakeholders, to ensure compliance with rule requirements;
- (2) Provide compliance advisory services to overall program management considering aspects of change management on a Firm's compliance program;
- (3) Provide oversight for review of advertising, digital tools, marketing, and program development;
- (4) Identify and ensure appropriate licensure and registration for all regulated work of the Broker-Dealer and the individuals performing such work;
- (5) Develop oversight, monitoring, testing, and inspections procedures for program implementation procedures;
- (6) Design, develop, and administer licensing, education, and training program for impacted employees;
- (7) Enhance the compliance testing plan to accommodate changes to controls, business activities, etc.;
- (8) Conduct post-implementation compliance inspection, assessment, or review; and
- (9) Manage appropriate compliance surveillance as necessary for ongoing purposes post-implementation, including any necessary business reporting.

¹⁴ The roles and responsibilities of Compliance may vary at different firms.

2.1.4. Human Resources

Primary Role:

Serve as business function support and change management lead throughout the Reg BI Program implementation related to changes to business strategy or practices, compensation or performance management practices, talent acquisition strategy, and/or licensing, education, and training practices.

Primary Responsibilities:

- (1) Review, and amend or revise if necessary, employee compensation, benefits, or performance management statements, agreements, or plans¹⁵;
- (2) Review, design, develop, and administer changes to talent acquisition or talent management strategies; and
- (3) Design and execute internal communications strategy.

2.1.5. Product

Primary Role:

Serve as subject matter expert for Firm investment philosophies, product analyses, investment recommendations, and their associated risks.

Primary Responsibilities:

- (1) Develop investment recommendation justifications for Firm's product lineup, including information about the target customers, the benefits of the investment product, the risks and costs associated with the investment product, and other such information as necessary for marketing, sales process, or training purposes;
- (2) Create and develop investment content for marketing and sales distribution materials or other such customer communications; and
- (3) Ensure marketing and sales distribution materials are accurate, fair, and balanced regarding investment products; conversely, ensure risks associated with such materials are appropriately disclosed for initial implementation and for ongoing purposes post-implementation.

2.1.6. Marketing

Primary Role:

Serve as liaison between investment management, legal, compliance, and business functions to create, coordinate, and deliver marketing materials, communications, and required disclosures to customers throughout program implementation and thereafter.

¹⁵ Such action may be required if the firm participates in a pay-for-referral, pay-for-enrollment, stock incentive compensation plan, or other compensation-based or commission-based compensation program for sales or trading employees. See Conflicts Obligation for more information.

Primary Responsibilities:

- (1) Create, coordinate, and deliver marketing materials, strategic communications, and required disclosures to customers throughout rule implementation program and thereafter;
- (2) Assess and inform business functions on strategic messaging, customer and competitive responses, and market participant dynamics throughout rule implementation program; and
- (3) Ensure consistency across new and dated marketing materials for ongoing purposes.

2.1.7. Technology

Primary Role:

Serve as business function support and technical lead for technology enhancements, upgrades, or onboarding of systems or third-party service provider integration throughout rule implementation program.

Primary Responsibilities:

- (1) Serve as technical subject matter expert on technology enhancements, versioning, upgrades, or vendor procurement as necessary for Reg BI Program implementation;
- (2) Design, build, and test systems integration and/or third-party service provider integration necessary for Reg BI Program implementation;
- (3) Ensure system access, change control, supervision, and oversight are appropriately designed and built for compliance obligations; and
- (4) Ensure information security, data privacy, and technology risk and control requirements to meet applicable Firm policies, industry standards, and regulatory compliance requirements.

2.1.8. Business Management

Primary Role:

Lead business strategy and operational transformation as necessary for the Reg BI Program implementation.

Primary Responsibilities:

- (1) Ensure ongoing execution of operational functions of the Broker-Dealer, including all applicable regulatory requirements for front-, middle-, and back-office business functions;
- (2) Design, develop, and administer appropriate supervision and oversight of obligations imposed by Reg BI for both operational and employee purposes;
- (3) Design, develop, and administer an appropriate business and systems control environment to ensure compliance with obligations imposed by Reg BI and other associated regulatory requirements; and
- (4) Manage and inform appropriate shared services stakeholders for ongoing purposes as business strategy or operational changes occur.

2.1.9. Finance

Primary Role:

Serve as liaison between business and shared services functions in assessing and modeling financial impact on implementation costs and changes to business strategy.

Primary Responsibilities:

- (1) Assess and model the financial impact of changes to pricing, fees, commissions, or other financial changes to products, services, and employee or financial advisor compensation;
- (2) Assess and plan for costs associated with Reg BI Rule Package compliance; and
- (3) Manage ongoing financial modeling as new products are launched, and business strategies and product and service offerings are developed.

2.1.10. Risk

Primary Role:

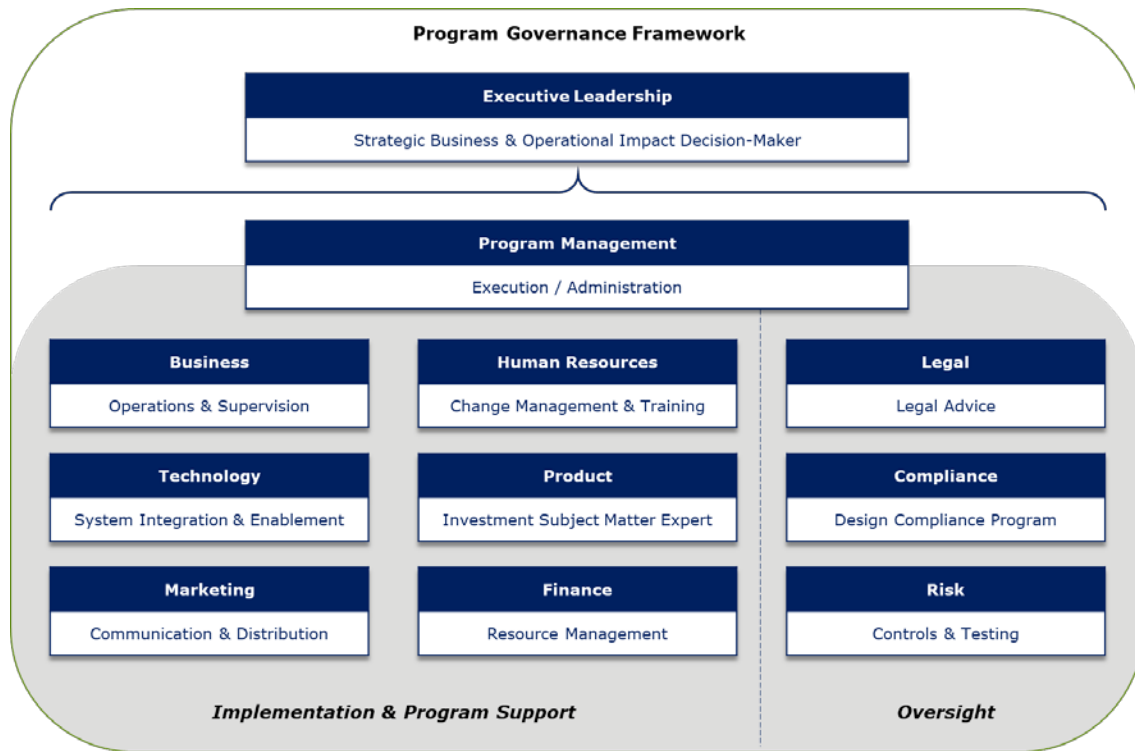
Serve as liaison between or in tandem with compliance and business functions in the design, implementation, and testing of the business control environment; Advise business function on its risk profile and associated mitigation strategies throughout the Reg BI Program implementation.

Primary Responsibilities:

- (1) Conduct initial-state risk assessments to understand business's overall risk profile with regard to products and services offered, potential conflicts of interest (e.g., business line, compensation), and third-party service provider vulnerabilities;
- (2) Engage business, technology, and shared services stakeholders throughout rule implementation program to ensure risks are appropriately identified and mitigated given proposed changes to people, process, technology, and business strategy;
- (3) Design, develop, and implement necessary controls as changes to people, process, technology, and business strategy are developed as a result of Reg BI Program; and
- (4) Conduct post-implementation risk assessments and ongoing control testing to ensure business is appropriately managing its risk profile.

Below is a representative program governance framework with identified stakeholders and suggested primary roles throughout rule implementation as roles and responsibilities vary across Firms.

Figure 2: Reg BI Program governance framework



2.2. Assessing organizational readiness for Reg BI Program implementation

Many considerations for assessing a Firm's organizational readiness depend on an initial-state business model. This initial-state model accounts for the size, scope, and complexity of the Firm's business model, including the products and services it offers its customers. Firms with more uniform product and service offerings, centralized supervision structures, and simplified or model investment philosophies will likely find lower organizational readiness barriers to adopting Reg BI Rule Package requirements. Conversely, Firms offering more complex products and service offerings, decentralized supervision structures, and more nuanced or competing investment philosophies across business lines will likely find higher organizational readiness barriers given the change management necessary to meet the various requirements of the Reg BI Rule Package.

The framework below seeks to assist program management in assessing its Firm's organizational readiness to adopting Reg BI Rule Package requirements. This framework is neither comprehensive nor exhaustive; rather, it identifies key questions involving people, process, technology, and business strategy that Firms may consider in determining the organizational readiness for a program governance structure. Answers to such questions will likely implicate the degree to which implementation efforts impact a Firm's operations, strategy, and people.

Table 1: Potential framework for organizational readiness

Category	Topic	Change Management Considerations
People	Employee Management (Talent Acquisition, Retention, Management)	<ul style="list-style-type: none"> • Does the Firm retain the technical talent necessary to meet its obligations imposed by the Reg BI Rule Package, including administration, enforcement, and interpretation? • Does the Firm appropriately manage the technical talent necessary to meet its obligations imposed by the Reg BI Rule Package? • Does the Firm anticipate additional resources are, or will be, required for implementation of obligations imposed by the Reg BI Package?
	Customer Management (Customer, Vendor, Market Participant Management)	<ul style="list-style-type: none"> • Does the Firm understand the applicability of the Reg BI Rule Package on its customer populations? • Does the Firm understand and appropriately manage its customer population demographics? For example, does the firm appropriately provide products and services that are suitable for its customer demographics? • Does the Firm effectively and appropriately manage its customer acquisition strategy? • Does the Firm appropriately manage its customer relationships to ensure it is acting in the best interest of such? • Does the Firm adequately understand the components of the customer life cycle and the individual customer needs at each stage of the cycle?
	Financial Advisors	<ul style="list-style-type: none"> • Does the Firm appropriately manage financial advisors' understanding of the differences between risks and costs across products? • Does the Firm provide financial advisors the tools necessary to facilitate client management and investment recommendation processes?
Process	Compliance Program	<ul style="list-style-type: none"> • Are the appropriate people positioned to assist with the development of policies and procedures for Reg BI Rule Package compliance and conflict mitigation? Are individuals appropriately identified as Associated Persons for purposes of Broker-Dealer oversight and surveillance? • Are individuals appropriately registered to conduct securities and supervisory activities on behalf of the Broker-Dealer (e.g., Series 24, Series 65)?
	Supervision	<ul style="list-style-type: none"> • Does the Firm employ an appropriate number of supervisory principals to reasonably conduct

Category	Topic	Change Management Considerations
		<p>supervision of registered persons on behalf of the Broker-Dealer?</p> <ul style="list-style-type: none"> • Does the supervisory structure exist as a centralized or decentralized model? Does this supervisory structure meet the compliance requirements of the Reg BI Rule Package? • Does the Firm appropriately manage the risk profile of branch offices? • Does the Firm have appropriately-designed policy escalation and exception procedures? • Does the Firm have an aggregated view of its data to identify trends and high-risk behavior?
	Sales / Compensation Practices	<ul style="list-style-type: none"> • Does the Firm employ sales practices or compensation practices that conflict with the obligations imposed by the Reg BI Rule Package? • Does the Firm employ an appropriately-designed compensation model for sales personnel, relationship managers, registered representatives (“RR”), and/or Associated Persons? • Does the Firm appropriately monitor or mitigate risk in its employee compensation programs? • Does the Firm understand the risks associated with pay-for-referral, stock compensation plan, pay-for-enrollment, or similar sales-based compensation programs? Are these risks appropriately identified, documented, controlled, and/or mitigated?
	Performance Management	<ul style="list-style-type: none"> • Does the Firm have an appropriate incentive and disincentive program structure to manage the performance of its registered persons? • Are the consequences for performance management or policy violations appropriately designed to mitigate their associated risks and/or disincentivize their occurrence?
Technology	System Integration	<ul style="list-style-type: none"> • Does the Firm require new or updated systems, technology, technology governance, or third-party service providers to implement requirements imposed by the Reg BI Rule Program? • Does the Firm employ document digitalization technologies or electronic delivery technologies that would aid in the delivery of Reg BI Program requirements?
	Information Technology (“IT”) Risk and Controls	<ul style="list-style-type: none"> • Does the Firm employ an appropriately-designed and adequately performing governance program for systems and their associated risks?

Category	Topic	Change Management Considerations
		<ul style="list-style-type: none"> • Does the Firm have the appropriately-established controls to mitigate operational risks pertinent to its business model? • Does the Firm properly educate and train IT personnel on the regulatory responsibilities imposed by Reg BI in its development of software and technology on behalf of the Firm?
	Oversight and Monitoring	<ul style="list-style-type: none"> • Does the Firm adequately understand its compliance obligations for onboarding or employing third-party service providers for Reg BI Program purposes? • Does the Firm have appropriately-designed and adequately performing due diligence oversight of new or existing third-party service providers? • Does the Firm have identified and documented points of contact for new and existing third-party service providers for crisis management, business contingency, and operational excellence purposes? • Does the Firm appropriately manage its third-party service providers in order to ensure it is meeting its obligations imposed by the Reg BI Rule Package?
Strategy	Products Offered	<ul style="list-style-type: none"> • Does the Firm promote certain products over others across business lines that potentially present a conflict of interest? For example, does the Firm give preferential treatment to new product offerings that are equally suitable for customers?
	Services Offered	<ul style="list-style-type: none"> • Does the Firm understand its obligations imposed by the Reg BI Rule Package as a result of these service offerings?

2.3. Developing a workforce and customer change management and communication strategy

2.3.1. Change management strategy

Based on a Firm's business model, the scope and complexity of its products and services, its customers, and its sales and compensation practices, the degree to which change management considerations affect its program governance could vary significantly. While not intended to provide a prescriptive change management strategy, the following framework provides considerations for Firms as they develop a change management strategy for Reg BI Program implementation that is appropriate in scope and design for the Firm's specific needs.

The change management strategy framework assesses key questions involving people, process, technology, and business strategy which Firms may consider as part of a program governance structure. Answers to such questions will likely implicate the degree to which implementation efforts impact a Firm's operations, strategy, and people.

In general, the following table outlines high-level change management tasks that Firms may wish to consider as part of their rule implementation program. With all topics, a Firm may need to consider if a particular topic applies to the Firm's implementation efforts, and if so, what degree of effort the Firm will need to dedicate to such topic. Answers to these topics will implicate overall program implementation costs and implementation timelines.

Table 2: Potential framework for change management strategy

Category	Topic	Change Management Considerations
People	Education and Training	<ul style="list-style-type: none"> • Annual Compliance Meeting • Job-specific trainings • Policy and procedure trainings
	Human Resources	<ul style="list-style-type: none"> • Employee and financial advisor compensation practices (e.g., incentive compensation) • Talent acquisition and retention practices • Performance management changes
	Licensing and Registration	<ul style="list-style-type: none"> • For non-dually registered Firms, a review of the use of the terms "financial advisor" or "advisor" in marketing materials, customer communications, and registered persons representations • Registration of persons (e.g., Series 65 requirements)
Process	Policies and Procedures	<ul style="list-style-type: none"> • Written Supervisory Procedures • Registered principal responsible • Escalation procedures (for policy questions) • Exception procedures (for Firm policies and procedures) • Complaint handling (identification and remediation) • Books and records • Conflict of Interest policies and procedures • Reg BI Program policies & procedures
	Regulated Work	<ul style="list-style-type: none"> • Regulatory filings (e.g., Form CRS, Form BD changes if applicable) • Books and records (e.g., Form U4, U5 changes) • Outside business activities • Code of Ethics • Political contributions • Gifts and entertainment
	Oversight	<ul style="list-style-type: none"> • Control testing • Control and operational oversight • Surveillance changes
	Supervision	<ul style="list-style-type: none"> • Associated Persons • Financial operations • Front-office operations • Middle/Back-office operations • Books and records • Communications • Marketing (forward and backward looking) • Trading (oversight/surveillance of RR or financial advisor trades; market participants)

Category	Topic	Change Management Considerations
		<ul style="list-style-type: none"> • AML/FinCEN • Powers of attorney or authorized agents on accounts
Technology	System Integration	<ul style="list-style-type: none"> • Ownership and decision-making structure for implementation • Ongoing management and oversight
	Process Automation	<ul style="list-style-type: none"> • Opportunities to automate or consolidate processes • Implement automated, preventative system controls • Enhance data analytics and reporting technologies
	Vendor Management	<ul style="list-style-type: none"> • Vendor identification and due diligence • Vendor procurement
	Books & Records	<ul style="list-style-type: none"> • Contract requirements • Data privacy • Service agreements • Control documentation
Strategy	Sales Practice	<ul style="list-style-type: none"> • Product offerings (i.e., self-directed vs. recommended) • Digital vs. face-to-face recommendations • Model portfolios (vs. managed accounts) • Share classes (particularly, as investment recommendations) • Business lines (e.g., conflicts of interest, sales strategy) • Customer acquisitions (e.g., cold-calling, etc.) • Financial advisors' compensation
	Compensation	<ul style="list-style-type: none"> • Employee compensation • Product fees (e.g., share class pricing) • Trading commissions (self-directed, online vs. call) • Administrative fees (e.g., 12b-1 fees)
	Sales and Service Offerings	<ul style="list-style-type: none"> • Account administration (e.g., managed, discretionary) • Solicited vs. unsolicited trades (e.g., individual, RIA, Investment Adviser Representative ("IAR"), RR) • Account monitoring (initial and ongoing) • Account type (e.g., managed, brokerage v. advisory, 401k rollovers) • Account trading (solicited vs. unsolicited) • IRA account services (e.g., terms and conditions)
	Products	<ul style="list-style-type: none"> • Suitability recommendations (e.g., share class, similar investment objectives, pricing) • Trade aggregation (and its associated fees) • Product shelf considerations (e.g., open or proprietary)

2.3.2. Communication strategy

An appropriately designed communication strategy may be required, given the degree to which a Firm chooses to modify its product and services marketing, business strategy, and operations as a result of Reg BI Program implementation. A well-planned and organized communication strategy will consider both internal and external stakeholders as part of its communications. Internal stakeholders could include employees, business and operational management, marketing, and other specialized functions within Firms as necessary. External communications could include Firm customers, the public, third-party service providers, other market participants and utilities, and regulators. The framework below offers suggestions

that a Firm may consider in an overall communication strategy as part of Reg BI Program implementation. Firms may wish to consider how such communications take into account important factors in terms of audience, timing, messaging, and impact or reaction.

Definitions for Communication Strategy Framework:

- **Business strategy** – communications describing changes to business strategy that could implicate inbound vs. outbound sales, customer and product prospecting, etc.
- **Education** – communications detailing or administering educational or awareness materials
- **Change management** – general communications describing implications to employee or business practices, including employee compensation, compliance, performance management, job description changes, etc.
- **Operations** – communications describing operational or infrastructure changes, including vendor procurement, technology enhancements, etc.
- **Product / service** – communications describing changes to discretionary trading practices, securities recommendation practices, account services offered, etc.
- **Fees / commissions** – communications describing changes to customer or customer billing, fees, commissions, or other associated costs borne by such individuals
- **Required customer notice** – communications describing changes to Firm registrations, licensures, marketing materials, or service agreements or contracts for customers and/or third-party service providers which require customer notice, including account service agreements, data privacy sharing agreements, etc. Retail customers can also be notified to expect the delivery of Form CRS starting from June 30, 2020.
- **Required regulatory notice** – communications to regulators describing changes to Firm registrations, licensures, or marketing materials as required by applicable regulatory requirements (e.g., Form BD, Form CRS, Form ADV changes) or account service agreement changes (e.g., IRA service agreement), etc.

The following framework proposes internal and external stakeholders that Firms may consider in implementing a robust and effective communication strategy as part of its Reg BI Program implementation:

Table 3: Potential framework for communication strategy

Category	Group	Topic of Communication
Internal Stakeholders	Employees (e.g., financial advisors, registered principals)	<ul style="list-style-type: none"> ● Business strategy ● Education ● Change management ● Product / service ● Operations
	Management	<ul style="list-style-type: none"> ● Business strategy ● Education ● Change management ● Product / service ● Operations

Category	Group	Topic of Communication
	Marketing	<ul style="list-style-type: none"> • Business strategy • Education • Change management • Product / service
	Specialized business functions	<ul style="list-style-type: none"> • Business strategy • Education • Change management • Product / service • Operations • <i>Additionally, Firms may consider: Enterprise risk management, data privacy, financial crimes oversight changes</i>
External Stakeholders	Customers	<ul style="list-style-type: none"> • Business strategy • Product / service • Fees / commissions • Required customer notice
	The Public	<ul style="list-style-type: none"> • Business strategy • Product / service
	Third-Party Service Providers	<ul style="list-style-type: none"> • Business strategy • Product / service • Operations
	Market Utilities/Participants	<ul style="list-style-type: none"> • Business strategy • Product / service • Operations
	Regulators	<ul style="list-style-type: none"> • Business strategy • Product / service • Fees / commissions • Operations • Required customer notice • Required regulatory notice

2.4. Acknowledging other regulatory considerations in tandem with Reg BI implementation

As with any rule implementation program, Firms should holistically consider the universe of potential impacts on their other regulatory obligations given their registration status, their business and operational models, the products and services offered, their geographical location, and the jurisdiction of their regulators. While this Guide does not discuss in detail other regulatory obligations, as Firms implement changes to their business strategies, operations, products and services, or human capital management as a result of the Reg BI Program, they may wish to consider impacts on other, applicable regulatory obligations, including:

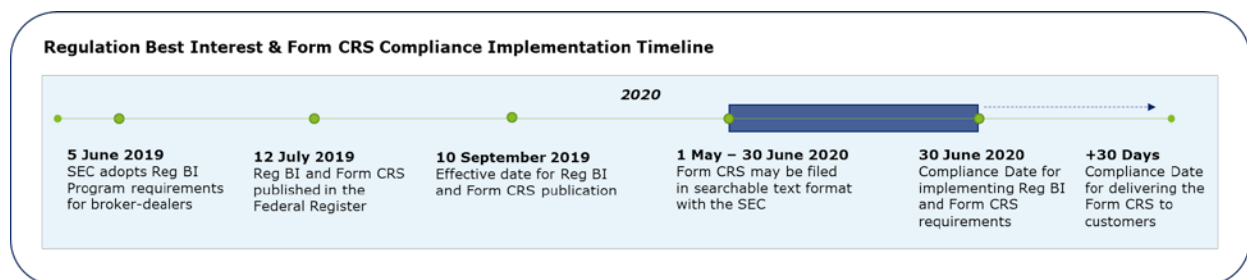
- SEC regulations;
- Financial Industry Regulatory Authority (“FINRA”) rules;
- Individual state laws and regulations;
- Municipal Securities Rulemaking Board requirements;
- Department of Treasury requirements;
- Department of Labor (“DOL”) requirements;
- Office of the Comptroller of the Currency requirements; and/or
- Emerging and existing state fiduciary requirements.

In addition, other voluntary best practices, such as the Certified Financial Planner Board of Standards, Inc. fiduciary requirements, may be considered for individuals.

2.5. Providing an illustrative timeline for program implementation

Critical to the success of effective program governance is the understanding of the various program milestones and compliance dates for Reg BI Rule Package implementation. Below is a depiction of the compliance dates as set forth by the SEC in publishing the Reg BI Rule Package adopting releases.¹⁶

Figure 3: Reg BI Program compliance implementation timeline



In consideration of the approaching compliance dates in June 2020, Firms should maintain perspective of how these dates align with other operational considerations and budget priorities. For example, the compliance date marks the end of the second business quarter, and Broker-Dealers often execute a number of functions at quarter-end, including sending customer account statements, filing quarterly regulatory reports, or finalizing and closing financial books. These competing priorities may pose operational or budgetary constraints that may need to be considered by Firms as part of Reg BI Program implementation.

2.6. Providing considerations for estimating program implementation costs

Firms may wish to consider a number of factors when determining an appropriate cost estimate for their rule implementation program. While these factors will vary largely in degree from Firm to Firm given variances in business model and organizational readiness, Firms may want to consider undergoing a formal budget review process for Reg BI Program implementation. Such a review could include considerations of both front-end and ongoing implementation costs as well as opportunities to consolidate or converge

¹⁶ Reg BI and Form CRS adopting releases were published in the Federal Register with an effective date of September 9, 2019. See footnote 2 and 3, respectively.

collective business efforts (e.g., technology enhancements or process automation) to maximize cost-reduction potential.

Possible cost considerations for Reg BI Program implementation and ongoing expenditures could include the following:

Table 4: Possible cost considerations for program implementation

Category	Potential Implementation Costs
Human Capital	<ul style="list-style-type: none"> • Additional full-time employees (e.g., ongoing surveillance, oversight, supervision, and reporting) • Reallocated full-time employees (e.g., ongoing surveillance, oversight, supervision, and reporting) • Third-party resources (e.g., contractors, vendors, outside counsel spends) • Ongoing surveillance and reporting activities • Ongoing supervision and monitoring of employees • Ongoing compliance considerations
Operational Impacts	<ul style="list-style-type: none"> • Program evaluations (e.g., compensation structure, product due diligence, account type recommendations, conflicts of interest, service offerings, customer service-level impacts) • Performance management changes • Education and training programs • Disclosures and communications delivery • Marketing materials review (i.e., current-state and future materials) • New or enhanced business processes • New or enhanced business controls • Opportunity deferrals and business plan disruption impacts
Technology Investments	<ul style="list-style-type: none"> • Process automation or enhancements • Data analytics and reporting • Vendor procurement or system integration • Supervisory controls • Software or product licensing fees

In considering program implementation costs and expected ongoing expenditures, many Firms undertook a similar exercise when considering the DOL fiduciary rule proposal in 2017. While not an exact comparison, Firms may find it efficient to benchmark against prior DOL fiduciary rule program cost estimates when assessing the impact of Reg BI Program requirements. As a comparison, the following industry data was published by Deloitte in August 2017 following input from industry participants.¹⁷ From the DOL fiduciary rule's issuance in April 2016 to the publication of the report in August 2017, financial institutions reported a total spend to-date (i.e., "start-up costs") of \$595 million with an anticipated \$200 million spend for the remainder of 2017.¹⁸ Additionally, the table below illustrates the average spend (based on size) of these financial institutions:

¹⁷ The DOL Fiduciary Rule: A study of how financial institutions have responded and the resulting impacts on retirement investors. Deloitte & Touche LLP. August 2017. All references below in the remainder of this section refer to this publication.

¹⁸ The DOL Fiduciary Rule: A study of how financial institutions have responded and the resulting impacts on retirement investors. Deloitte & Touche LLP. August 2017. Page 17.

Figure 4: Average spend (based on size) for financial institutions

Financial Institution Size	Net Capital	Average Start-Up Spend Per Financial Institution (\$MM)	Average Ongoing Spend Per Financial Institution (\$MM)
Large	Greater than \$1 billion	\$54.64	\$5.89
Medium	\$50 million to \$1 billion	\$16.37	\$3.15
Small	Less than \$50 million	\$2.3	\$1.1

From the same study, Deloitte multiplied the average cost estimate of each financial institution size category by the number of institutions in their respective size category.¹⁹ This calculation yielded the following cost estimates for both Broker-Dealer “start-up costs” to implementation and ongoing annual costs for compliance.

Figure 5: Estimated total Broker-Dealer start-up costs

Estimated total broker-dealer start-up costs to comply with Rule requirements				
Financial Institution Size Category	Number of Financial Institutions	Cost Per Financial Institution (\$MM)	Total Cost (\$MM)	DOL 2016 Projection ¹⁶ (\$MM)
Large	42	\$ 54.64	\$ 2,295	
Medium	147	\$ 16.37	\$ 2,407	
Estimated Total Start-up Cost			\$ 4,702	\$2,052- \$3,001

Figure 6: Estimated total ongoing annual costs

Estimated total ongoing annual costs to comply with Rule requirements				
Financial Institution Size Category	Number of Financial Institutions	Cost Per Financial Institution (\$MM)	Total Cost (\$MM)	DOL 2016 Projection ¹⁷ (\$MM)
Large	42	\$ 5.89	\$ 248	
Medium	147	\$ 3.15	\$ 463	
Estimated Ongoing Annual Cost			\$ 711	\$463 - \$679

It is expected that each Firm will approach its rule implementation governance program independently with particular consideration and attention given to its interpretation of the Reg BI Program, its business model and objectives, its product and service offerings, and its risk appetite for compliance.

¹⁹ ^Ibid. Number of Broker-Dealers in industry, per DOL: Large, n = 42; Medium, n = 147; Small, n = 2,320. Deloitte Whitepaper (2017); page 18.

3. Understanding the Rule and assessing impact

This section provides a framework for Firms to understand the Reg BI Rule Package requirements and its impact on their business and operations. This includes identifying key stakeholders and decision makers, establishing subject matter expertise, agreeing on the meaning of rule requirements, and making business decisions associated with the requirements.

This section is intended to identify key elements for consideration when developing an approach to compliance with a Reg BI Program, specifically:

- Conducting an impact assessment to develop a clear understanding of how the Firm is currently addressing the elements of the Reg BI Rule Package and assessing how Reg BI Program requirements will impact the current state
- Making business decisions on how to respond to Reg BI Program impacts
- Designing changes to current-state operations intended to support the business decisions taken and address compliance gaps in the current-state model

This section will also identify various points in the customer life cycle where the Reg BI Program should be considered.

3.1. Understanding Reg BI

Reg BI is a significant regulatory change with components and elements that directly or indirectly affect various units and divisions of a Firm. Hence, it is recommended that the Reg BI Rule Package and its core requirements are understood by impacted functions within the Firm, including product, operations, compliance, legal, technology, and finance. Without a consistent understanding of the regulation, Firms may be challenged to assess the impact of the Reg BI Program and identify, escalate, and resolve items supporting rule compliance and business decisions. At the same time, these functions need to have a consistent understanding of the Reg BI Program, so that they are synchronized and coordinated, leading to cohesive efforts across the Firm.

There are opportunities for differences in understanding the requirements by different functions, as Reg BI, itself, is not definitive or prescriptive in various instances (e.g., the definition of “best interest” and “reasonably designed” policies and procedures). Firms may wish to consider conducting workshops with participants from each of the impacted functions. These workshops might serve as the foundation for further impact analysis across various divisions and businesses. They may also be a platform for the stakeholders to come together to identify and plan the future course of action as it pertains to Reg BI Program compliance.

Firms should consider establishing a core Reg BI Program team with representation from multiple functions (e.g., operations, compliance, legal, technology, risk, product), to undertake the various activities needed to comply with Reg BI Rule Package requirements. This team may consist of internal and/or external resources. Below are the pros and cons of involving internal resources vs. external resources for a Reg BI Program team:

Table 5: Pros and cons of involving internal resources vs. external resources for a Reg BI Program team

Option/ Parameter	Internal Resources	External Resources	Both Internal and External Resources
Pros	Identifying a core group of internal resources enables Firms to leverage groups and individuals who already have a strong understanding of the Firm, its business and product line, e.g., resources previously involved with the DOL fiduciary rule may be leveraged to support this effort.	Engaging external resources to support the Firm in understanding Reg BI may provide additional marketplace perspective and reduce the demand on internal resources who may not have bandwidth to support Reg BI efforts in addition to business as usual (“BAU”).	This has the potential to take the best of both options; internal resources will provide Firm-level insights while external resources will bring expertise and industry insights. Internal resources may have capacity to focus on BAU while available to provide Firm-level information.
Cons	The time and opportunity cost of engaging these resources may be relatively high as BAU may be impacted and other initiatives may be delayed. Firms may be challenged to identify industry leading practices as it relates to the questions they are seeking to answer.	The direct cost is higher but the demand on internal resources is lower as they are able to focus on the issues requiring decisions rather than understanding rule requirements.	It may require a strong Program Management Office (“PMO”) to ensure efficient team coordination and management of associated costs; communication is critical so the information between internal and external resources need be exchanged in a timely manner.

Broker-Dealers may choose one option over others depending on their history of undertaking such large compliance and transformation efforts, comfort with and understanding of the subject matter, and capacity to manage this effort in addition to BAU.

As many of the rule requirements are principles-based, this team should identify clarification points and questions and develop Firm-specific interpretations and definitions to share with the relevant parties. This team may want to conduct workshops and regular meetings for stakeholders to share the analysis, clarify questions, and ensure involvement of appropriate resources and escalation of questions and issues.

While an understanding of Reg BI Rule Package requirements is critical, the Reg BI Program team may also benefit from a robust communications framework to share Reg BI Program requirements and decisions with stakeholders impacted by rules. A framework should consider who should be communicated to, when, how and in what capacity; for example, the Firm may want to communicate updates to its field force about the product portfolio as and when a decision is made or wait until formal training is administered. The timing and medium of communication are important to consider. Firms may choose different media for

different communications to different stakeholders, and the manner and content of which they choose will be unique to each. The team may also engage external parties for communication design and delivery.

Overall, a cohesive and consistent understanding of the Reg BI Rule Package requirements will lay the foundation for understanding the potential impact of the Reg BI Program on a Firm's current-state business and help the Firm undertake decisions and changes it may want to implement in response to the rule requirements.

3.2. Business Impact

Once a working understanding of the Reg BI Rule Package has been established, Firms should consider developing an understanding of its impact on the existing business structure followed by a consideration of changes that may need to be made as a result. It is suggested that the groups responsible for understanding Reg BI Rule Package requirements engage with appropriate business owners who can provide context regarding the impact of potential changes. Particular attention should be paid to business areas that are considered critical or core to the Firm's business operations, and it is important to recognize many of these elements are interrelated and should not be considered in isolation. Areas of consideration may include:

- (1) The Firm's business structure (e.g., a Broker-Dealer, an RIA), a dual Registrant or a financial institution that has both a registered broker-dealer and a registered investment adviser as separate and distinct legal entities (a "Hybrid Firm");
- (2) The products and services offered by the Firm and its respective revenue models, including any specific limitations imposed by the Reg BI Program;
- (3) Conflicts of interest at the Firm (including its affiliates) and at the registered representative level;
- (4) Titles used to describe financial advisors (e.g., the terms "advisor" or "adviser", in marketing materials, legal entities' documents, customer agreements, and financial advisor licenses); and/or
- (5) Compensation and incentive models, including compensation differences by:
 - o Product (e.g., affiliated vs. nonaffiliated, security type, Firm, share class);
 - o Account type (e.g., brokerage, advisory, annuity, retail vs. retirement);
 - o Source (e.g., IRA rollover); and/or
 - o Incentive programs and their criteria for qualification.

A suggested approach when reviewing each of the elements mentioned above is to determine potential change(s) that the Firm may decide to make in response to the Reg BI Program and the level of impact that these change(s) may have on the business model and operations.

Illustrative Example:

Impact of Reg BI on the products and services offered under the Broker-Dealer (for dually-registered Firms)

- o *Is a change under Reg BI required or optional?* **Optional**
- o *What are potential changes that may need to be made?* **Potentially move certain services – financial planning, portfolio monitoring -- out from the Broker-Dealer and to the RIA**
- o *Is the area of impact critical to business, important to business or ancillary?* **Critical to business**

- *Could impact to the current model cause Financial Advisors or customers to leave or stay?* **Potentially leave - will require a communications program and implications for the customer and representative experience**
- *Might it present a competitive advantage?* **Potentially – by enabling the Broker-Dealer to have a more transaction focused business model**
- *Is the financial impact of the change negligible, minor, or significant?* **Potentially significant**

3.2.1. *The Firm's business structure*

Firms may operate under a variety of business structures and be registered as a Broker-Dealer, an RIA, or a dual Registrant or Hybrid Firm. The business structures drive how RRs and financial advisors engage with customers and the types of products and services they provide. Firms should consider leveraging their understanding of Reg BI Program requirements to evaluate how these different structures are impacted by rules, which may facilitate discussions among stakeholders regarding future state and potential changes.

3.2.2. *The products and services offered by a Firm and its respective revenue models*

It is important to understand how Reg BI Program requirements may impact a Firm's decision to continue to offer certain products, while possibly adding others to the product shelf. Firms may want to consider developing an inventory of all products and services currently offered, which would support additional discussion and evaluation of compensation practices, revenue models, and conflicts of interest. Suggested elements may include:

- The product type (e.g., ETF, mutual fund, individual security, annuity);
- The service type (e.g., a managed account, self-directed account or advisory, brokerage, or digital educational tools vs. providing investment advice); and
- The firm type offering a product or service (e.g., a Broker-Dealer, an RIA, a dual Registrant or Hybrid Firm).

For each product type and service, the Firm should consider undertaking a revenue analysis. This analysis might include a breakdown of the various revenue streams associated with each product type and service, as well as a breakdown of the business structures and account types under which the product types and services are offered. The Firm should also consider analyzing for each product and service type:

- The level of due diligence that is performed at the Firm and RR or financial advisor level;
- The costs to the retail customer and how such costs benchmark the cost and performance to alternatives, including alternative share classes (this would also include evaluation of how proprietary products are evaluated vs. non-proprietary alternatives);
- The level of understanding that customers, RRs, or financial advisors have of the products' or services' complexities and risks;
- The customer segment(s) to which the product or service is offered and the investing goals that it helps to address; and/or
- How the product or service is sold and the level of supervision, surveillance, and testing of sales practices.

3.2.3. *Conflicts of interest by product and service type*

Firms may want to consider developing a conflict of interest register if one does not already exist. A comprehensive catalog could include all conflicts of interest of which the Firm is aware and answer the following questions:

- To which products or services does the conflict apply?
- What is the type of conflict (e.g., client vs. client, Firm vs. client, financial consultant vs. client, financial consultant vs. Firm)?
- Is the conflict at the Firm- or RR or financial advisor-level, and how does the Firm categorize such conflicts?
- Is the conflict considered material or immaterial? Might this vary depending on the product?
- What Firm-level (including its affiliates) revenue streams and RR or financial advisor-level compensation and incentives are associated with the conflict?
- Is the conflict being mitigated? What controls and testing are in place to mitigate such a conflict? If the conflict is not currently being mitigated, is it possible to mitigate or eliminate the conflict?
- If the conflict cannot be mitigated or eliminated, is it an acceptable conflict for the Firm?
- How complex is the conflict, and how well do impacted customer segment(s) understand the conflict?
- What is the description of the conflict, including the related incentive or disincentive and other material facts?
- What is the driver of the conflict and how is it appropriately managed?
- Is the conflict appropriately disclosed?

Policies and procedures regarding conflicts of interest may also be considered, including:

- The frequency of review of existing conflicts of interest;
- A method of review of existing conflicts of interest;
- A process for reviewing and adding conflicts of interest to new products and services;
- A process for reviewing cross-functional conflicts between business functions or business lines;
- A process for evaluating conflicts of interest when a product or service is changed, or there is a business event (e.g., the Firm acquires another Firm or enters a new market); and/or
- How internal and external audiences are notified/updated when conflicts of interest are updated or modified.

Policies and procedures around conflicts of interest for products and services may be reviewed in light of the Reg BI Rule Package, including both conflicts considered to be material and non-material. The current process for identifying, reviewing, mitigating or eliminating, and disclosing conflicts of interest should be evaluated for compliance with the Reg BI Program requirements and identification of gaps. A resource or master list of potential conflicts of interest that may apply to any product or service could also be created for reference. For additional information regarding conflicts of interest, please see Section 6 of this Guide.

3.2.4. *Titles used to describe financial advisors*²⁰

When leveraging the term “advisor” or “adviser” to describe financial advisors or for other purposes, Firms should consider an evaluation of whether the term(s) are appropriate to continue using under the Disclosure Obligation of Reg BI. This may be facilitated by a thorough understanding of where the term is used and in what context. Potential places such terms(s) may be found include but are not limited to:

²⁰ Firms may also need to consider the impact of state regulation on the usage of such titles (e.g., New York).

- Marketing materials;
- Disclosures;
- Customer agreements;
- Websites; and/or
- Titles and job descriptions (e.g., on business cards).

3.2.5. *Compensation and incentive models*

Compensation programs and incentive models may benefit from a review to identify potential instances where the Firm or an Associated Person may be incentivized to place its own interests ahead of the interests of the customer and/or make a recommendation that is not in the best interest of the customer. Analysis of compensation and incentive models might consider:

- Product (e.g., affiliated vs. non-affiliated, security type, issuer, share class)
- Account type (e.g., brokerage, advisory, or annuity, retail vs. retirement, IRA type)
- Source (e.g., 401k rollover proceeds)

When evaluating compensation and incentive models, Firms might map each element of monetary and non-monetary compensation back to the Firm's conflicts of interest register. Firms also might consider evaluating if such conflicts become more acute or probable under certain circumstances (e.g., at the beginning or end of a fiscal year or near incentive plan thresholds).

Attention should be paid to compensation and incentive models and programs that encourage the sale or promotion of any one specific product or service during a limited time period, such as those that may exist during initial public offerings ("IPOs"), closed-end fund launches, or sales contests.

3.3. Potential Business Changes

Should Firms decide to conduct any such impact analysis, the Firm might consider potential changes that need to be made in response to such impact analysis and an assessment of Reg BI Program requirements. The decisioning process may be an iterative one, as decisions made in one area may have implications for other areas. For example, the elimination of a conflict of interest may require additional decisioning on product types to offer or changes to revenue and compensation models. It is important, therefore, to consider the benefits of a cross-functional approach to the decision-making process. Decision areas for consideration may include:

- (1) **Products and Services:** Will the Firm make changes to the types of products and services offered or recommended? Changes to products and services could include:
 - Removing products and services from the shelf where conflicts cannot be sufficiently disclosed, eliminated, or mitigated and determining how to address existing investors in or shareholders of these products and services; and
 - Limiting access to certain products or services as part of conflicts of interest mitigation efforts or more clearly defining to what customer segment(s) and under what circumstances such products and services may be offered or sold;
- (2) **Business Structure:** In what structure (e.g., a Broker-Dealer, an RIA, a dual Registrant or a Hybrid Firm), will the firm offer its products and services, understanding the impact of Reg BI Program requirements on each registration type? For example, a Broker-Dealer may decide to eliminate certain services, such as portfolio monitoring, and may decide to launch an RIA as an alternative structure under which to offer these services.

If contemplating a dual Registrant structure, a firm may change under which registration various customer interactions are covered, including when one interaction may potentially fall under multiple registrations (e.g., such as when a recommendation is made to a customer to move from a brokerage to an advisory account). Firms may also wish to consider how these conversions will be tracked, monitored, and disclosed for compliance purposes.

Another decision point for Firms whose Associated Persons use the term “advisor” or “adviser” is whether or not they will choose to continue to do so under Reg BI.²¹

- (3) **Revenue Models:** Will the Firm make changes to its business and revenue models? Potential changes may include the elimination of certain revenue streams associated with conflicts of interest that would be overly costly to effectively mitigate and disclose. This might, for example, include revenue-sharing or referral arrangements. The Firm may also decide to identify certain revenue streams for higher-growth rates under the Reg BI Program. Firms may wish to consider identifying these strategic work streams and also accounting for them when making compensation and incentive model decisions.
- (4) **Conflicts of Interest:** What kinds of conflicts will the Firm preserve and mitigate or disclose vs. eliminate? For those conflicts of interest that the Firm determines cannot be mitigated or eliminated and are not acceptable to the Firm, it should determine a strategy to remove those conflicts. For example, if the conflict is product or services related, a Firm might consider assessing the implications of removing such conflict from the offering and determine how to address current investors in and shareholders of the products and services to be eliminated. In other words, will the customers be required to:
 - Close the position?
 - Convert or transfer to another product? or
 - Be allowed to hold such position but not add to the holding?²²
- (5) **Compensation and Incentives:** After reaching an understanding of the various types of compensation and incentives that may be paid to financial advisors and reviewing instances where an RR or financial advisor may be incentivized to sell a particular product that could potentially be viewed as not in a customer’s best interest, Firms may wish to consider what changes would be required in order to sufficiently mitigate such a conflict. Examples of potential changes relating to retail customers include:
 - Eliminating or modifying sales contests that emphasize certain product or service sales during specified time periods;
 - Aligning compensation for similar product types;
 - Reviewing and possibly modifying or eliminating the terms under which limited time products are able to be promoted or sold;
 - Restricting or eliminating certain share classes for mutual funds;
 - Aligning compensation and incentives for promoting and selling proprietary products vs. those offered by third parties; and/or
 - Modifying the product offering shelf to support these efforts.

²¹ See footnote 18 regarding state requirements for the use of such terms and titles.

²² In this instance, the Firm will also need to consider its responsibilities to its customers who continue to hold the product or service.

3.4. Changes to Operations

The Firm may need to design changes to current-state operations to support the implementation of the Reg BI Program and to enforce compliance. Firms may consider establishing a program structure with work streams to identify gaps in current-state operations and to design such changes. Examples of work streams could include:

- (1) **Project Management/PMO:** Responsible for developing a coordinated plan to design changes to operations, inclusive of managing communications across work streams and identifying interdependencies. This function may also track overall progress, and report and escalate key issues and decisions to senior leadership.
- (2) **Compliance:** Responsible for identifying gaps and designing changes to the compliance infrastructure for Reg BI Program compliance (e.g., changes needed to compliance policies and procedures to meet the Disclosure, Care, Conflicts of Interest, and Compliance Obligations).
- (3) **Supervision:** Identifies gaps and changes required to the existing supervisory function to support rule compliance and the strategic decisions of the Firm (e.g., changes to systems and processes required to review and approve recommendations against a “best interest” standard).
- (4) **Customer experience:** Evaluates how to redesign and enhance the customer experience under the Reg BI Program, including the redesign of key processes, such as customer onboarding, rollovers and account type changes. This work stream should consider the experience of new and existing customers as well as the customer’s digital experience.
- (5) **Financial advisor experience:** Evaluates how to redesign processes related to regular activities of financial advisor (e.g., customer prospecting, customer onboarding and the making of recommendations). Redesign efforts considering how to streamline and automate these processes could help boost financial advisor satisfaction and retention during Reg BI Program implementation and during the post-implementation operating state.

The above work streams are representative only and not meant to be comprehensive. The number and nature of work streams will vary, depending on the business model and the business decisions that the Firm has decided to make in response to its Reg BI Program implementation. Although there is no single approach to designing the target-state model, it is encouraged that all Firms understand the impact of Reg BI Program requirements on their current operating model, identify gaps in the current-state model, and design a target-state model that both supports compliance and business decisions made in response to Reg BI Program requirements.

Reg BI Program requirements could potentially impact various workstreams. As an example, the below matrix considers the impact of the Conflict of Interest Obligation requirements across the example workstreams provided above. Note that this matrix may not hold true for all Firms.

Figure 7: Level of impact to a Firm's workstreams due to Reg BI Program requirements

Workstreams COI Obligation Requirements	Project Management	Compliance	Supervision	Customer Experience	Financial Professional Experience
Identification of conflicts	Low	High	Medium	Low	Low
Disclosure of conflicts	Low	High	Medium	High	High
Mitigation of material limitations on recommendations to retail customers	Low	Medium	High	High	High
Mitigation of certain incentives to associated persons	Low	Medium	High	Low	High
Elimination of certain conflicts	Low	High	Medium	Low	High
Establish, maintain and enforce reasonably designed, written policies and procedures	Low	High	High	Low	Low

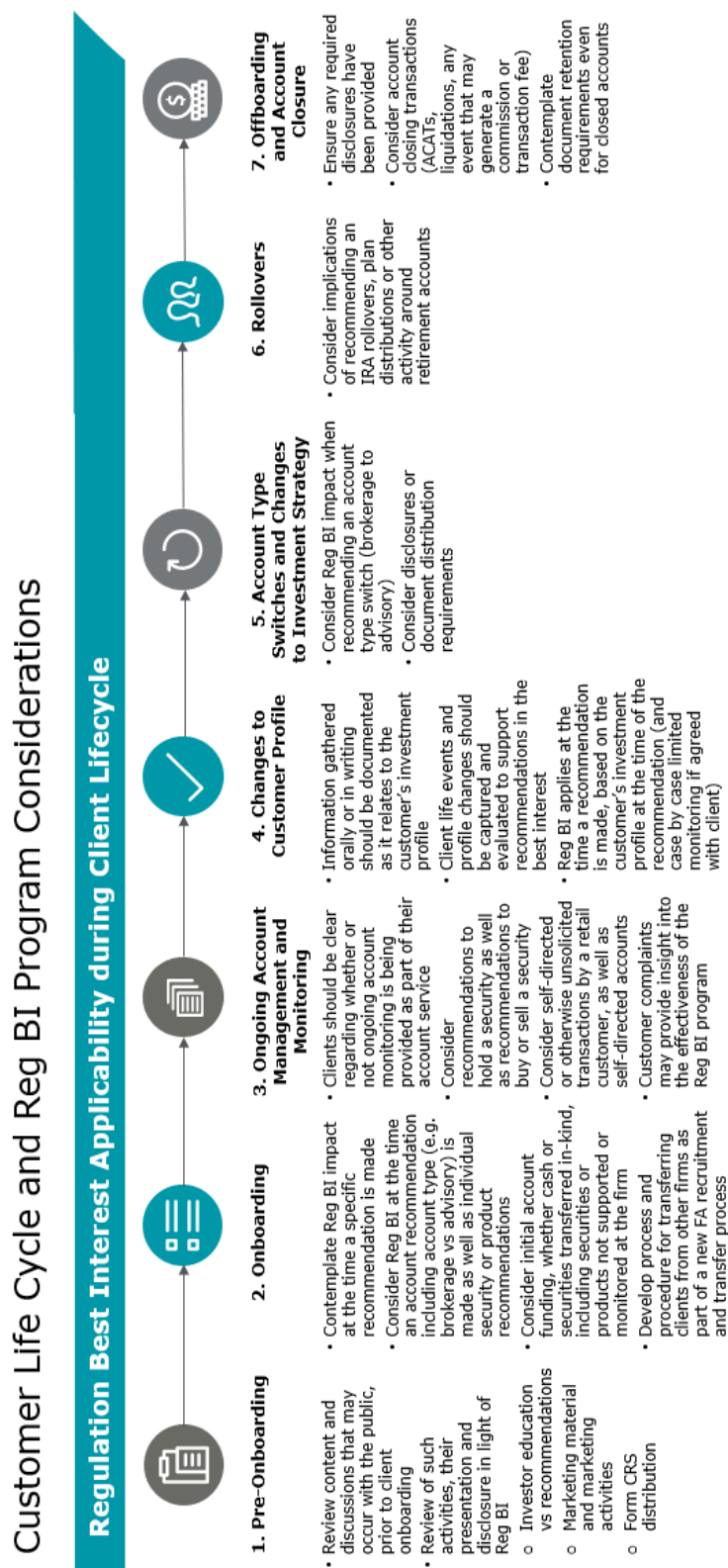
Level of Impact Legend

High	Medium	Low
High	Medium	Low

3.5. Customer Life cycle

Firms may wish to evaluate the customer life cycle to help identify impacts of Reg BI Program requirements on current-state operations and the customer experience. This exercise may prove to be an effective way for a Firm to confirm that it has assessed the impacts and identified the required changes needed to be made across the life cycle. The below graphic provides an illustrative example of how a Firm might categorize the customer life cycle into phases and identifies potential impact points for consideration in each phase (e.g., customer education vs. providing investment advice, if and when recommendations are made during the pre-onboarding phase). Firms may also wish to consider the impact of different means through which customers and potential customer interactions occur, including telephonic, digital (e.g., email, website, social media) and individual or group in-person meetings.

Figure 8: Customer life cycle



4. Disclosure Obligation

Reg BI's Disclosure Obligation requires Broker-Dealers to provide to retail customers²³, prior to or at the time of the recommendation, in writing, full and fair disclosure of all material facts related to the scope and terms of the relationship and all material facts relating to conflicts of interest that are associated with the recommendation.

Disclosure under Form CRS provides succinct information about the relationships and services the Firm offers to retail customers, fees and costs that retail customers will pay, specified conflicts of interest and standards of conduct, and the disciplinary history of the Firm, among other things. While Form CRS is an initial layer of disclosure, the Disclosure Obligation (under Reg BI) builds upon the disclosures made in the Form CRS.

This section is intended to identify key elements of disclosure requirements under Form CRS and the Reg BI Disclosure Obligation, specifically:

- (1) Disclosure requirements that Registrants need to provide to retail customers to comply with the SEC's Form CRS requirement, and with respect to RIAs, amendments made to Form ADV;
- (2) Disclosure requirements that Broker-Dealers or natural persons who are Associated Persons of the Broker-Dealer need to provide to retail customers to comply with the SEC's Disclosure Obligation under Reg BI
- (3) Delivery format and content of disclosures made to retail customers for both the Form CRS and the Disclosure Obligation (particularly the electronic delivery of such disclosures)
- (4) Layered disclosures, the use of hyperlinks, and other means of facilitating access to additional information
- (5) The timing and frequency of providing disclosures and the tracking of delivery for such disclosures
- (6) A representative process to provide additional disclosure when any previously provided information becomes materially inaccurate or new, relevant material information become available
- (7) The process of filing the Form CRS with the SEC

4.1 Reg BI Disclosure Obligation

4.1.1. *Disclosure Requirements of Reg BI*

Broker-Dealers are required to provide specific disclosures under the Disclosure Obligation of Reg BI. Firms are encouraged to read the Reg BI adopting release to understand the specific examples provided by the SEC and to determine how these examples and such guidance might apply to their businesses.

1. **Material facts regarding the scope and terms of the relationship**

The minimum material facts of the scope and terms of the relationship to be disclosed include:

²³ Refer to "Definition of Retail Customer", Reg BI adopting release. 2019.

A. Disclosure of capacity in which the Broker-Dealer is acting with respect to the recommendation

The disclosure should indicate in what capacity the Broker-Dealer or natural person who is an Associated Person of the Broker-Dealer is acting with respect to the recommendation. For example, in the case of a dually-registered Associated Person of a dual Registrant or Hybrid Firm, the individual must disclose in what capacity he or she is acting when making a recommendation (in the case of a Broker-Dealer RR) or providing investment advice (in the case of an IAR). In other words, the individual must disclose which hat he or she is wearing. Additionally, an Associated Person of a dual Registrant who does not offer investment advisory services is required to disclose this fact as a material limitation to such services in order to satisfy the Disclosure Obligation. Generally, the Associated Person is able to rely upon the disclosures provided by the Firm unless additional disclosure is necessary.

Broker-Dealers also need to address the following in their disclosure:

- o Capacity in the context of names and titles (discussed below); and
- o Capacity in the context of marketing communications.

The Broker-Dealer may state that it provides “advice” or other such similar statements in its marketing communication, but the statements should not be made in a manner that contradicts the disclosures made in accordance with Reg BI and Form CRS requirements and should be reviewed with care considering the solely incidental interpretative guidance provide by the SEC as part of the rule package it released in June 2019.²⁴

Usage of the terms “adviser” and “advisor”²⁵

As described in the Reg BI adopting release, the SEC recognizes that Broker-Dealers sometimes use the terms “adviser” and “advisor” to reflect a business of providing advice other than investment advice to retail customers; however, the SEC also notes that there is a presumption of a violation to the Disclosure Obligation should such usage be inappropriate, and/or create confusion for retail customers.²⁶

The SEC, however, also notes that in certain circumstances where a Broker-Dealer provides advice in other capacities outside the context of investment advice to a retail customer and where there is compelling claim to the usage of the terms “adviser” and “advisor”, Firms and their financial advisors may use the terminology in their discretion. For example, when a Broker-Dealer acts on behalf of a municipal adviser or a commodity trading adviser, the Firm acts in distinct advisory roles, specifically defined by federal statute and which does not entail providing investment advisory services.²⁷ Broker-Dealers are encouraged to employ care and diligence when they choose to exercise the discretionary usage of the terms “adviser” or “advisor” in such circumstances.

Considerations for usage of titles

1. **Existing designations:** Broker-Dealers and dual Registrants may wish to consider reviewing their existing designation policy to ensure that the use of the term “adviser” or “advisor” for

²⁴ Reference to “Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser”.

²⁵ Please refer to the SEC Small Entity Compliance Guide, 2019 for additional information about the SEC considerations of a presumed violation for the improper usage of these terms.

²⁶ See Reg BI adopting release. Pages 158, 531. 2019.

²⁷ See Reg BI adopting release. Page 158. 2019.

Associated Persons that are neither registered as an IAR nor supervised by an RIA is in accordance with the limited circumstances allowed by the Disclosure Obligation as set out in the adopting release.

2. **Marketing and media:** The aforementioned requirements may compel Broker-Dealers to reassess and evaluate names, titles, and leading statements that are used as part of communications and sales practices across various media such as the company websites, collateral marketing materials, and in-person or telephone conversations.
3. **Third-party communication:** Broker-Dealers may work with third-parties or have revenue-sharing arrangements with third-parties (e.g., referral agreements, solicitation agreements) for managing customer investments. Broker-Dealers may wish to review and establish controls as to how they are represented to retail customers by such third-parties. Manufacturers and distributors may need to consider reassessing the communication materials they provide to third-parties for use with their customers, whereby such third-parties may be affected by limitations on the usage of the terms “adviser” and “advisor”.
4. **Other titles:** Broker-Dealers may also consider re-evaluating the usage of terms that are synonymous with the terms “adviser” and “advisor.” For example, labels such as “wealth manager” and “financial consultant” have the risk of improperly suggesting an advisory-type relationship when the Firm is not operating in an advisory capacity.

B. Disclosure of material fees and costs

Broker-Dealers should considering building upon the material fees and costs identified in the Form CRS²⁸ and provide additional details that clearly convey the reason a fee is being imposed (i.e., the “why”) and the timing of the fee charged (i.e., the “when”), including any triggering events (e.g., a fee being imposed because an account minimum falls below a certain threshold) and whether fees may be negotiable or waivable. Broker-Dealers are not required to provide personalized fee disclosure to each retail customer. Instead, material facts about fees and costs in terms of more standardized numerical and narrative disclosures, such as standardized or hypothetical amounts, dollar or percentage ranges, and explanatory text would satisfy the requirement.²⁹

The disclosure requirements around fees and costs would likely compel Broker-Dealers to perform a review of their fee arrangements and maintain a repository of the most current fee agreements, disclosure agreements, and account agreements, along with any such amendments.

C. Disclosure of the type, scope and terms of services provided

Broker-Dealers are required to build upon their disclosure in the Form CRS³⁰ and provide additional information regarding the types of services and the scope of services under the Disclosure Obligation. Generally, an Associated Person of a Broker-Dealer may rely on the Broker-Dealer’s Form CRS disclosure but may be required to provide additional disclosure. For example, an Associated Person of a dual Registrant who does not offer investment advisory services must also disclose this fact as a material limitation.³¹

²⁸ Reference to Section II.B.3 “Summary of Fees, Costs, Conflicts, and Standard of Conduct” of Form CRS adopting release. 2019.

²⁹ See Reg BI adopting release. Page 168. 2019.

³⁰ Reference to section II.B.2 “Relationships and Services” of Form CRS adopting release. 2019.

³¹ See Reg BI adopting release. Page 179. 2019.

Broker-Dealers also need to address the following in their disclosure:

- Frequency and duration of services;
- Account minimums or similar requirements;
- Material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer (e.g., if the Broker-Dealer only recommends proprietary products); and
- Whether the Firm monitors the retail customer's account and the scope and frequency of any such account monitoring services.

Broker-Dealers would likely need to put in place a formal process for periodic review of their product portfolio and ensure that product changes are documented. New securities that are to be incorporated into the portfolio may also need to go through a process to identify and document any potential proprietary product conflicts. This can be done at the Firm level for product shelf prior to the RR level in certain instances depending on the business model.

D. Disclosure of other material facts related to the scope and terms of the relationship

Material facts relating to the scope and terms of the relationship, other than those mentioned above, must also be disclosed. Some examples of other material facts include:

- The general basis for the Broker-Dealer's or an Associated Person's recommendation (i.e., investment approach, philosophy, or strategy) to retail customers;
- Circumstances when the standardized disclosure does not apply and how the Broker-Dealer will notify the customer in such cases (e.g., if an Associated Person of Broker-Dealer has a different approach);
- Material facts related to the risk associated with the recommendation in standardized terms; and
- Product-level risks in standardized terms, with additional information on any available issuer disclosure documents.

2. Material facts regarding conflicts of interest

A "Conflict of interest" associated with a recommendation is defined as "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."³² The conflicts of interest identified in Form CRS³³ may provide a useful starting point for the identification of material facts related to the recommendation.

Broker-Dealers also need to disclose material facts regarding conflicts of interest associated with:

- Compensation for recommendations, including the sources and types of compensation received in a standardized format or particularized disclosure;
- Variable compensation schemes associated with recommending a more expensive product (that has higher compensation for the Broker-Dealer) than a less expensive alternative; and
- Recommendation of proprietary products.³⁴

³² Refer to definition of "Conflict of Interest", Reg BI adopting release. 2019.

³³ Reference to Section II.B.3 "Summary of Fees, Costs, Conflicts, and Standard of Conduct" of Form CRS adopting release. 2019.

³⁴ See Reg BI adopting release. Pages 208-209. 2019.

Broker-Dealers would likely need to review their existing policies and procedures to identify areas that could cause a potential conflict of interest to arise. Some of the topics to review could include tracked performance metrics, commission grids, sales breakpoints, incentives, bonuses, non-cash compensation, (e.g., the performance scorecard may incentivize managers to limit money moving out of proprietary products to increase the profitability of the company; transaction-based compensation policy could incentivize Broker-Dealers to trade more frequently, thereby, raising questions of “churning”).

Delivery Format and Content

Reg BI requires Broker-Dealers to make disclosures, in writing, to retail customers, before or at the time of the recommendation. The Rule is meant to make it easier for the customers to understand these disclosures and hence, the Firm might want to consider the use of graphics, pictures, tabular representations, etc. in their written disclosures as opposed to simply creating another document for customers to read. The disclosures are required to be concise, clear, and understandable so that they promote effective communication between a Broker-Dealer and a retail customer. The disclosure documents could be in paper or electronic format, provided that prior consent for electronic delivery has been obtained from retail customers. Also, in certain circumstances as discussed below, the SEC staff notes the permissibility of oral disclosure and follow-on disclosure after a recommendation is made.

4.1.2 Oral disclosure

Oral disclosure may be made, no later than the time of a recommendation, to supplement facts that were not reasonably known at the time the written disclosure was made. However, a record of the fact that oral disclosure was provided should be maintained (e.g., oral disclosure on the actual capacity of the relationship can be provided at the time of recommendation if the written disclosure was generic in nature. As an example, “*All recommendations will be made in a Broker-Dealer capacity unless otherwise expressly stated.*” Firms might wish to consider to what extent (if at all) they will permit the usage of oral disclosures. Such decisions will come with additional considerations of risk and operational impact (e.g., how such disclosures will be supervised and evidenced).

4.1.3 Disclosure after recommendation³⁵

Providing disclosure to a retail customer after the recommendation is made is permitted in certain limited circumstances (e.g., delivery of a product prospectus or a trade confirmation, after the execution of the trade).³⁶ However, an initial disclosure in writing that identifies the material fact and describes the process through which such facts may be supplemented or updated post a recommendation should be provided to the retail customer.

The Firm might rely on multiple communication channels like phone, mail, email, or personalized account portals on the website to deliver the required disclosure. However, from a compliance and cost standpoint, delivering disclosure electronically might be the most efficient option for Firms to consider. Firms which

³⁵ Please refer to the SEC Small Entity Compliance Guide, 2019 for additional information as to what is required for Firms when delivering disclosures after the recommendation is made.

³⁶ See Reg BI adopting release. Page 239. 2019.

employ robo-advisors, investor questionnaires, and other such online tools to make recommendations may need to consider the appropriateness of their disclosures given Reg BI and Form CRS requirements. For example, Firms may need to reconsider the timing and order of required disclosures throughout the customers' website experience to ensure that the timing and delivery obligations for the Form CRS and other such disclosures are satisfied.

Broker-Dealers are encouraged to conduct a pros and cons assessment of a single omnibus (i.e., standardized) disclosure vs. situational (i.e., individualized) disclosures. Broker-Dealers may choose to standardize certain forms of their disclosure, but whether such standardized disclosure will satisfy the Disclosure Obligation will depend on the facts and circumstances. Disclosures may need to be tailored to a particular recommendation if the standardized disclosure does not sufficiently identify the material facts about a conflict of interest (e.g., conflicts about a specific proprietary product or conflicts that arise out of a relationship with an affiliated third-party might be covered within a standardized disclosure).

4.1.4 Layering approach

Layered disclosure is permissible, in which more general information is supplemented by more detailed information provided either at the same time or subsequently. However, the total disclosures should constitute full and fair disclosure of the information required by the Disclosure Obligation and Form CRS.

Firms may wish to consider the impact on the customer experience when delivering disclosures through a layering approach, such that the customer has all the relevant and required information while at the same time not being overburdened with redundant information. The Disclosure Obligation under Reg BI can be met using existing documents provided to retail customers or a combination of such documents (e.g., such as account opening documents, product prospectuses, relationship guides, account agreements, fee schedules, or other standalone documents). Existing documents may need to be reviewed to determine if additional information is required to be disclosed given the Reg BI and Form CRS requirements. Firms may also consider consolidating and packaging all required documents which a retail customer receives or leveraging or otherwise cross-referencing existing documents to fulfill the Disclosure Obligation.

Below are examples of the advantages and disadvantages of each suggested approach to fulfilling the delivery requirements for disclosures. Broker-Dealers are encouraged to conduct a cost-benefit assessment to determine the appropriateness of any such approach for their business model, whether through a new disclosure, the use of a layered approach, or a hybrid between the two.

Table 6: Approaches for Reg BI Disclosure – Pros & Cons

Approach	Pros	Cons
New Disclosures	<ul style="list-style-type: none"> Comprehensive package newly created to ensure compliance Low monitoring overhead as compared to using existing disclosures 	<ul style="list-style-type: none"> Initially labor-intensive and time-consuming Could be expensive as dedicated full-time employee might be required
Layering	<ul style="list-style-type: none"> Leveraging existing disclosures lends to incremental nature of the effort and results in time savings Potential cost savings in delivery 	<ul style="list-style-type: none"> Maintaining consistency among disclosures Monitoring required to ensure compliance across multiple sources

Hybrid Approach	<ul style="list-style-type: none"> • May be more cost effective than creating new disclosure materials 	<ul style="list-style-type: none"> • The added cost and effort to create a new core disclosure
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4.1.5 Timing, frequency, and tracking of delivery

Timing and frequency:

The SEC has not adopted any prescribed requirements for the timing and frequency of written disclosures, other than requiring Broker-Dealers to disclose to retail customers before or at the time of the recommendation.³⁷

Tracking of delivery:

Broker-Dealers are required to deliver their disclosures to retail customers within the framework of the SEC's existing guidance regarding electronic delivery, and the following elements are required to be satisfied with the delivery of disclosures to retail customers:

- Notice to the retail customer that information is available electronically;
- Access to information comparable to that which would have been provided in paper form and such that is not so burdensome that the intended recipients can effectively access it; and
- Evidence to show delivery (i.e., a reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws).

4.1.6 Updating disclosure documents

Broker-Dealers must provide retail customers with updated disclosure when previously provided disclosures become materially inaccurate or when new material information is available, including any conflict of interest not disclosed prior. Typically, these updates should be made within 30 days after the material change occurs or is otherwise identified.³⁸ Firms may wish to consider what is a reasonable basis for review of their disclosures. For example, as other required disclosures require an annual or ongoing review (e.g., the annual privacy notice; in the case of RIAs, filing of a Form ADV amendment for material changes), Firms may consider incorporating such a review of Form CRS into these already established processes. The Firm might also consider establishing a cadence to re-inform customers of updates and changes to such disclosures as to minimize adverse impacts to the customer experience.

4.2 Form CRS Relationship Summary and Amendments to Form ADV

4.2.1 Disclosure Requirements of Form CRS

Form CRS is an initial disclosure intended to provide concise information to retail investors about the relationships and services that Broker-Dealers and/or RIAs offer. Form CRS will need to be delivered to a "retail investor"³⁹ by "Firms"⁴⁰, which include sole proprietorships and other business organizations that are registered under one, or both, of the below statutes:

³⁷ See Reg BI adopting release. Page 217. 2019.

³⁸ See Reg BI adopting release. Page 244. 2019. With respect to Form CRS delivery, see also Form CRS adopting release. Pages 24, 237. 2019.

³⁹ Refer to "Definition of Retail Investor", Form CRS adopting release. 2019.

⁴⁰ Refer to footnote 4, Form CRS adopting release. 2019.

- An Investment Adviser under Section 203 of the Investment Advisers Act of 1940; or
- A Broker-Dealer under Section 15 of the Exchange Act.

For the purposes of Form CRS, a “dual Registrant” as defined in the adopting release⁴¹ that does not offer both brokerage and investment advisory services to retail investors would not fall within the definition of dual Registrant.⁴²

As the filed Form CRS will be made publicly available, Firms may want to consider creating a screening committee or other review process composed of professionals from legal and compliance teams to review the disclosure to avoid any potentially misleading statements or omissions of material facts. Also, as noted previously, some of the disclosure obligations under Reg BI could build upon the content available in the Form CRS. In such cases, the Firm should ensure consistency between the additional material facts and conflicts disclosed under Reg BI requirements and the information presented in the Form CRS. The Firm may also want to entrust this responsibility to an appropriate authority like a conflicts officer or a conflicts committee that serves in a similar capacity to ensure that processes are in place to resolve any inconsistencies.

The layout for Form CRS is structured into five items. The key requirements for each of these five items are summarized below. Please refer to the [Form CRS Relationship Summary; Amendments to Form ADV](#) adopting release for specific instructions on how the Form CRS items must be disclosed:⁴³

⁴¹ Refer definition of “dual registrant” in Form CRS adopting release. 2019.

⁴² See Form CRS adopting release. Page 6. 2019.

⁴³ It is important to note that specific cross-references to services must link back to information that is “same or equivalent” to information required by Form ADV, Part 2A or Reg BI, as applicable. For RIAs, there are references to specific Form ADV, Part 2A items. See, Instruction 2.C.: “Additional Information: Include specific references to more detailed information about your services that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure (Items 4 and 7 of Part 2A or Items 4.A. and 5 of Part 2A Appendix 1) and Regulation Best Interest, as applicable.”

Figure 9: Form CRS layout

1. Introduction

- ❑ Standardized introductory paragraph; include information such as the firm name, SEC registration status (Broker-Dealer, Registered Investment Adviser, Dual Registrant), an indication that brokerage and advisory services differ and reference to [Investor.gov/CRS](https://www.investor.gov/crs)

2. Relationships and Services

- ❑ Summary of relationships and services offered to retail investors; the description of brokerage services, investment advisory services or both (as applicable), should address the topics of monitoring, investment authority, limited investment offerings, account minimums and other requirements
- ❑ Specific cross-references to additional detailed information about the Firm's services
- ❑ Prescribed conversation starters related to Firm's brokerage and/or advisory experience and how Firms would recommend investments to retail investors in different capacities

3. Summary of Fees, Costs, Conflicts, and Standard of Conduct

- ❑ Summary of principal and other fees and costs that retail investors will pay for brokerage or investment advisory services, including the charging frequency of such fees and the associated conflicts of interest
- ❑ Description of the Firm's legal standard of conduct using prescribed wording and summary (with examples) of the ways in which Firms and their affiliates make money from brokerage services and/or investment advisory services provided to retail investors
- ❑ Summary of how the Firm's financial professionals are compensated (including cash and non-cash compensation) and the conflicts of interest created by those payments
- ❑ Specific cross-references to additional detailed information
- ❑ Prescribed conversation starters to help retail investors understand how Firm's fees and costs, conflicts of interest affect their investments and how Firm would address these conflicts

4. Disciplinary History

- ❑ Disclosure as to whether the Firm or its financial professionals have reportable disciplinary history and references for retail investors to conduct further research on these events
- ❑ Reference to [Investor.gov/CRS](https://www.investor.gov/crs) and prescribed conversation starter related to Firm's disciplinary history and the conduct that resulted in such history

5. Additional Information

- ❑ References to indicate where retail investors can find additional information about Firm's brokerage or investment advisory services and request a copy of the relationship summary
- ❑ Telephone number where retail investors can request up-to-date information and request a copy of the relationship summary
- ❑ Prescribed conversation starters on Firm's Primary contact person and the contact person to submit concerns on the treatment provided by the Primary contact person

4.2.2 Amendments to Form ADV

The RIAs will be required to submit the Form CRS as Part 3 of their Form ADV filing. The SEC has provided clarifications to help RIAs satisfy the requirements to update the Form ADV⁴⁴ and Form CRS. The options available to RIAs are:

- (1) File an amended Form CRS as an other-than-annual amendment within the 30 days required to file the amendment; or
- (2) Submit amended versions of the Form CRS required by Part 3 as part of their annual updating amendment.

Table 7: Update frequency for Form ADV parts

Part of Form ADV	Frequency of update
Part 1 and 2	<ul style="list-style-type: none">• At least annually, within 90 days of the end of the fiscal year; and• More frequently, if required by the instructions to Form ADV
Part 3	<ul style="list-style-type: none">• At the frequency required by the instructions to Form CRS (i.e. Form ADV, Part 3)

It should be noted that RIAs will need to file Part 3 of their Form ADV with the SEC and deliver such documents to retail investors in accordance with Form CRS instructions. The criteria for delivery of Part 3 differs from the delivery requirements of Form ADV Part 2 brochures. Hence, there may be situations in which RIAs will need to deliver a copy of Part 3 to retail investors even if the situation does not warrant a delivery of Part 2 brochures.

Please refer to Form CRS adopting release for additional information on Form ADV, Part 3.

4.2.3 Delivery format and content

Form CRS may be delivered in paper or electronic format. A Firm may wish to consider delivering the initial Form CRS in a manner consistent with its existing arrangement with a retail investor and confirming that any electronic delivery process is consistent with the SEC's electronic delivery guidance. Retail investors may request a copy of the relationship summary in a format they prefer and are entitled to establish their delivery preferences once they have entered into a relationship with a Registrant. If a Form CRS is delivered electronically, it must be presented prominently in the electronic medium and must be easily accessible for a retail investor. If the Form CRS is delivered in paper format as part of a package of documents to a retail investor, Firms are required to ensure that the disclosure is the first among any documents that are delivered at that time.⁴⁵

Firms may want to ensure that they have adequate data storage and accessibility capabilities to meet the above requirements. In addition to having the technical capability, the Firm might also want to ensure that standard operating policies and procedures for disclosure management and governance are established.

⁴⁴ See General Instruction 4 to Form ADV (When am I required to update my Form ADV?): <https://www.sec.gov/about/forms/formadv-instructions.pdf>

⁴⁵ See Form CRS adopting release. Page 499. 2019.

A relationship summary in paper format must not exceed two pages, or the equivalent if delivered electronically, for a Broker-Dealer, RIA, or affiliates that prepare separate summaries. Dual Registrants may choose to prepare a single relationship summary having up to four pages for both their brokerage and advisory services.

As described in the adopting release, affiliates are permitted to prepare a single relationship summary describing both brokerage and investment advisory services that they offer or to prepare separate relationship summaries, one for each type of service. If two affiliated SEC-registered Firms prepare separate relationship summaries, and they provide brokerage and investment advisory services through dually-registered professionals, they are required to deliver both entities' relationship summaries with equal prominence and at the same time, without regard to whether the particular retail investor qualifies for those retail services or accounts. The adopting release notes that each of the relationship summaries must cross-reference and linked to the other. If the affiliated Firms are not providing brokerage and investment advisory services through dually registered professionals, they may choose whether or not to reference each's relationship summary and whether or not to deliver the affiliate's relationship summary with equal prominence and at the same time.⁴⁶

The Form CRS must be concise and direct and written in plain English to take into consideration retail investors' level of financial experience. Legal terms that impede the retail investors' understanding of material information are discouraged.⁴⁷

Firms also need to ensure that the Form CRS adheres to certain characteristics, such as having standardized headings in the form of questions, prescribed conversation starters, as well as electronic and graphical features to furnish information. These filings are required to be in a text-searchable format and to be structured with machine-readable headings. The machine-readable, structured headings will facilitate the SEC's and other regulators' ability to analyze and compare specific items of the relationship summary across Firms for the benefit of retail investors.⁴⁸

Considerations for delivery of Form CRS

- (1) Firms may consider providing additional training and standardized response guide for Associated Persons so that they are better equipped to have conversations with retail investors and are aware of the prescribed conversation starters questions within Form CRS. Firms may also consider having processes and supervision in place to ensure consistency in the responses of Associated Persons while having these conversations with retail investors.
- (2) Dual Registrants may consider the following options to fulfill Form CRS obligations:
 - Preparing separate Form CRS documents for their brokerage and advisory services, each of which not to exceed two pages;
 - Preparing a single Form CRS for their brokerage and advisory services in which two pages are dedicated to brokerage services and two pages for advisory services, and the document does not exceed four pages;

⁴⁶ For additional information regarding dual Registrants and dually-registered professionals, please see Appendix B of the Form CRS adopting release. Page 5. 2019.

⁴⁷ For additional information about the usage of plain English, please see the SEC's Office of Investor Education and Advocacy: A Plain English Handbook.

⁴⁸ See Form CRS adopting release. Page 21. 2019.

- Preparing a single Form CRS with commingled language for both brokerage and advisory services under each section, again, not to exceed four pages. The Firm may consider presenting the information in a tabular format, with brokerage services described in one column and advisory services described in another in order to distinguish clearly between the brokerage and advisory services offered by the Firm and to facilitate a comparison by the retail investor should this option be considered.
 - Regardless of the format selected, the disclosure must “facilitate comparison” by the retail investor between the two types of services.⁴⁹
- (3) In addition, prior to June 30, 2020, Firms may consider notifying their existing retail customers to indicate that they will soon be receiving Form CRS disclosures and to educate them on the purpose of such disclosures in order to minimize any potentially adverse operational impacts given customer responses (e.g., call volume increase due to retail customers’ questions).⁵⁰

4.2.4 Layering approach; using links

The Form CRS is intended to be an initial layer of disclosure for retail investors and contain high-level information that retail investors would be more likely to read and understand while having the means to access more detailed information. Firms may cross-reference other documents and use hyperlinks or other tools to give additional information about such topics as well. However, this additional information may not substitute the narrative descriptions required in the Form CRS disclosure.

4.2.5 Timing, frequency, and tracking of delivery

Compliance Timeline

Broker-Dealers and RIAs must electronically file their relationship summary with the SEC, by the below timelines.

Table 8: Dates for filing relationship summary with the SEC

SEC registration status	Dates for filing relationship summary with the SEC
Broker-Dealers	
Registered with SEC as a Broker-Dealer, before June 30, 2020	Beginning on May 1, 2020, and by no later than June 30, 2020
Has an application for registration or have an application pending with the SEC as a Broker-Dealer on or after June 30, 2020	On or before the effective date of registration
RIAs	
Registered or have an application for registration pending with the SEC as an RIA, before June 30, 2020	Beginning on May 1, 2020, and by no later than June 30, 2020

⁴⁹ See Form CRS adopting release. Page 23. 2019.

⁵⁰ Firms may wish to consider this option as part of their change management and communication strategy outlined in Section 2: Program Governance.

SEC registration status	Dates for filing relationship summary with the SEC
Has an application for registration with the SEC as an RIA on or after June 30, 2020	Date of application for SEC registration (<i>Initial application should include a relationship summary</i>)

Firms are also required to begin delivery of their relationship summary (i) to new and prospective retail investors from the date by which they are first required to electronically file their relationship summary with the SEC, and (ii) to all their existing retail investors, on an initial one-time basis, within 30 days of the date of the SEC filing.

Initial delivery obligations to new or prospective retail clients

The initial delivery of the relationship summary to new or prospective retail clients is governed by a set of delivery triggers. A Firm must deliver its current Form CRS, before or at the earliest of the triggers listed below.

Table 9: Triggers for initial delivery of Form CRS

Firm Type	Form CRS Delivery Triggers
Broker-Dealer	<ul style="list-style-type: none"> • A recommendation of an account type, a securities transaction; or an investment strategy involving securities; • Placing an order for the retail investor; or • The opening of a brokerage account for the retail investor
RIA	The time of entering into an investment advisory contract with the retail investor, even if their agreement with the retail investor is oral.
Dual Registrant	At the earlier of the delivery trigger for either Broker-Dealers or investment advisers

Considerations for prospective clients

- (1) Firms may need to scrutinize their lead generation programs and processes to ensure that no recommendation is made prior to the delivery of Form CRS to prospective retail investors. Conversely, controls may need to be implemented over multiple client communication channels (e.g., email, website, in-person, and telephone conversations). Firms may wish to emphasize the delivery and importance of Form CRS, in telephone conversations with prospective retail investors and may consider delivering the Form CRS at the beginning of the prospecting process.
- (2) Firms which provide automated advice services through their website may need to ensure that a prospective retail investor agrees and consents to electronic delivery of the receipt of Form CRS before any investment recommendations are displayed. Firms may choose to employ customer agreement checkboxes, pop-up notifications, or prominent hyperlinks to direct a retail investor to read the Firm's Form CRS before any automated advice is delivered. Additionally, Firms will need to consider how they document the timestamps and delivery dates of such actions in order to evidence compliance with the requirements of the rules.

Frequency of re-delivery of Form CRS relationship summary for existing clients

Registrants are required to deliver the most recent version of the Form CRS to each retail investor who is an existing customer, before or at the time a Firm:

- Opens a new account that is different from the retail investor's existing account(s);
- Recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment; or
- Recommends or provides a new brokerage or advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

In addition to the above, the current Form CRS is required to be delivered to each retail investor within 30 days upon request.

Since Firms have the flexibility to tailor the delivery frequency of Form CRS, they may want to consider different approaches to designing the delivery process for Form CRS. Firms may lean towards a conservative approach and deliver Form CRS at regular intervals to existing clients (for example, as the first document within monthly or quarterly statements bundled). Additionally, Firms might also wish to incorporate system or process triggers to initiate any off-cycle delivery of Form CRS whenever a triggering event (e.g. new account opening) occurs. Lastly, Firms may also choose to establish system and process controls to verify the evidence for delivery of the most recent version of Form CRS before any new recommendation of brokerage or advisory service or investment is made to a retail investor or when an updated Form CRS is required to be sent to retail investors.

Tracking of delivery of Form CRS relationship summary

Firms are required to deliver the Form CRS to their retail investors as outlined by the SEC's existing guidance regarding electronic delivery. The following examples are provided in the SEC's guidance and may be used to satisfy the evidence requirements under Form CRS delivery obligations:⁵¹

- Obtaining the intended recipient's informed consent for delivery through a specified electronic medium, and ensuring that the recipient has appropriate notice and access;
- Obtaining evidence that the intended recipient received the information, for example, via electronic mail return-receipt or by confirmation that the information was accessed, downloaded, or printed; and/or
- Disseminating information through certain facsimile methods.

Whether using paper or electronic media, Firms might want to consider establishing audit trail procedures to ensure that applicable delivery obligations are met. From a recordkeeping perspective, Firms may want to ensure that their existing systems have the capabilities to enter, preserve, and extract a record of the date on which each Form CRS was delivered to any retail investor or prospective retail investor.⁵² Firms may also wish to reassess that their communication channels for delivery are aligned with the preferences of their retail investors. Firms may need to implement systems and processes to track retail investors who

⁵¹ See Evidence to Show Delivery. <https://www.govinfo.gov/content/pkg/FR-1996-05-15/pdf/96-12176.pdf>

⁵² See Section 8: Recordkeeping requirements of this Guide for more information.

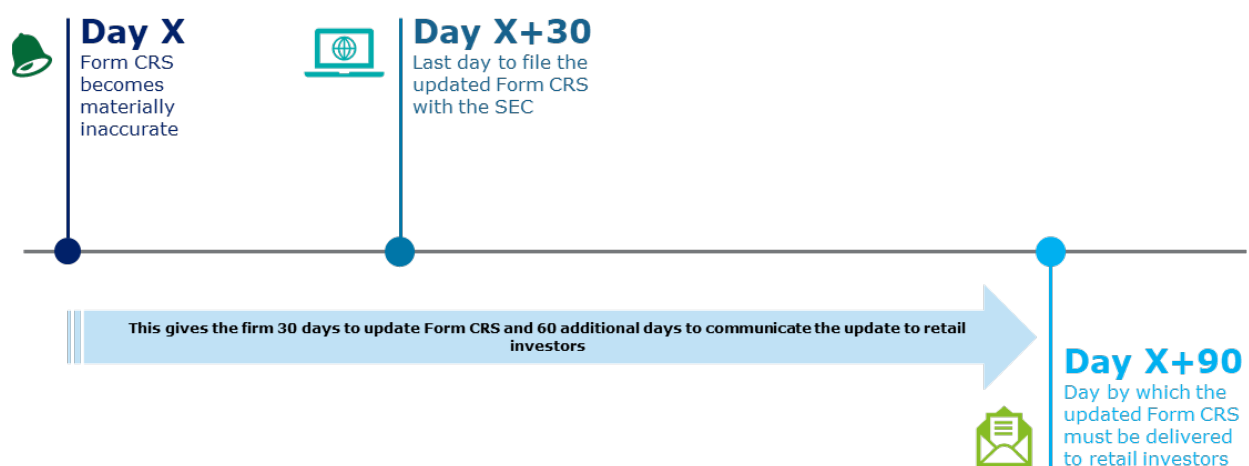
have consented to e-delivery of Form CRS and to track retail investors who opt for paper delivery of Form CRS, if these capabilities for tracking retail investors' preferences do not already exist.

4.2.6 Updating disclosure documents

Firms are required to update, file amendments to, and re-deliver the Form CRS whenever the disclosure becomes materially inaccurate. Firms are required to communicate the updated information without any charges to retail investors as described in the adopting release. The figure below illustrates a representative timeline for updating the Form CRS and the periods within which Firms are required to file or deliver updates to existing clients or customers:

Figure 10: Timeline for updating Form CRS

As described in the SEC Form CRS adopting release, there is a requirement for “firms to update their relationship summary within 30 days whenever the relationship summary becomes materially inaccurate”⁵³ and “the rules as adopted will allow firms to communicate information in an amended relationship summary to retail investors who are existing clients or customers within 60 days after the updates are required to be made...”⁵⁴



⁵³ See Form CRS adopting release. Page 24. 2019.

⁵⁴ See Form CRS adopting release. Page 237. 2019.

Table 10: Update requirements for Form CRS

Relationship Summary Update Requirement	Period for filing/delivery of the update	Additional update requirements
SEC filing	To be updated and <i>filed</i> within 30 days, whenever any information in the relationship summary becomes materially inaccurate	<ul style="list-style-type: none"> An exhibit highlighting the changes to the relationship summary should be included
Communication to retail investors who are existing clients or customers	To be <i>delivered</i> within 60 days after the updates are required to be made to the relationship summary	<ul style="list-style-type: none"> Updates can be delivered through an amended relationship summary or another disclosure. Most recent changes in each amended relationship summary should be highlighted and attached as an exhibit to the unmarked amended relationship summary

Filing of Form CRS

Broker-Dealers are required to file their relationship summary with the SEC by filing Form CRS electronically through the Central Registration Depository (“Web CRD®”), operated by the Financial Industry Regulatory Authority, Inc. (“FINRA”). RIAs are required to file their relationship summary with the SEC by filing Form CRS electronically through the Investment Adviser Registration Depository (“IARD”). Dual Registrants are required to electronically file their relationship summaries using both the IARD and the Web CRD®. The SEC filed relationship summaries will be accessible to the public through Investment Adviser Public Disclosure (“IAPD”) and BrokerCheck. If Firms have their own public website, they are required to prominently display the single, joint, or separate FORM CRSes on their website.

4.2.7 Key Implementation Considerations from Section 4

Section 4 addressed requirements and implementation considerations for the Disclosure Obligation. Below is a summary of implementation considerations from this section. These considerations are neither exhaustive nor prescriptive; rather, they are representative of the types of considerations that a Firm may find helpful as it designs and executes on its Reg BI Program requirements.

Figure 11: Section 4 implementation considerations

Reassess the Usage of Titles	Firms may wish to consider assessing the use of terms such as “adviser” and “advisor” in marketing materials, client communications, and public media platforms.
Data Requirements	Firms may consider adopting data management and data governance policies to track and trace the required disclosures under Reg BI to better enable evidencing compliance with the rule.
Establish Audit Trail Procedures	Firms may wish to consider building the capabilities to track and trace their delivery obligations and associated evidence to support the fact that such obligations are met. Such a procedure would likely be dependent on the definition and implementation of data requirements mentioned above.
Onboarding	Firms may wish to evaluate lead generation programs and processes to ensure that recommendations are not being made to prospective retail customers prior to the delivery of the Form CRS.
Advanced Notice	Firms may wish to consider developing a process and communication plan for notifying retail customers of the start of delivery of the Form CRS in advance of the June 30, 2020 compliance date to minimize any potential adverse operational impacts (e.g., high call volumes due to potential customers’ questions).

5. Care Obligation

When making recommendations, Broker-Dealers must exercise reasonable diligence, care, and skill to evaluate the three components of the Care Obligation.

- (1) **Reasonable-basis:** Broker-Dealers need to understand the recommended security or investment strategy, as well as the potential risks, rewards, and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers
- (2) **Customer-specific:** Based on the understanding of the recommended security or investment strategy and retail customer's investment profile, Broker-Dealers need to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer and does not place the Broker-Dealer's interest ahead of the retail customer's interest
- (3) **Quantitative suitability:** Broker-Dealers need to ensure a series of recommendations, even if viewed as in the customer's best interest when viewed in isolation, should also be viewed in the aggregate as not excessive and made in the best interest of the customer.⁵⁵

Broker-Dealer's compliance with the Care Obligation would be evaluated based on the facts and circumstances at the time of the recommendation (and not in hindsight).

Considerations for each of the three components of the Care Obligation are mentioned below.

5.1. Broker-Dealer's understanding of particular security or investment strategy (reasonable basis)

Factors that constitute reasonable diligence, care, and skill may vary depending on the complexity and risks associated with the recommended security or investment strategy and the Broker-Dealer's familiarity with the recommendation. Broker-Dealers could consider the following non-exhaustive list of factors when assessing a particular security or investment strategy:

- What is the security or strategy's investment objectives?
- What are the characteristics (including any special or unusual features) of the security or investment strategy?
- What are the initial and subsequent costs (if any, e.g., surrender or redemption costs) of the security or investment strategy?
- How liquid is the security?
- What are the risks, volatility, and likely performance in a variety of market conditions (normal and stressed)?
- What is the expected return of the security?
- What are the financial incentives to recommend the security or investment strategy?
- How is the security or strategy expected to perform during different market environments?

⁵⁵ Please refer to the SEC Reg BI Small Entity Compliance Guide, 2019 for additional information.

Analyzing the above factors could allow Broker-Dealers to develop an understanding of the security or investment strategy in order to reasonably believe that the recommendation could be in the best interest of at least some retail customers.

5.1.1. Consideration for complex products

Broker-Dealers should establish heightened scrutiny while recommending complex products to retail customers. Products considered complex or risky for retail customers may include the following:

- Inverse or leveraged exchange-traded products
- Penny stocks and thinly traded securities that have low liquidity
- Asset-backed securities that are secured by a pool of collateral
- Investments tied to stock market volatility
- Products that include an embedded derivative component
- Derivatives
- Highly leveraged products

Below are some supervisory procedures⁵⁶ for complex products that Broker-Dealers could consider:

- (1) Approval of the sale of complex products: Broker-Dealers can have formal written procedures to ensure that complex products are not recommended to a retail customer before it has been thoroughly vetted.
- (2) Post-approval review: Broker-Dealers can consider developing procedures to review how the complex products performed after the Firm approved them.
- (3) Training of Broker-Dealers: Associated Persons of a Broker-Dealer can be adequately trained to understand not only the way a complex product is expected to perform in various market conditions, but also to understand the risks associated with the product.
- (4) Consideration of a customer's financial sophistication.
- (5) Discussions with customer: Broker-Dealers should discuss with the retail customer the features of the product, how it is expected to perform under different market conditions, the risks and the possible benefits, and the costs of the product.
- (6) Consideration of less complex or costly products: Broker-Dealers should consider whether less complex or costly products could achieve the same objectives for their customers.

The SEC has not placed any limit or restriction on recommending complex or higher-risk products if the Broker-Dealer has a reasonable basis to believe that a recommendation could be in the best interest of at least some retail customers and the Broker-Dealer has developed a proper understanding of the recommended product or investment strategy.

5.2. Customer-specific recommendation

Customer-specific component of the Care Obligation requires Broker-Dealers to have a reasonable basis to believe that the recommendation is in the best interest of the particular retail customer and to not

⁵⁶ Refer to FINRA notice 12-03: <https://www.finra.org/sites/default/files/NoticeDocument/p125397.pdf>

place the Broker-Dealer's interest ahead of the customer's interest. Below are several examples where Broker-Dealers may not be acting in the best interest of the retail customer:

- Recommending one product over another to receive a larger commission
- Recommending a product without understanding the potential risks and rewards associated with the recommendation
- Recommending a mutual fund to maximize commissions rather than to establish an appropriate portfolio for retail customers
- Recommending new issues that are pushed by Firms to meet sales targets
- Recommending speculative securities that pay high commissions

Broker-Dealers should consider the following to have a reasonable basis to believe that the recommendation is in the best interest of the particular retail customer:

- Understand the retail customer's investment profile
- Evaluate potential risks, rewards and costs (both initial and subsequent) associated with the particular recommendation
- Consider reasonably available alternatives
- Understanding how the recommendation's attributes align with the investor's investment profile

5.2.1. Understanding of the retail customer's investment profile

Important factors to consider while creating a retail customer's investment profile

Broker-Dealers should exercise reasonable diligence to obtain and analyze enough customer information to ascertain the retail customer's investment profile. Firms should consider including, at a minimum, the following in a retail customer's investment profile⁵⁷:

- Age
- Other investments
- Financial situation and needs
- Tax status
- Investment objectives
- Investment experience
- Investment time horizon
- Milestones
- Liquidity needs
- Risk tolerance
- Any other information the retail customer may disclose to the Broker-Dealer in connection with a recommendation

Other relevant factors

Broker-Dealers can consider additional factors based on the unique facts and circumstances of each recommendation. For example, when a Broker-Dealer making a variable annuity recommendation believes that longevity risk is an important factor for a particular retail customer and that such factor is

⁵⁷ Please refer to the SEC Reg BI Small Entity Compliance Guide, 2019 for additional information.

necessary to develop a reasonable basis to believe that the product is in the best interest of that retail customer, then the Broker-Dealer should consider that factor.

5.2.2. Factors to consider when making recommendations to a particular retail customer

The factors that a Broker-Dealer could consider when making a recommendation may vary depending upon the particular product or strategy recommended:

- Potential risks, rewards and costs of the particular recommendation.
- Costs associated with the execution of a strategy, which includes the purchase or redemption of multiple securities, and any other costs such as deferred sales charges or liquidation costs. Broker-Dealers can recommend more costly products, provided the Broker-Dealer has a reasonable basis to believe it is in the best interest of a particular retail customer. Some questions that the Firm may want to consider for implementation:
 - Are there existing systems and data sources that enable the representatives to perform a cost comparison?
 - Are there standardized rules to guide representatives on how to weight cost when evaluating a product vs. alternatives?
 - Are there policies that define when a representative could exercise independent judgement in recommending a costlier product?
- Additional factors could be considered depending on the particular security or investment strategy being recommended and depending on the particular retail customer's investment profile. For example, prior to recommending a variable annuity to a particular retail customer, Broker-Dealers could generally develop a reasonable basis to believe that the retail customer will benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit.

5.2.3. Consideration of reasonably available alternatives

Broker-Dealers need to consider reasonably available alternatives before making recommendations to a particular retail customer. While conducting such an evaluation, a Broker-Dealer does not necessarily have to conduct an evaluation of every possible alternative, nor is it required to recommend the single "best" of all possible alternatives that might exist. A Broker-Dealer could reasonably limit the universe of "reasonably available alternatives" if there is a sensible process or methodology for limiting the scope of alternatives or the universe considered for a particular retail customer or particular category of retail customers. To determine the scope for reasonably available alternatives Broker-Dealers could consider, by way of example, the following factors:

- Broker-Dealer's business model
- Associated person's customer base (including the general investment objectives and needs of the customer base)
- Investments and services available to the associated person to recommend (including limitations due to licensing of the associated person)
- Specific limitations on the available investments and services with respect to certain retail customers (e.g., product or service income thresholds; product geographic limitations; or product limitations based on account type, such as those only eligible for IRA accounts)

5.3. Quantitative suitability (series of recommendations)

A series of recommendations (even if viewed as in the customer's best interest when viewed in isolation) should also be viewed in the aggregate as not excessive and made in the best interest of the customer.⁵⁸ What would constitute a series of recommended transactions would depend on the facts and circumstances and would need to be evaluated with respect to a particular retail customer. Below are a few indicators⁵⁹ of excessive trading that Broker-Dealers could consider when assessing a series of recommendations:

- **Turnover rate:** Turnover rate is calculated by dividing the aggregate amount of purchases in an account by the average monthly investment. The average monthly investment is the cumulative total of the net investment in the account at the end of each month, exclusive of loans, divided by the number of months under consideration
- **Cost-to-equity ratio:** Represents the percentage of return on the customer's average net equity needed to pay Broker-Dealer commissions and other expenses
- **In-and-out trading:** Refers to the sale of all or part of a customer's portfolio, with the money reinvested in other securities, followed by the sale of the newly acquired securities.

If a retail customer expresses a desire for active trading, a Broker-Dealer can take this element into consideration when evaluating a recommendation; however, the Broker-Dealer will need to reasonably believe that a series of recommended transactions is in the best interest of the retail customer.

5.4. Considerations for specific recommendation types

5.4.1. *Proprietary products and other limited menus of products and products with third-party arrangements (e.g., revenue sharing)*

A Broker-Dealer that materially limits its product offerings to certain proprietary or other limited menus of products or third-party arrangements must comply with the Care Obligation—even if it has disclosed and taken steps to prevent the limitation from placing the interests of the Broker-Dealer ahead of the retail customer. Broker-Dealers should not use their limited menu to justify a product recommendation that is not in a customer's best interest.

Hence, Firms may wish to consider implementation of a process to periodically analyze the competitiveness of its product shelf in terms of cost, return and risk to marketplace alternatives. This would help the Firm to ensure that its product offerings are in line with the other options available in the market. Some of the key objectives that the process could try to address are:

- (1) Reconciling the product offering with market alternatives regularly to ensure that the Firm has a competitive product mix
- (2) Identifying customer segments or investment needs where the Firm could potentially have difficulties in making recommendations in the best interest of the customer, due to the limited nature of its product offering.

⁵⁸ Please refer to the SEC Reg BI Small Entity Compliance Guide, 2019 for additional information.

⁵⁹ Refer to FINRA Rule 2111 (Suitability) FAQ - <https://www.finra.org/rules-guidance/key-topics/suitability/faq>

- (3) Identifying indicators for recommendation with facts and circumstances (e.g., type of customers, product costs, product performance) that may warrant a higher-level of supervision

5.4.2. Prospecting

The Care Obligation also requires that the recommendations provided by the Firm match the retail customer's investment profile at the time of the recommendation. If a Firm decides to allow recommendations to be made to prospective customers, Firms will have to ensure that the representatives had enough information about the prospect to satisfy the Care Obligation. One option Firms may wish to consider for implementation is the map the customer life cycle and identify what types of recommendations may be made at what points along the life cycle. This may help to identify whether controls are needed at such points to ensure the Care Obligation is satisfied.

5.4.3. IRA and IRA Rollovers

Reg BI is applicable to recommendations to open an IRA or to rollover workplace retirement plan assets into an IRA rather than keeping assets in a previous employer's workplace retirement plan or rolling over assets to a new employer's workplace retirement plan.

Factors that Broker-Dealers could consider when recommending to open IRA or to roll over assets to IRA (Non-exhaustive list):

Broker-Dealers could consider a variety of factors, the importance of which will depend on the particular retail customer's needs and circumstances, including but not limited to:

- (1) Retail customer's investment profile
- (2) Potential risks, rewards, and costs of the IRA or IRA rollover compared to the investor's existing employer sponsored retirement plans
- (3) Other relevant factors such as: fees and expenses; level of service available; available investment options; ability to take penalty-free withdrawals; application of required minimum distributions; protection from creditors and legal judgments; holdings of employer stock; and any special features of the existing account

With respect to IRA rollovers and available investment options, Broker-Dealers might also consider other factors such as the retail customer's current financial situation and liquidity needs in order to develop a reasonable basis to believe that the rollover is in the retail customer's best interest.

5.4.4. Account Type

Reg BI is applicable to recommendations of account types (e.g., brokerage or advisory)

Factors that Broker-Dealers can consider when recommending a type of account (non-exhaustive list):

- Services and products provided in the account (e.g., account monitoring services)
- Projected account cost to the retail customer
- Alternative account types available
- Services requested by the retail customer
- Retail customer's investment profile

- Dual Registrants can also consider the spectrum of accounts offered (i.e., both brokerage and advisory taking into account any eligibility requirements such as account minimums) and not just brokerage accounts

5.4.5. *Explicit and Implicit “hold” recommendations*

FINRA’s suitability rule applies to explicit hold recommendations but does not apply to implicit recommendations to hold a security or securities. In an enhancement to FINRA’s suitability rule, Reg BI also applies to implicit hold recommendations resulting from agreed-upon account monitoring.

Explicit hold recommendation

An explicit hold recommendation refers to explicit recommendations to hold a security or to continue to use an investment strategy involving securities or to continue to use an investment strategy involving securities (e.g., when a registered representative meets (or otherwise communicates) with a customer during a quarterly or annual investment review and explicitly advises the customer not to sell any securities or make any changes to the account or portfolio or to continue to use an investment strategy).

Implicit hold recommendation

When a Broker-Dealer agrees with a retail customer to monitor their customer’s account, 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 agreed-upon monitoring occurs and is covered by Reg BI.

When addressing implicit hold recommendations, Broker-Dealers could consider the following:

- Clearly communicating to customers in writing whether account monitoring services are or are not provided to avoid an implicit agreement to monitor the customer’s account. Such communication should be consistent with disclosures required under the Disclosure Obligation
- Identifying accounts where agreed-upon monitoring services are provided
- Documenting the account monitoring policies and procedures. For example, the policy may:
 - Identify a benchmark (e.g., stop loss) for retaining the hold on a security
 - Indicate that hold recommendations can be removed for underperforming investments
 - Incorporate routine monitoring procedures and procedures to escalate deficiencies and the required corrective actions

5.5. Documentation of specific recommendations

The Care Obligation does not require Broker-Dealers to document the basis for a recommendation. Broker-Dealers are, however, encouraged to consider documentation based on the facts and circumstances of the recommendation to evidence their compliance with the Care and Disclosure Obligations. Some of the factors that the Firm could consider when developing its approach to documentation are:

- **Risk-based process** – Firms may want to establish a risk-based approach when determining whether certain types of recommendations should be documented. For example, Firms could establish defined guidelines that would help identify whether a recommendation should be categorized as “high risk” or “complex”. Firms could then emphasize documentation for recommendations

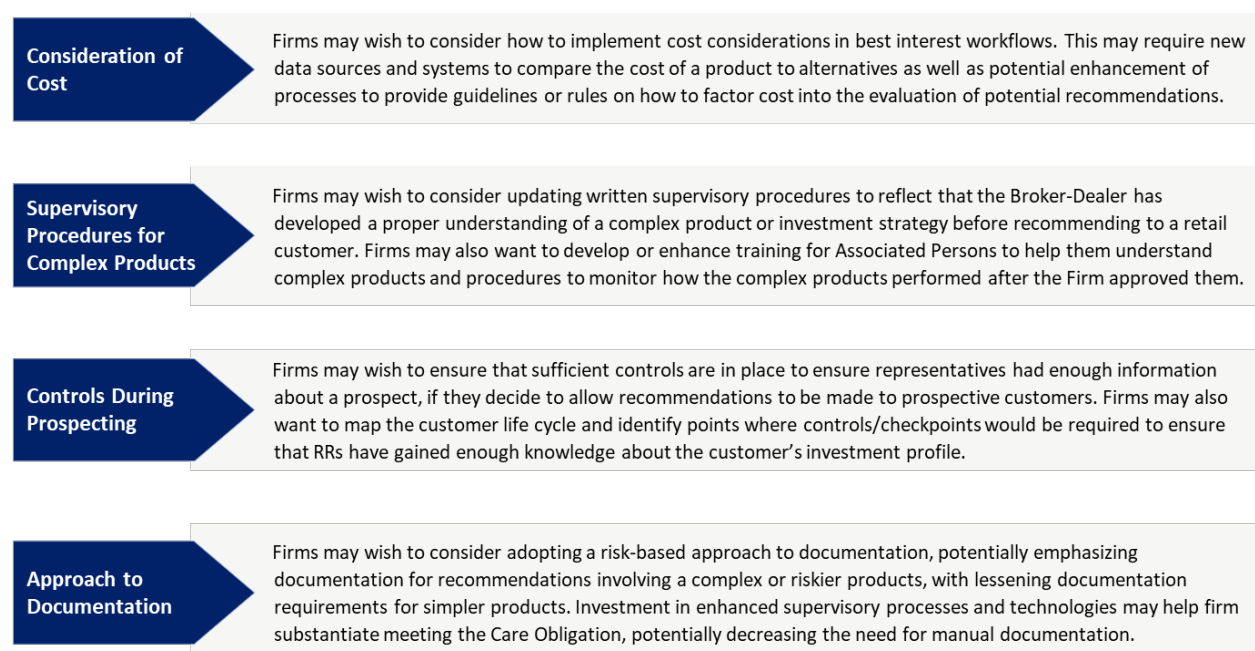
involving a complex or riskier product and for circumstances where a recommendation may seem inconsistent with a retail customer’s investment objectives on its face. Firms could also adopt a less intensive document approach in cases where the recommendation rationale is less involved or is not evident from the recommendation itself.

- **Supervision** – Firms may consider how well they can evidence the effectiveness of their supervisory processes. Investment in enhanced supervisory processes and technologies may help Firm substantiate meeting the Care Obligation, thereby, potentially, decreasing the need for documentation of the basis for recommendations.
- **Financial Advisor experience** – Firms might consider the Financial Advisor experience in development of processes for documenting the basis for recommendations. Streamlined and automated processes that enable Financial Advisors to focus more on the customer and less on administrative work are potentially additive; both to the Financial Advisor experience and the Firm’s confidence in its ability to meet the Care Obligation.

5.6. Key Implementation Considerations from Section 5

Section 5 addressed requirements and implementation considerations for the Care Obligation. Below is a summary of implementation considerations from this section. These considerations are neither exhaustive nor prescriptive; rather, they are representative of the types of considerations that a Firm may find helpful as it designs and executes on its Reg BI Program requirements.

Figure 12: Section 5 implementation considerations



6. Conflict of Interest Obligation

The Conflict of Interest Obligation aims to identify and address conflicts of interest, whether through elimination or, at a minimum, disclosure. In addition to disclosure, certain identified conflicts of interest are also required to be mitigated in order to comply with Reg BI. This Guide section will discuss the scope and structure of Conflict of Interest Obligation and will separately describe the requirements and considerations for disclosing, mitigating, and/or eliminating conflicts of interest.

6.1. Conflicts of interest catalog (types)

6.1.1. *Applicability of Conflict of Interest Obligation*

Compliance with the Conflict of Interest Obligation is applicable only to the Broker-Dealer and not to natural persons who are Associated Persons⁶⁰ of a Broker-Dealer. This differs from the Disclosure and Care Obligations, which apply to both the Broker-Dealer and to natural persons who are Associated Persons of the Broker-Dealer. Specifically, the customer-specific Care Obligation places a duty on the Broker-Dealer to have a reasonable basis to believe that the recommendation was in the best interest of the retail customer at the time of the recommendation, based on that retail customer's investment profile (as defined by Reg BI) and the potential risk, rewards, and costs associated with the recommendation, and did not place the financial interest of the broker, dealer, or natural person ahead of the interest of the retail customer.⁶¹ Similarly, in accordance with the Disclosure Obligation, Associated Persons of Broker-Dealers will be required to disclose material facts relating to conflicts of interest that are associated with a recommendation.

The term "Broker-Dealer" in this section means only the broker or dealer entity and excludes individuals, who are Associated Persons of the Broker-Dealer, including:

- (1) Any partner, officer, or director or branch manager of the broker or dealer;
- (2) Any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer; or
- (3) Any employee of the broker or dealer.

As described in the Reg BI adopting release, Broker-Dealers are expected to be the most capable of identifying and addressing the conflicts that may affect the obligations of their Associated Persons with respect to the recommendations they make, and therefore are in the best position, to affirmatively reduce the potential effect of these conflicts of interest.⁶²

⁶⁰ A "natural person who is an associated person" is a natural person who is an associated person as defined in Section 3(a) (18) of the Exchange Act.

⁶¹ See Reg BI adopting release. Page 14. 2019.

⁶² See Reg BI adopting release. Page 326. 2019.

6.1.2. Conflicts of Interest under Reg BI^{63,64}

Reg BI defines the term “conflict of interest” as 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.

Reg BI is not limited to specific Firm-level conflicts of interest. For the purposes of compliance with Reg BI, Broker-Dealers will need to address all conflicts of interest that are associated with recommendations.⁶⁵ Specifically, the conflicts of interest that are required to be analyzed by a Broker-Dealer are as follows:

- Conflicts between the Broker-Dealer and the retail customer (Firm vs. Client);
- Conflicts between the natural persons who are Associated Persons and the retail customer (Associated Person vs. Client); and
- Conflicts between the Broker-Dealer and the natural persons who are Associated Persons (Firm vs. Associated Person).

In addition to the conflicts noted by Reg BI mentioned above, Firms may consider additional conflicts such as conflicts between clients (e.g., IPO allocations or proprietary research or advice among different types of customers).

Conflicts can arise in a number of ways for a Broker-Dealer and its individual Associate Persons. Some examples of conflicts that may incentivize Broker-Dealer or its Associated Persons to deprioritize the interests of its retail customers, are listed below:

- Charging of commissions or other transaction-based fees;
- Receipt and offer of differential compensation based on the product sold;
- Receipt of third-party compensation for services provided;
- Receipt of revenue-sharing payments;
- Recommendation of proprietary products, products of affiliates, or a limited range of products;
- Recommendation of a security underwritten by the Broker-Dealer or an affiliate of the Broker-Dealer (including recommendation of IPOs);
- Recommendation for a transaction to be executed in a principal capacity;
- Allocation of trades and research, including allocation of investment opportunities (e.g. IPO allocations or proprietary research or advice) between retail customers and the Broker-Dealer’s own account; and/or
- Recommendations that are made considering the cost to the Broker-Dealer for effecting the transaction or strategy on behalf of the customer.

⁶³ See [Release No. 34-86031; File No. S7-07-18], Section II.C.3

⁶⁴ See FINRA publication, Report on Conflicts of Interest (2013) which notes the implementation of a comprehensive framework by Broker-Dealers to identify and manage conflicts of interest across and within Firms’ business lines that is scaled to the size and complexity of their business.

⁶⁵ See Reg BI adopting release. Page 15. 2019.

6.2. Conflict-related controls, policies and procedures

6.2.1. *Structure of Conflict of Interest Obligation*^{66,67}

The Conflict of Interest Obligation is structured into two major requirements.

- (1) An overarching obligation to establish, maintain and enforce written policies and procedures that are reasonably designed to identify and at a minimum disclose (pursuant to the Disclosure Obligation), or eliminate, all conflicts of interest associated with the recommendation; and
- (2) Adoption of specific requirements with respect to such policies and procedures for the mitigation or elimination of identified conflicts of interest

Broker-Dealers will be required to adopt reasonably designed policies and procedures that establish a clearly defined and articulated structure for determining how to effectively identify and address conflicts of interest (i.e., whether to eliminate or disclose (and mitigate, as required) the conflict); and setting forth a process to help ensure that conflicts are effectively addressed as required by the policies and procedures.

Reg BI mandates a broad obligation on Broker-Dealers to address conflicts both at the Firm level and the associated person level. There is an overarching obligation to identify and disclose, in accordance with the Disclosure Obligation, all conflicts of interest associated with recommendations.⁶⁸ For situations in which disclosure alone is not sufficient, Broker-Dealers may need to establish policies and procedures designed to eliminate the conflict or both disclose and mitigate it. The approach to disclosure, mitigation and elimination of conflicts of interest will be further discussed in the Guide.

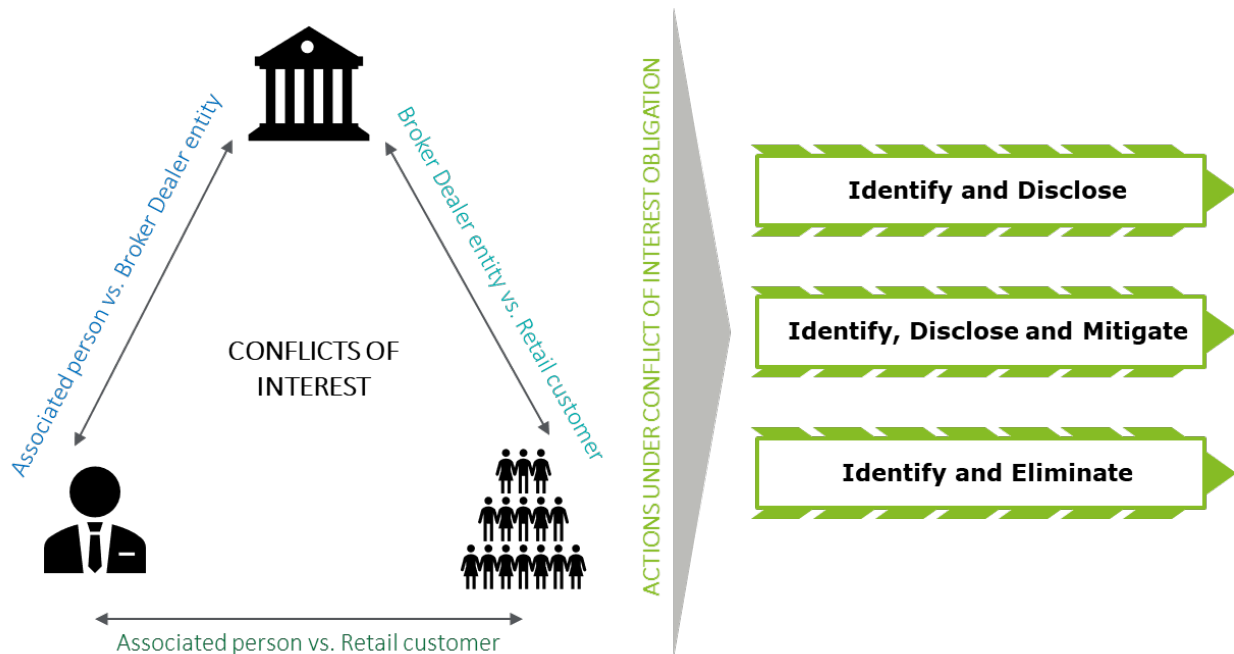
⁶⁶ See [Release No. 34-86031; File No. S7-07-18], Section II.C.3

⁶⁷ See FINRA "Report on Conflicts of Interest" for guidance on Client vs. Client conflicts. 2013.

⁶⁸ See Reg BI adopting release. Page 15. 2019.

A simplified overview of Conflict of Interest Obligation is illustrated in the below figure.

Figure 13: Actions under Conflict of Interest Obligation



6.2.2. Considerations for adopting “reasonably designed” policies and procedures⁶⁹

The written policies and procedures adopted by Broker-Dealers will need to be “reasonably designed” to ensure compliance with the requirements to disclose conflicts in accordance with the Disclosure Obligation and to identify and address conflicts in accordance with the Conflict of Interest Obligation. The requirement for “reasonably designed” policies and procedures is expected to allow the Broker-Dealer “to identify and address potential compliance deficiencies or failures (such as inadequate or inaccurate policies and procedures, or failure to follow the policies and procedures).”⁷⁰

Broker-Dealers are not mandated to perform a detailed review of each recommendation of a securities transaction or security-related investment strategy to a retail customer. They are offered the flexibility to tailor their policies and procedures to their particular business model, focusing on specific areas of their business that pose the greatest risk of noncompliance and greatest risk of potential harm to retail customers.⁷¹

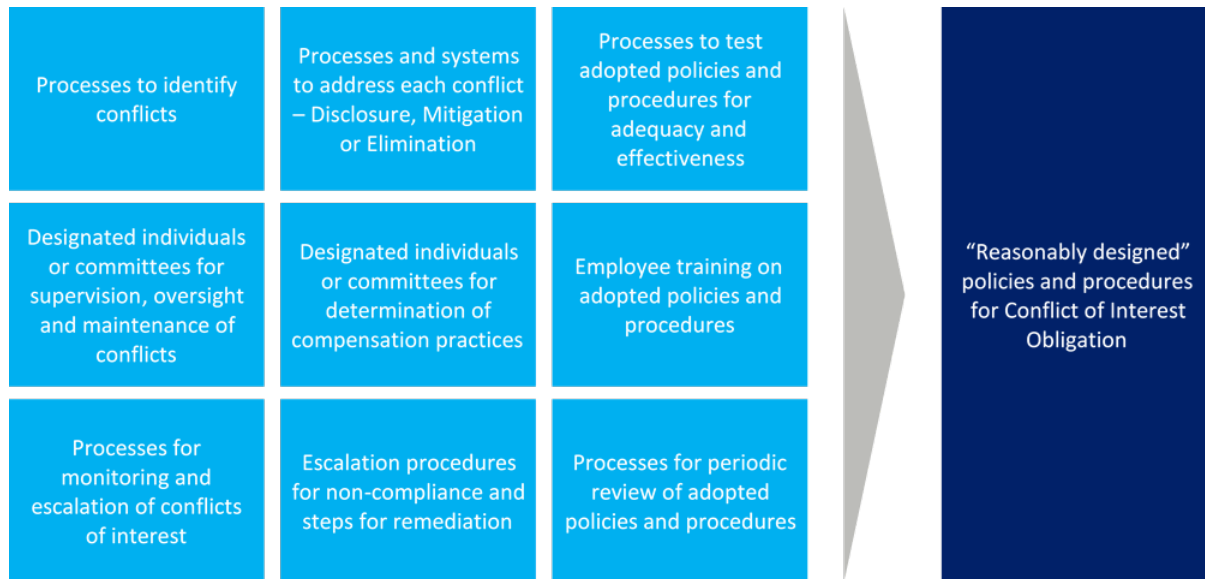
⁶⁹ See [Release No. 34-86031; File No. S7-07-18], Section II.C.3.a

⁷⁰ See Reg BI adopting release. Page 307. 2019.

⁷¹ See Reg BI adopting release. Pages 306-307. 2019.

The components that may be considered for formulating reasonably designed policies and procedures, are illustrated in the below figure.

Figure 14: Potential components for formulating reasonably designed policies and procedures



6.2.3. Considerations for identification of conflicts of interest⁷²

Broker-Dealer compliance with the Conflict of Interest Obligation begins with the identification of all conflicts of interest associated with recommendations.

The Reg BI adopting release lists certain considerations for reasonably designed policies and procedures to identify conflicts of interest. Broker-Dealers may wish to consider the following checklist in order to design policies and procedures to identify conflicts of interest:

- Do the policies and procedures define conflicts in a manner that is relevant to a Broker-Dealer’s business models?
- Do the policies and procedures define conflicts at both the Firm-level and at the Associated Person level?⁷³
- Do the policies and procedures enable Broker-Dealer’s employees to understand and identify conflicts?
- Do the policies and procedures establish a structure and process for identifying the different types of conflicts faced by the Broker-Dealer and its Associated Persons?
- Do the policies and procedures establish a structure and process to identify conflicts in a Broker-Dealer’s business as it evolves?

⁷² See [Release No. 34-86031; File No. S7-07-18], Section II.C.3.c

⁷³ See SEC commentary in Reg BI adopting release regarding its position on a safe harbor with FINRA rules regarding conflicts of interest. Pages 308, 328.

- Do the policies and procedures provide for an ongoing and regular, periodic review for the identification of conflicts associated with the Broker-Dealer's business? For example,
 - Conflicts of interest that arise due to changes in the Broker-Dealer's business/organizational structure;
 - Conflicts of interest that arise due to changes in the Broker-Dealer's changes in compensation incentive structures; or
 - Conflicts of interest that arise due to Broker-Dealer's introduction of new or revised products or services.
- Do the policies and procedures establish training procedures regarding the Broker-Dealer's conflicts of interest? For example,
 - Training on conflicts of natural persons who are Associated Persons of the Broker-Dealer;
 - Training to identify such conflicts of interest; or
 - Training on employees' roles and responsibilities with respect to identifying such conflicts of interest.

6.3. Approach to disclosing, mitigating, or eliminating conflicts of interest

6.3.1. *Disclosure, mitigation, or elimination of Conflicts*

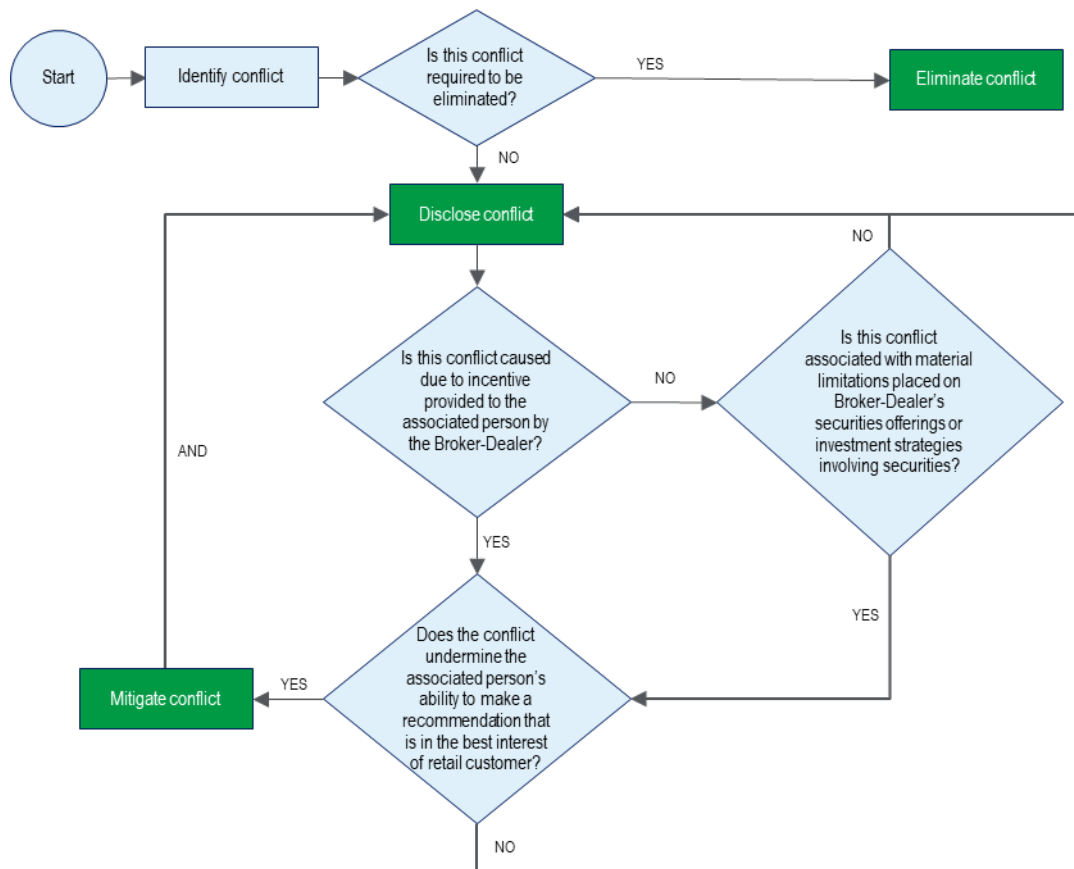
Reg BI allows Firm-level conflicts to be generally addressed through disclosure by Broker-Dealers. However, for certain conflicts, disclosure alone would not be sufficient, and Broker-Dealers would need to eliminate the conflict, or both disclose and mitigate the conflict. An identified conflict of interest that is not eliminated is required to be disclosed in accordance with Reg BI's Disclosure Obligation. The disclosure requirements for conflict of interest are discussed in Section 4 of this Guide. In addition, in certain situations, conflicts must also be mitigated. The requirements to eliminate certain conflicts of interest, as defined by Reg BI, are discussed in the subsequent sub-section.

While Firms should consider mitigating any conflicts that are likely to lead to a recommendation that is disinterested, Reg BI specifically requires Broker-Dealers to identify and mitigate the following types of conflicts:

- Conflicts due to incentives to Associated Persons of a Broker-Dealer; and
- Conflicts that arise due to material limitations placed on recommendations.

The below figure illustrates a representative logic for managing conflicts of interest in accordance with Reg BI requirements.

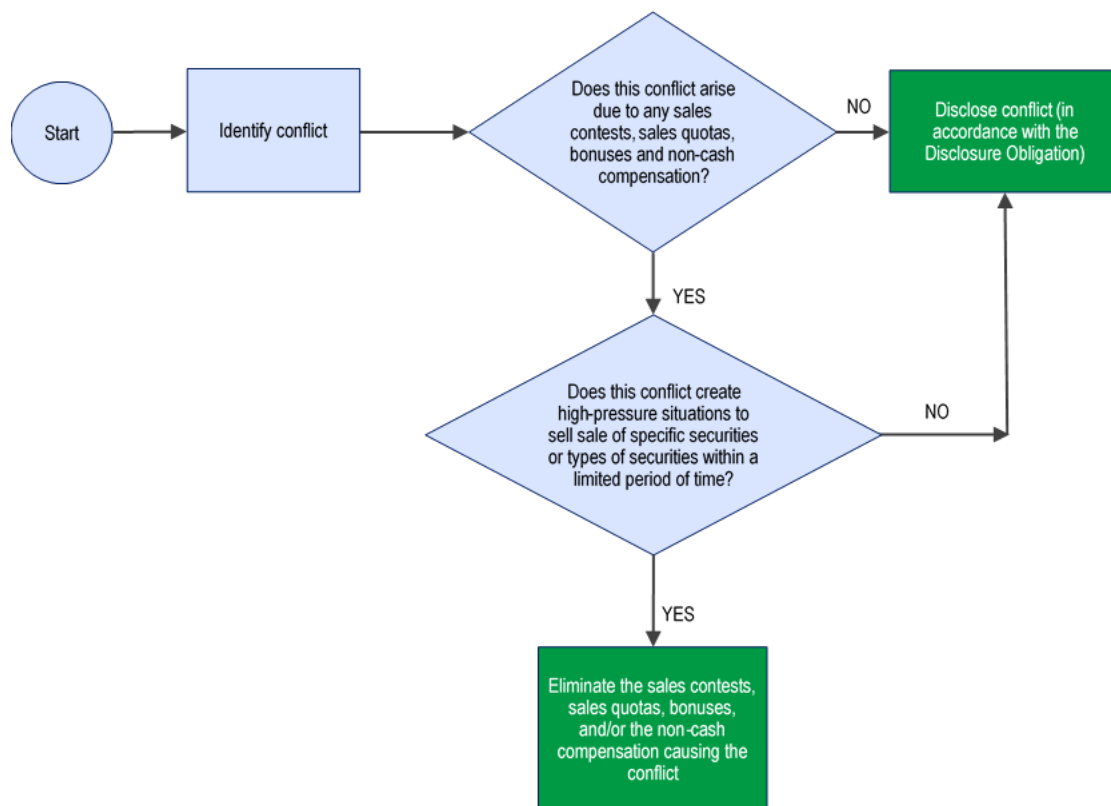
Figure 15: An example decision tree to disclose, mitigate, or eliminate a conflict under Reg BI
Conflict of Interest Obligation



6.3.2. Elimination or disclosure of Conflicts

Any identified conflict of interest associated with a recommendation is required to be disclosed or eliminated by Broker-Dealers. A logical flow for disclosing or eliminating any identified conflict of interest that is associated with a recommendation is illustrated in the below figure:

Figure 16: An example decision tree to eliminate specific sales-related conflicts under Reg BI Conflict of Interest Obligation



6.3.2.1. Mitigation of Certain Incentives to Associated Persons⁷⁴

Reg BI requires Broker-Dealers to establish, maintain, and enforce reasonably designed policies and procedures to identify and mitigate any conflicts of interest that create an incentive for the Associated Person to place the interest of the Broker-Dealer or such Associated Person ahead of the interest of the retail customer. The table below outlines the scope of such mitigation efforts.

⁷⁴ See [Release No. 34-86031; File No. S7-07-18], Section II.C.3.e

Table 11: Scope of the mitigation requirement for conflicts under Reg BI Conflict of Interest Obligation

Scope of the mitigation requirement for conflicts	
Includes	Excludes
<ul style="list-style-type: none"> • Conflicts of interest due to incentives provided to associated persons by the Broker-Dealer • Conflicts of interest due to incentives provided to associated persons by third-parties that are within the control of or associated with the Broker-Dealer's business • Conflicts of interest due to sales contests 	<ul style="list-style-type: none"> • Conflicts of interest due to external interests of the Associated Person, that is not within the control of or associated with the Broker-Dealer's business⁷⁵

Firms are encouraged to review the examples provided by the SEC in the Reg BI adopting release as they discern which conflicts of interests identified are required to be mitigated.⁷⁶

Additionally, Broker-Dealers may wish to consider the mitigation of conflicts that are related to the below list of incentives for Associated Persons by the Firm or with third-parties within the control of or associated with the Broker-Dealer's business:

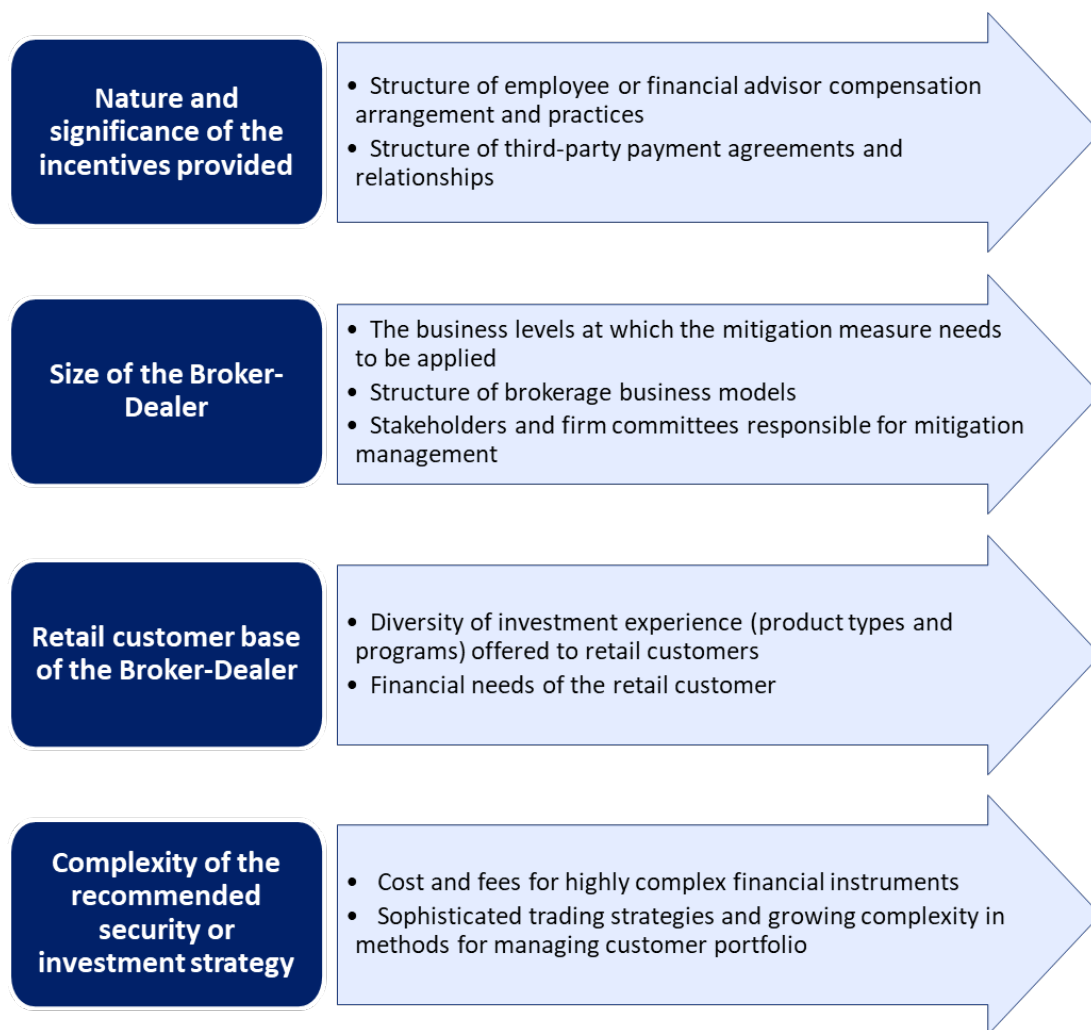
- Compensation from the Broker-Dealer or from third-parties, including fees and other charges for the services provided and products sold;
- Employee compensation or employment incentives (e.g., incentives tied to asset accumulation, special awards, differential or variable compensation, incentives tied to appraisals, or performance reviews);
- Commissions or sales charges, or other fees or financial incentives, or differential or variable compensation, whether paid by the retail customer, the Broker-Dealer or a third-party; and/or
- Compensation that varies based on the advice given, such as commissions, markups/markdowns, loads, revenue sharing, and Rule 12b-1 fees.

Factors that may influence the mitigation measures that are to be included in the required policies and procedures are outlined in the below figure.

⁷⁵ For more information about this exclusion, please see page 329 of the Reg BI adopting release.

⁷⁶ For further discussion, see Reg BI adopting release. Pages 329-330. 2019.

Figure 17: Factors that may influence the mitigation measures



Potential methods to mitigate conflicts due to incentives

Reg BI provides a list of potential mitigation methods that may be used as examples by Broker-Dealers to comply with Reg BI's requirement to mitigate conflicts that arise due to incentives to Associated Persons. This non-exhaustive list of mitigation practices are as follows:

- Avoid compensation thresholds that disproportionately increase compensation through incremental increases in sales;
- Minimize 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;
- Eliminate compensation incentives within comparable product lines (e.g., mitigation by capping the credit that an associated person may receive across mutual funds or other comparable products across providers);

- Implement supervisory procedures to monitor recommendations that:
 - Are near compensation payout thresholds;
 - Are near thresholds for Firm recognition;
 - Involve higher compensating products, proprietary products, or transactions in a principal capacity;
 - 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;
 - Involve redemption fees, surrender charges, or other exit fees;
- Adjust compensation for associated persons who fail to adequately manage conflicts of interest; and/or
- Limit the types of retail customer to whom a product, transaction, or strategy may be recommended.

6.3.2.2. Mitigation of Material Limitations on Recommendations to Retail Customers⁷⁷

There is a provision in Reg BI that specifically addresses those conflicts of interest that are presented when Broker-Dealers place any material limitations on the securities or investment strategies that may be recommended to a retail customer.

The Reg BI adopting release provides guidance to Broker-Dealers to establish, maintain, and enforce written policies and procedures reasonably designed to:

- (1) **Identify and disclose** any material limitations Broker-Dealers place on their securities offerings or investment strategies involving securities that may be recommended to a retail customer and any associated conflicts of interest; and
- (2) **Prevent** such limitations and associated conflicts of interest from causing the Broker-Dealer to make recommendations that place the interest of the broker, dealer, or such natural person ahead of the interest of the retail customer.

An example for material limitations that may be placed on recommendations to retail customers is tabulated below.

Table 12: Example for material limitations on recommendations to retail customers

Example for material limitations on recommendations to retail customers	
What can be considered as material limitations?	Conflict associated with material limitation
<ul style="list-style-type: none"> • Recommendation of only proprietary products • Recommendation of only a specific asset class, or products with third-party arrangements • Recommendation of products from only a select group of issuers 	<ul style="list-style-type: none"> • Establishment of a product menu may result in recommendations that are not in the best interest of the retail customer

⁷⁷ See [Release No. 34-86031; File No. S7-07-18], Section II.C.3.f

Any material⁷⁸ limitations placed on securities offerings or investment strategies involving securities that may be recommended to a retail customer, and any conflicts of interest associated with such limitations, are required to be disclosed by the Broker-Dealer in accordance with Reg BI's Disclosure Obligation. For example, when a Broker-Dealer intends to provide recommendations only for proprietary products, it would need to disclose, the material limitation that the products on the menu are all proprietary, and the material fact of the conflict of interest that the Broker-Dealer and its Associated Persons are being compensated for selling these products. Additional details on the disclosure requirements are discussed in Section 4 of this Guide.

Considerations for policies and procedures to mitigate conflicts due to material limitations

Reg BI adopting release provides considerations for developing policies and procedures to mitigate conflicts due to material limitations placed on securities offerings or investment strategies involving securities that may be recommended to a retail customer. These considerations are listed below.

- (1) Establishment of product review processes for products that may be recommended
 - o Establishment of procedures for identifying and mitigating the conflicts of interests associated with the product
 - o Establishment of procedures for declining to recommend a product where the Broker-Dealer cannot effectively mitigate the conflict
 - o Establishment of procedures for identifying which retail customers would qualify for recommendations from the product menu
- (2) Usage 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
- (3) 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

It is worth noting that the Reg BI adopting release states that the disclosure of material limitations and mitigation of associated conflicts, alone, will not excuse a Broker-Dealer from satisfying the Care Obligation. In accordance with the facts-and-circumstances approach under the Care Obligation, if a Broker-Dealer offers only a few products, an associated person of the Broker-Dealer may be expected to understand and consider all of these offerings when recommending a security or investment strategy. Similarly, a Broker-Dealer offering only proprietary products would need to consider reasonably available alternatives offered to make recommendations that are in the best interest of the retail customer.⁷⁹

⁷⁸ As discussed Section 3 of this Guide and in the Reg BI adopting release, a limitation is "material" if there is "a substantial likelihood that a reasonable shareholder would consider it important." *Basic, Inc. v. Levinson*, 485 U.S. 224, 224 (1988). Page 342. In the context of Reg BI, this standard would apply in the context of retail customers.

⁷⁹ For additional information about the scope of consideration of "reasonably available alternatives", please see the Reg BI adopting release. Page 39. 2019.

6.3.3. Elimination of Conflicts⁸⁰

For those types of compensation or payment practices (cash and non-cash) where the associated conflicts of interest are pervasive and cannot be reasonably mitigated, Reg BI requires Broker-Dealers to eliminate such conflicts in their entirety. Specifically, Reg BI requires Broker-Dealers to establish, maintain, and enforce written policies and procedures reasonably designed to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation⁸¹ that are based on the sales of specific securities or specific types of securities within a limited period of time.⁸²

Scope of elimination requirement

- (1) The elimination requirement is applicable to 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. However, Broker-Dealers are not prohibited from providing such incentives; they may still do so as long as that they do not create high-pressure situations to sell a specifically identified type of security, within a limited period of time, such that the Associated Person cannot make a recommendation in the retail customer's best interest.⁸³
- (2) The requirement only applies compensation practices based on sales of specific securities or types of securities, and does not apply to, for example, total products sold, or asset growth or accumulation and customer satisfaction.⁸⁴

Figure 18: Note on Care Obligation⁸⁵

Does disclosure, mitigation or elimination of conflicts ensure compliance with Care Obligation?

Any recommendation, disclosure, mitigation or elimination of conflicts aside, would still need to be in the best interest of a retail customer, in accordance with the Care Obligation. For example, in a circumstance where a Broker-Dealer (or its associated person) is choosing among identical securities with different cost structures, it would be inconsistent with Reg BI to recommend the more expensive alternative for the customer, even if the Broker-Dealer had disclosed that the product was higher cost and had policies and procedures reasonably designed to mitigate the conflict under the Conflict of Interest Obligation, as the Broker-Dealer would not have complied with the Care Obligation.

⁸⁰ See [Release No. 34-86031; File No. S7-07-18], Section II.C.3.g

⁸¹ Non-cash compensation includes but is not limited to merchandise, gifts and prizes, travel expenses, meals and lodging and excludes coverage for certain employee benefits such as healthcare and retirement benefits. See [Release No. 34-86031; File No. S7-07-18], Section II.C.3.g

⁸² See Reg BI adopting release. Page 313. 2019.

⁸³ See Reg BI adopting release. Page 352-353. 2019.

⁸⁴ See Reg BI adopting release. Page 354. 2019.

⁸⁵ See Reg BI adopting release. Pages 278-291. 2019.

6.4. Considerations for the adoption and implementation of Conflict of Interest Obligation

Certain elements that may be considered by Broker-Dealers in governing and managing their conflicts of interest, are listed below.

- (1) **Conflict of Interest Register:** Broker-Dealers may consider maintaining a consolidated inventory of all conflicts of interest that arise within the Firm and for its Associated Persons. Firms may wish to catalog the different types of conflicts (e.g., conflicts due to compensation programs, conflicts due to material limitations in recommendations, or conflicts due to non-cash benefits or compensation) within and across business lines and maintain, periodically review, and update such catalog. This repository of conflicts would provide a reference for Broker-Dealers for various purposes, such as to design their conflicts of interest policies and procedures, to design their compensation practices, and/or to adopt mitigation methods for Reg BI compliance.
- (2) **Model for conflict management:** Depending on the size and business models of the Firm, Broker-Dealers may choose to adopt a distributed or centralized model for management of conflicts. In a centralized model, there would generally be single office or department having overall ownership of conflict management. Large sized Firms or Firms with intricate business models may consider adopting a distributed structure, in which there may be a compliance group or conflicts committee within each business line or program to facilitate the governance of conflicts that are unique to the business. Broker-Dealers might also consider a hybrid model by combining both distributed and centralized management structures.
- (3) **Monitoring and surveillance systems:** Broker-Dealers may need to review and evaluate their existing systems and processes for conflict management. If the systems for monitoring and surveillance are inadequate and sub-standard, management information on conflicts of interest will likely be lacking, leaving the Broker-Dealer unable to identify and address potential conflicts and eventually face the risk of non-compliance with Reg BI. Changes may be required to existing control framework and supervisory systems to monitor for potential violations of policies and procedures by natural persons who are Associated Persons.
- (4) **Existing regulatory infrastructure:** Broker-Dealers may consider leveraging the existing compliance infrastructure present in the organization. For example, dual Registrants may have an existing control framework in place to disclose conflicts of interest in the Firm's Form ADV, Part II. Such existing practices may be leveraged and updated for the purposes of Reg BI Program compliance. Similarly, Broker-Dealers who have an international presence may be able to learn from their global member firms as to their experience in adopting similar rule requirements to Reg BI in non-US regulatory regimes (if applicable). For example, the Markets in Financial Instruments Directive (or Mifid II) requires investment firms in the United Kingdom to strengthen their governance and organizational requirements in relation to management of conflicts of interest.
- (5) **Conduct:** Broker-Dealers may consider cultivating a conduct culture within its Firm to promote compliance and to set expectations for individual behavior across the organization's hierarchy. A culture of putting clients first can induce associated persons to "own" the risks and be responsible for assessing and managing conflicts of interest for each recommendation made to a

retail customer. In addition, understanding the drivers of behaviors will allow Broker-Dealers to identify areas requiring change in order to create appropriate behavioral incentives (for example, supervisor and RR compensation practices, Firm revenue-sharing arrangements, etc.).

- (6) **Recruitment practices and compensation structures:** Compliance with Reg BI post June 30, 2020 may result in Broker-Dealers modifying or eliminating some of their compensation practices. This may result in a reduction in the overall compensation that an Associated Person currently receives from providing recommendations. Broker-Dealer's hiring practices could also be affected due to change in offered benefits and remuneration. Other related considerations are as follows:
- Compensation committees may have earlier focused only on incentives offered to senior executives. Cash and non-cash benefits and compensation to all associated persons of a Broker-Dealer will need to be evaluated and reviewed to effectively comply with Reg BI.
 - Broker-Dealers may have to involve their risk management and control personnel in the design and development of their compensation programs.
 - Third-party agreements and affiliate relationships may need to be evaluated to ensure that any conflicts are identified and appropriately eliminated or disclosed, as needed.
 - Performance metrics and goals for employed personnel may need to be evaluated and updated such that there is no incentive for misconduct. The performance assessment process for employees can be adjusted to include controls for Reg BI's Conflict of Interest Obligation.
 - Broker-Dealers may need to evaluate their hiring policies to ensure that they are rigorous enough to avoid or mitigate the risk of the employment of Associated Persons with a disciplinary history or problematic financial standing.
- Existing employees and newly-hired individuals may need to undergo focused training to recognize potential conflict situations, identify Firm-level and Associated Person-level conflicts, and practice making decisions as to how to address such conflicts. Broker-Dealers may also consider designing or revising their Codes of Ethics and Conducts for their employees to explain conflicts under Reg BI, provide guidance for recognizing them, and Firm resources to address any questions.⁸⁶

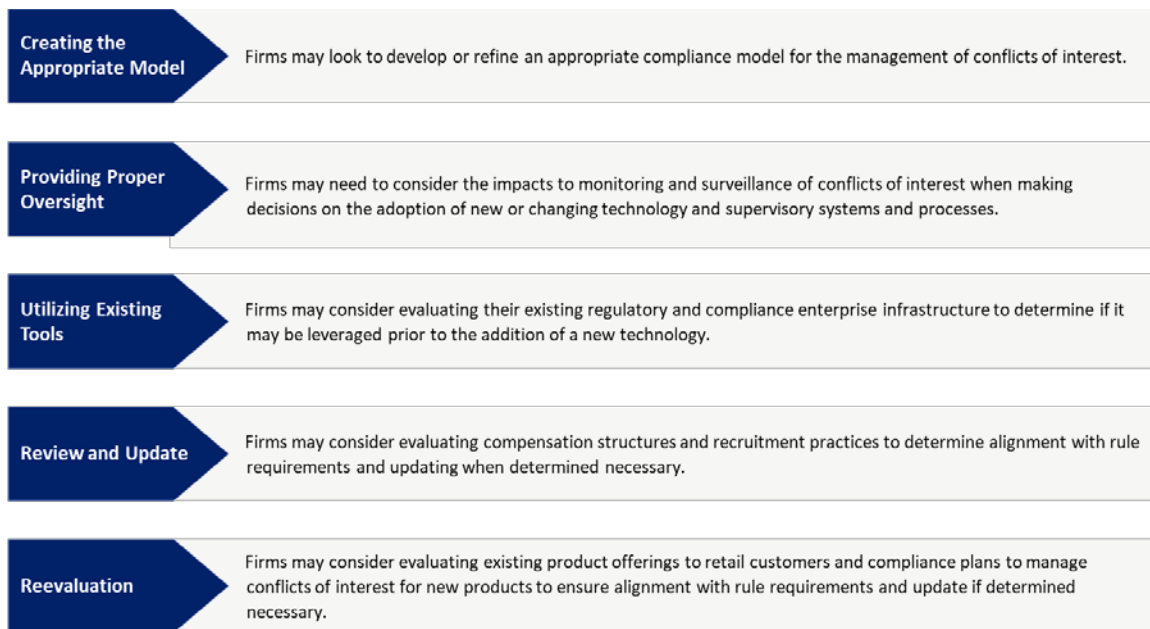
⁸⁶ For RIAs, this is an explicit requirement under the Investment Advisers Act 204(A)-1.

- (7) **Products and services:** To comply with the Conflict of Interest Obligation, Broker-Dealers may need to evaluate existing products and services and potentially decide to expand or limit the menu of securities offered to retail customers. Broker-Dealers may adjust their menu of securities such that it results in more consistent product fees across comparable securities or investment strategies. This has the potential to help reduce compliance costs for Reg BI purposes. Broker-Dealers may also need to evaluate any new business or product planned to be introduced for potential conflicts of interest. Some considerations to identify and manage conflicts of interest for new products are as follows:
- The implementation of product review teams to identify and mitigate conflicts of interest that may be associated with a new product;
 - The evaluation of the suitability of the new product for recommendation to retail customers;
 - The conducting of post-launch reviews of new products to identify potential compliance risks and conflicts; and
 - The training of employees required to understand the new product as well as the retail customer base to which the new product may be recommended.

6.5. Key Implementation Considerations from Section 6

Section 6 addressed requirements and implementation considerations for the Conflict of Interest Obligation. Below is a summary of implementation considerations from this section. These considerations are neither exhaustive nor prescriptive; rather, they are representative of the types of considerations that a Firm may find helpful as it designs and executes on its Reg BI Program requirements.

Figure 19: Section 6 implementation considerations



7. Compliance Obligation

7.1. Compliance Obligation Requirements

The Compliance Obligation⁸⁷ requires Broker-Dealers, in addition to the policies and procedures required by the Conflict of Interest Obligation, to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI requirements.

The Compliance Obligation is intended to ensure that Broker-Dealers have a “strong systems of controls” in place to detect and prevent violations of Reg BI⁸⁸, in addition to the policies and procedures required under Conflict of Interest Obligation, and to protect the interests of retail customers. Whether or not policies and procedures are considered reasonably designed to comply with Reg BI Rule Package requirements will depend on facts and circumstances, including the type of recommendation, the complexity of the product or service recommended, and the sophistication of the retail customer.

The Compliance Obligation provides flexibility to formulate policies and procedures that address the variety of business and operating models that exist and does not prescribe specific policies and procedures required to be created. Firms are, therefore, encouraged to consider the size, complexity, and associated risks in their business models and operations when developing policies and procedures to meet their Reg BI Rule Package obligations. Other considerations may include suggestions outlined below:

Table 13: Considerations for Policies and Procedures

Component Obligation	Considerations for Policies and Procedures
Compliance Obligation (General Considerations)	<ul style="list-style-type: none">• To what extent the Firm has standalone policies and procedures for compliance, relevant sections within existing compliance manuals, or a hybrid approach which considers a combination of the two.• To what extent processes, controls, technology solutions, and/or training materials created for previously-anticipated regulatory requirements (e.g., such as the DOL fiduciary rule) or existing state requirements (e.g., such as the New York Regulation 187) may be leveraged for Reg BI Program compliance purposes.• The roles and responsibilities the key functional groups (e.g., product, operations, technology, legal and compliance) to develop an integrated approach to achieve Reg BI compliance.• How and to what extent a Firm will evidence support for and maintain documentation of recommendations made to retail customers.• To what extent the Firm adopts changes to its business model and is required to update its policies and procedures accordingly to accommodate such changes (e.g., such as the launch of a new product or service).
Disclosure Obligation	<ul style="list-style-type: none">• The points across the customer life cycle (e.g., prospecting, onboarding, rollover, and account type change) that require disclosure to retail customers.

⁸⁷ Refer to Compliance Obligation in Regulation Best Interest: The Broker-Dealer Standard of Conduct, <https://www.sec.gov/rules/final/2019/34-86031.pdf>

⁸⁸ See SEC Reg BI Adopting Release. Page 359. 2019.

Component Obligation	Considerations for Policies and Procedures
	<ul style="list-style-type: none"> • The variety of media through which disclosures are made to retail customers (e.g., in person, online, and marketing materials). • The circumstances under which the Firm will allow supplemental oral disclosures. • The creation of Form CRS and the extent to which the Firm may wish to implement layered disclosures. • The extent to which existing disclosures may be updated to comply with the Disclosure Obligation. • The timing and frequency of disclosures made to retail customers. • The extent to which the Firm allows its financial advisors to personalize services (e.g., investment strategies).
Care Obligation	<ul style="list-style-type: none"> • How the Firm will define and operationalize “reasonable diligence, care, and skill”, when making a recommendation. • How the Firm will define and operationalize its definition of a “reasonable basis” for making a recommendation and the associated costs of doing so. • The extent to which the Firm will standardize its recommendation processes vs. allowing financial advisors the flexibility to determine if a recommendation is in the best interest of the retail customer. • The complexity of the types of products and services offered, and the level of due diligence, care, and skill that are required. • The extent to which additional training is required for financial advisors as they need to meet standards of care and conduct under Reg BI. • The degree of documentation the Firm requires to demonstrate compliance with the Care Obligation.
Conflict of Interest Obligation	<ul style="list-style-type: none"> • The extent to which the Firm will permit conflicts unique to an individual or a subset of financial advisor(s) or registered representative(s). • The material limitations that exist on products and services offered, and the conflicts that these may generate (e.g., limited product menu). • The extent to which proprietary products and services are offered and their related conflicts. • The complexity of conflicts and the ability of different customer segments to understand these conflicts. • The types of compensation and incentive plans that the Firm will permit and the types of conflicts inherent to these plans. • The way in which the Firm will decide to integrate conflicts-related policies and procedures with the policies and procedures for reviewing and updating of disclosures required under the Disclosure Obligation (if at all).

Requirements under the Disclosure Obligation, the Care Obligation, and the Conflict of Interest Obligation are discussed in greater detail in Sections 4, 5, and 6, respectively, in this Guide.

As described in Section 4 of this Guide, Broker-Dealers and RIAs are required to provide a Form CRS to retail customers, which is intended to inform retail investors about the types of relationships and services the Firm offers; the fees, costs, conflicts of interest, and required standard of conduct associated with such relationships and services; whether the Firm and its financial advisors currently have reportable legal

or disciplinary history; and how to obtain additional information about the Firm. Form CRS must also be filed with the SEC. The requirements for Form CRS are described in greater detail in Section 4 of this Guide; however, below are suggestions for Firms as they consider how to meet their compliance obligations under the rule requirements:

Table 14: Considerations for compliance with the requirements of Form CRS

Considerations for compliance with the requirements of Form CRS may include:	Requirement Considerations (Non-Exhaustive)
Delivery	<p>Initial Delivery to Existing Customers</p> <ul style="list-style-type: none"> Firms are required to file the Form CRS with the Web CRD and/or the IARD and as such may consider updating relevant policies and procedures and designate appropriate staff for such filing. Firms are required to deliver Form CRS to existing clients within 30 days from the filing date noted above and as such may consider: <ul style="list-style-type: none"> Assessing the population of its existing customer accounts to determine efforts required to meet initial delivery; and Automating delivery and enhancements to technology to facilitate initial delivery. <p>Ongoing Delivery to Existing Customers⁸⁹</p> <ul style="list-style-type: none"> Firms may consider the implementation of processes to comply with the delivery requirements of the Form CRS for specific circumstances as defined in the rule requirements, including: <ul style="list-style-type: none"> Automating delivery and enhancing technology systems to facilitate such delivery; Leveraging alternative electronic delivery technologies to reduce costs of such delivery <p>Delivery to New and Prospective Customers</p> <ul style="list-style-type: none"> Firms may consider embedding delivery of Form CRS into its existing customer relationship management (“CRM”) and customer account onboarding processes and consider providing appropriate training to staff that manage these processes. Firms may consider digital delivery options (e.g., online agreements). <p>Tracking and Instances of Non-Compliance</p> <ul style="list-style-type: none"> In addition to establishing procedures to maintain records of delivery, Firms may consider implementing and/or embedding processes to track instances of non-compliance with the delivery requirements, as well as steps to address delinquent client disclosures.

⁸⁹ Ongoing delivery in this case is considered to be delivery as required by triggers as discussed in the Form CRS adopting release (e.g., to existing customers who opens a new account or if material changes necessitate such delivery of an updated Form CRS).

Content and Format	<ul style="list-style-type: none"> • Firms may consider designating appropriate staff responsible for preparing and updating the Form CRS consistent with the format prescribed by the rule requirements. • Firms may consider defining and documenting terms such as “materially inaccurate.”⁹⁰ This may standardize the process for determining when updates would be needed to the Form CRS. • Registrants may consider reviewing existing disclosures to determine if cross-referencing such information for Form CRS purposes is appropriate.
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7.2. Potential framework for satisfying the Compliance Obligation

For Firms to satisfy the requirements of the Compliance Obligation, they should consider a design and implementation of policies and procedures that are appropriate to their specific business models and operations. The SEC recommends⁹¹ that a reasonably designed compliance program generally would include controls, processes for remediation of non-compliance, training, and periodic review and testing, in addition to the requirement for policies and procedures to comply with Reg BI.

Below is an outline for a potential framework that Firms may choose to leverage as an aid to their design and implementation of policies and procedures for satisfying the requirements of the Compliance Obligation. The framework is staged in three phases: (1) a risk assessment, (2) a current-state gap assessment, and (3) a target-state design.

7.2.1. Risk Assessment

Firms are encouraged to first perform a risk assessment to identify and evaluate the risk factors that may cause a violation to Reg BI Rule Package requirements. The risk assessment will enable Firms to identify risk factors specific to their business and operating models; it will also enable them to assess the levels of inherent and residual risk in their businesses. Firms are encouraged to evaluate existing supervision and surveillance processes as well as controls and compliance testing plan designs to understand and assess the potential to mitigate identified risk factors as part of Reg BI Program implementation.

7.2.2. Current-State Assessment and Gap Analysis

Firms choosing to undergo a current-state gap assessment may wish to consider an assessment and review of the business and operational changes that the Firm has decided to make as a result of Reg BI Rule Package requirements, including the extent to which current policies and procedures should be enhanced to support these changes. With this approach, Firms may be able to address prioritized compliance risk factors in their business model and leverage existing policies and procedures where possible to meet the Compliance Obligation, instead of creating new policies and procedures.

Firms should also consider assessing gaps in their current-state infrastructure and determine changes that may be required to support their Reg BI compliance programs. This may include assessing and determining changes required to current-state controls and technology as well as testing, training,

⁹⁰ See SEC Form CRS Adopting Release. Page 187. 2019.

⁹¹ Refer to Section II C 4: Compliance Obligation in Regulation Best Interest: The Broker-Dealer Standard of Conduct, <https://www.sec.gov/rules/final/2019/34-86031.pdf>

monitoring, and remediation capabilities. It also may require enhancing policies and procedures of various functions, including product, marketing, operations, and legal. The changes required to the infrastructure to support a Reg BI compliance program will vary from Firm to Firm, depending on the existing infrastructure, the complexity of the business, and the extent to which changes need to be made to existing policies and procedures.

7.2.3. Target-State Design

In developing a target-state design, Firms may wish to determine the appropriate roles and responsibilities for the lines of defense in their compliance programs. Below are suggested questions that may aid Firms in assessing how they wish to design or modify such roles and responsibilities in their organizations:

Product:

- How will the Firm assess the existing or new products on its product shelf?
- How will restrictions on products and investment strategies, such as proprietary products or usage of preferred lists, be evaluated?
- Will the frequency or types of due diligence conducted in product reviews require changes?

Technology and Operations:

- How will policies and procedures need to change in response to the various functions impacted by Reg BI?
- How will policies and procedures for account opening, client onboarding, and prospecting be impacted?
- What new system integration considerations would be needed (e.g., CRM, order management system, financial planning system, or investment compliance systems)?

Marketing:

- How will policies and procedures need to change to make the required disclosures in order comply with Reg BI?
- What impact would there be on existing client-facing materials?
- Does the business currently provide recommendations digitally via online tools, such as investor questionnaires? If so, what impact would Reg BI have on such recommendations? Do procedures need to be updated to consider the timing and order of required disclosures across the customer digital experience?

Supervision:

- What supervision responsibilities will be centralized with the home office vs. decentralized in the branch offices?
- Will the supervisory model be risk-based, and what enhanced supervision processes will exist for activities deemed to be of high risk (e.g., 401k rollovers or complex product recommendations)?
- Does the business currently have the technology systems, analytics capabilities, and tools required to efficiently undertake their target-state supervisory roles and responsibilities?
- What enhancements to supervisory processes could be made with investment in automation?
- What new information or data inputs will supervision need to consume and synthesize to evaluate recommendations being made to retail customers?
- What new training does the business and its representatives require to fulfill their roles and responsibilities?

Surveillance:

- How will surveillance policies and procedures need to be modified for Reg BI compliance purposes?
- What new trends and patterns will be monitored on an ongoing basis to help prevent and detect compliance violations or emerging conflicts?
- What additional data and technologies will be required to implement the monitoring of trends and patterns?
- To what extent will surveillance be centralized vs. decentralized and to what extent will it sit with a second line vs. first line defense function?
- What information exchange and feedback will be required between supervision and surveillance functions to sustain effective compliance oversight?
- When compliance issues are identified, what capabilities will the Firm require to evaluate, escalate, and remediate these issues?

Testing

- How and with what frequency will the Firm test the effectiveness of its Reg BI Program policies, procedures, and controls?
- What existing testing capabilities may be leveraged for Reg BI? How can existing capabilities be enhanced with automation and investment in additional technologies?
- What metrics will the Firm develop to assess the effectiveness of its compliance program, and what are the data inputs and sources required for these metrics?
- How will the Firm retain and evidence the testing of its compliance program?
- What testing will be performed by compliance vs. internal audit vs. risk management functions?
- Will the Firm engage service providers to assist in the design and execution of such testing?

Once a Firm has designed for target-state Reg BI compliance, it will likely develop an implementation plan for such a compliance program. Firms may want to consider what resources might be leveraged across pre-existing compliance efforts or business projects in order to optimize the cost efficiency and ease of integration for such efforts. In this regard, Firms will likely need to consider the resources, skillsets, and experiences needed for implementation and how to address any such gaps (e.g., additional hiring, training, or engagement of external service providers). Firms should consider the impact of Reg BI Compliance Obligation efforts on other Firm stakeholders, including a holistic review of potential impacts on the Firm's other compliance policies and procedures.

7.3. Key Implementation Considerations from Section 7

Section 7 addressed requirements and implementation considerations for the Compliance Obligation. Below is a summary of implementation considerations from this section. These considerations are neither exhaustive nor prescriptive; rather, they are representative of the types of considerations that a Firm may find helpful as it designs and executes on its Reg BI Program requirements.

Figure 20: Section 7 implementation considerations

Risk Assessment	Firms may wish to consider performing a risk assessment to identify and evaluate compliance risk factors. Firms can then prioritize these risk factors by their probability of occurrence and potential impact. This prioritization enables Firms to allocate resources and invest strategically in the design of a compliance program.
Centralized Policies and Procedures	Firms may need to consider the extent to which their policies and procedures for the Compliance Obligation will be centralized. Firms may want to consider if it is advantageous to have standalone policies and procedures for compliance, relevant sections incorporated into existing compliance manuals, or a hybrid approach which considers a combination of the two.
Leveraging Existing Processes	Firms may wish to analyze the extent to which existing processes, controls, technology, and training created for previously-anticipated regulatory requirements (e.g., such as the DOL Fiduciary Rule) or existing state requirements (e.g., such as the New York DFS Regulation 187) may be leveraged for Reg BI Program compliance purposes.
Gap Analysis	Firms may consider assessing gaps in their current-state infrastructure and determine changes that may be required to support their Reg BI compliance programs. This may include assessing and determining changes required to current-state controls and technology as well as testing, training, monitoring, and remediation capabilities.
Roles and Responsibilities	Firms may wish to determine the appropriate roles and responsibilities for the lines of defense in their compliance programs, taking into consideration the impacts on product, technology or operations, marketing, and supervision, surveillance, and testing.
Controls and Monitoring	Firms may wish to assess their current-state capabilities in technology systems, data analytics, and others tools required to efficiently undertake their target-state supervisory roles and responsibilities.
Timelines	Firms may wish to consider evaluating the timelines for decisions needed to be made for the Disclosure, Care, and Conflict of Interest Obligations to allow enough time to design and implement policies and procedures for the Compliance Obligation by June 30, 2020.

8. Recordkeeping Requirements

This section is intended to provide considerations for Firms as they implement the recordkeeping requirements added in connection with the Reg BI Rule Package, potentially leveraging their recordkeeping infrastructure and governance programs currently in place for existing regulatory requirements.

8.1. Existing recordkeeping requirements

Broker-Dealers and RIAs are currently required to create and preserve books and records (referred to collectively hereafter as “records”) for their business and financial operations, among other things, in accordance with regulatory requirements of the SEC, FINRA, and the Municipal Securities Rulemaking Board (if applicable)⁹². The Securities Exchange Act Rules 17a-3 and 17a-4 define the recordkeeping requirements for Broker-Dealers. Rule 17a-3 defines the records required to be created and preserved by Broker-Dealers, and Rule 17a-4 defines the technical requirements for the maintenance and preservation of such records, including the minimum retention period and the method of retention.⁹³ Dual Registrants are also subject to the Investment Advisers Act Rule 204-2 which defines the recordkeeping requirements for RIAs.

While the population of records to be created and retained varies by Firm given the scope of products and services offered and the Firm’s business model, the below table outlines common categories of records that Broker-Dealers are required to create and retain under the existing rules (note: the examples are not comprehensive).

Table 15: Records to be made and preserved by Broker-Dealers

Records to be Made and Preserved by Broker-Dealers ⁹⁴	Retention Period
<i>Memoranda of Brokerage Orders and Dealer Transactions</i>	3 years (first 2 years in an accessible place)
<i>Associated Person Location and Identification Number Records</i>	3 years after the Associated Person has terminated employment and all other connections with the Firm
<i>Associated Person Compensation Records</i>	3 years (first 2 years in an accessible place)
<i>Associated Person Complaint Records</i>	3 years (first 2 years in an accessible place)
<i>Customer Account Records</i>	6 years after account closure or the date on which the information was replaced or updated
<i>Communications with the Public</i>	3 years (first 2 years in an accessible place)
<i>Organizational Documents</i>	Life of the enterprise and any successor
<i>Special Reports</i>	3 years after the date of the report

⁹² FINRA requires Firms to create and preserve books and records as defined by the Exchange Act. For example, FINRA Rule 4511(c) requires Firms to maintain books and records in compliant format with CFR 17a-4. As another example, for Firms governed by the MSRB, MSRB Rule G-8 requires such Broker-Dealers to maintain certain books and records.

⁹³ See 17 CFR § 240.17a-3, 17 CFR 240.17a-4, and respective subsections. Under Rule 17a-4(f), Broker-Dealers are required to preserve electronic records in a “Write Once Read Many” (“WORM”) format. Additionally, electronic records must meet other technical specifications, including requirements for the duplication, indexing, and serialization of such records; for the presence of an audit trail for such records; and for the verification, retrievability, and representation of such records.

⁹⁴ FINRA Books and Records Requirements Checklist (<https://www.finra.org/compliance-tools/books-and-records-checklist>).

Records to be Made and Preserved by Broker-Dealers ⁹⁴	Retention Period
<i>Compliance, Supervisory, and Procedures Manuals</i>	3 years after the termination of use of manual
<i>Exception Reports</i>	18 months after the report was generated

As Firms implement compliance programs for Reg BI, Firms should consider where Reg BI may create record creation and retention obligations that are in addition to or different than those that already exist under current rules.

8.2. Reg BI and Form CRS recordkeeping requirements

The SEC amended Exchange Act Rules 17a-3 and 17a-4 to require firms to create and preserve records for obligations imposed by Reg BI.⁹⁵ The below table outlines new recordkeeping requirements adopted in connection with the Reg BI Rule Package. A discussion of considerations for implementation options will follow in the subsequent section.

Table 16: Amendments to existing recordkeeping rules

Regulation	Amendments to Existing Recordkeeping Rules
Reg BI	<p>§17a-3(a) (35) For each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided: (i) A record of all information collected from and provided to the retail customer...as well as the identity of each natural person who is an associated person, if any, responsible for the account.</p>
	<p>§17a-4(e)(5) All account record information required pursuant to § 240.17a-3(a) (17) and all records required pursuant to § 240.17a-3(a) (35), in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.</p>
Form CRS	<p>§17a-3(a) (24) A record of the date that each Form CRS was provided to each retail investor, including any Form CRS provided before such retail investor opens an account.</p>
	<p>§17a-4(e) (10) All records required pursuant to §240.17a-3(a) (24), as well as a copy of each Form CRS, until at least six years after such record or Form CRS is created.</p>
	<p>§204-2(a)(14)(i) Copy of each brochure, brochure supplement and Form CRS, and each amendment or revision to the brochure, brochure supplement and Form CRS, that satisfies the requirements of Part 2 or Part 3 of Form ADV, as applicable...[continued]... a record of the dates that each brochure, brochure supplement and Form CRS, each amendment or revision thereto, and each summary of material changes not</p>

⁹⁵ Rule 17a-3 was amended to include 17a-3(a) (35). Rule 17a-4 was amended to include 17a-4(e)(5).

Regulation	Amendments to Existing Recordkeeping Rules
	contained in a brochure given to any client or to any prospective client who subsequently becomes a client.

Firms are encouraged to review the SEC guidance provided in the Reg BI and Form CRS adopting releases as to its expectations for Firm's compliance with recordkeeping requirements for such purposes. Additionally, Firms are encouraged to conduct an internal assessment, appropriate for its business model and internal standards, to determine whether there are additional records or documentation that they wish to maintain in an effort to evidence their compliance with the Reg BI Rule Package requirements.

8.3. A proposed framework for recordkeeping implementation

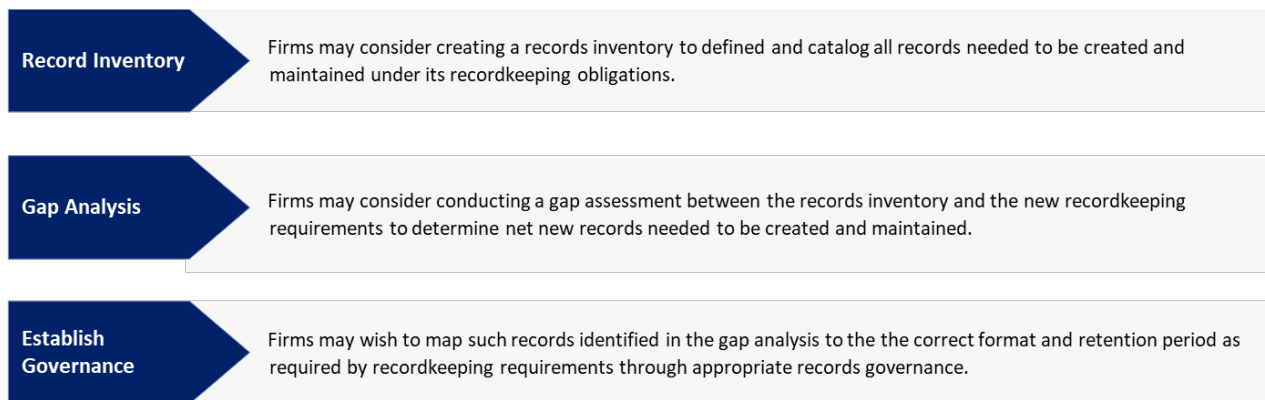
As Firms consider how best to approach implementation for Reg BI, a suggested step-wise approach for Firms to assess the impact of Reg BI and Form CRS on their recordkeeping obligations is outlined below (note: the recommendations are not comprehensive). This approach is not required for such an assessment; rather, it has been created for convenience and for reference by Firms undergoing such an exercise.

- (1) **Records Inventory:** Firms will need to determine the population of records needed to be created and retained based on rule amendments made to recordkeeping requirements in connection with Reg BI and Form CRS in addition to existing recordkeeping requirements. It is recommended that Firms define what documentation will be needed to satisfy such requirements for their purposes.
- (2) **Gap Analysis:** For records identified in the Records Inventory stage, Firms will need to determine whether gaps exist in their current recordkeeping obligations (i.e., determine if net new records should be created for Reg BI and Form CRS purposes). Below are examples of records and other documentation that Firms may consider maintaining as part of their overall Reg BI and Form CRS compliance programs (note: the examples are not exhaustive):
 - Record of each associated person, if any, responsible for the retail customer's account
 - Record of the date that each Form CRS was provided to each retail investor
 - Documentation any such created or updated compliance policies and procedures
 - Documentation of oral disclosures made to retail customers (if applicable)
 - Documentation evidencing the training of financial advisors or Associated Persons on Reg BI requirements
 - Documentation of the Firm's conflicts of interest register(s)
 - Documentation of the Firm's product review processes
 - Documentation of decisions regarding the mitigation or elimination of certain conflicts of interest
- (3) **Records Governance:** Firms will need to determine the correct format and retention period for such records identified above, including ensuring that such records meet the obligations of Rule 17a-4 (i.e., that records contained in electronic storage media are compliant with existing electronic record storage standards).

8.4. Key Implementation Considerations from Section 8

Section 8 addressed requirements and implementation considerations for Recordkeeping. Below is a summary of implementation considerations from this section. These considerations are neither exhaustive nor prescriptive; rather, they are representative of the types of considerations that a Firm may find helpful as it designs and executes on its Reg BI Program requirements.

Figure 21: Section 8 implementation considerations





Deloitte.