

BI:FYI – A Webinar Series on Federal and State Best Interest Initiative
Part 1: Enhancing Industry Best Interest Practices



Moderator

Nicole James Gilchrist

Senior Counsel

Thrivent Financial

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Eric Arnold

Partner

Eversheds Sutherland

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Issa Hanna

Counsel

Eversheds Sutherland

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Michelle Carroll Foster
Regional Vice President, State Relations
ACLI

Conflicts of interest – what’s new?

First contact vs. Point of sale

Is “one and done” disclosure possible?

Reasonably available alternatives

Plans and rollovers

Good faith effort

Training programs

Litigation update

Conflicts of interest – what's new?

- Reg BI requires disclosure, identification, mitigation, and in some cases, elimination of conflicts
- BD firms have experiences with conflicts from (1) 2013 FINRA conflicts of interest report, and (2) the now vacated DOL Rule
- Mostly confirm that firms are landing on the same assortment of conflicts we've been discussing for years

Conflicts of interest – what's new?

- Elimination of Certain Sales Contests/Sales Quotas/ Bonuses/Non-Cash Compensation
- Identify and eliminate if the program is:
 - (1) based on the sale of *specific securities* or *specific types of securities*, and
 - (2) within a *limited period of time*

Conflicts of interest – what’s new?

- How broad is a “specific security” or “specific types of securities”?
- In the Adopting Release, the SEC refers to:
 - mutual funds and variable annuities as “general categories of securities” and
 - “stocks of a particular sector or bonds with a specific credit rating” as examples of “specifically identified types of securities”
- FINRA Rulemaking on non-cash compensation appears to be backing off of position that MFs/VAs are “specific types of securities”

Conflicts of interest – what’s new?

- What is a “limited period of time”?
 - Adopting Release footnote 801 specifically says it is not defined
 - Not sure if/when it will be defined

Polling question 1

- What do you think is a “limited period of time”?
 - A. One week
 - B. One month
 - C. Three months
 - D. Six months

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- Historically, disclosures have been integrated into POS, but Form CRS and Reg BI disclosures are oriented to a “first contact” approach – how are insurers/firms/producers adapting to first contact as a separate touchpoint?
- Coordination of mailings with other reports?
- Training?
- What constitutes the trigger point during a “typical” transaction?

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Is “one and done” disclosure possible?

- Reg BI requires the delivery of a written disclosure document, at or prior to the time of recommendation
- Requires full and fair disclosure, prior to or at the time of recommendation, in writing, of all material facts related to the scope and terms of the relationship:
 - The person is acting as a BD/associated person of a BD
 - The material fees, costs that apply to *transactions, holdings* and *accounts*
 - Type and scope of services provided – including any material limitations
 - Material facts related to all conflicts of interest

Is “one and done” disclosure possible?

- Trigger for delivery is prior to or at the time of any recommendation
- Needs to be re-delivered if there is a material change
- There is some moderately helpful language in the SEC’s Adopting Release that delivery may not be required on a recommendation-by-recommendation basis
- Some commentary in the SEC’s Adopting Release seems to indicate that an annual update is anticipated due to changes on the platform, but there is no completely clear guidance
- *What are insurers/firms thinking in terms of refreshing disclosures and where to draw the line with re-delivery of disclosures?*

Polling question 2

- Are you planning to send out Form CRS annually? Reg BI?
 - A. We plan to send out both Form CRS and Reg BI annually.
 - B. We plan to send out Form CRS annually but not Reg BI.
 - C. We plan to send out Reg BI annually but not Form CRS.
 - D. We do not plan to send out Form CRS or Reg BI annually.

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Reasonably available alternatives

- Reg BI's Care Obligation requires the exercise of reasonable diligence, care and skill to consider reasonably available alternatives offered by the BD
- Guidance from the Adopting Release is not clear or satisfying, so confusion reigns
- Low-hanging fruit?
 - Lower-cost share classes
 - Sales charge waivers for certain investors
 - "One-trick ponies"

Polling question 3

- Given that this concept also appears in the NAIC model regulation, are insurers/firms taking similar approaches for both registered and unregistered annuities?

A. Yes

B. No

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- In some circumstances, a plan sponsor can be deemed a retail customer for purposes of Reg BI
- Expansion of “investment strategy” to cover rollover advice – one of Reg BI’s key enhancements over the suitability standard of conduct
- Rollover and withdrawal advice called out as a top area of focus in Chair Clayton’s June 15, 2020 Public Statement
- What to do when plan-specific information on costs, investment lineup, etc. are not readily available in connection with a rollover recommendation?

Polling question 4

- What kinds of information about plan costs, investment options, etc. are firms requiring their financial professionals to collect to help establish that a rollover recommendation is in a retail customer's best interest?
 - A. Actual information about the plan – no exceptions
 - B. Actual information about the plan – exception when the retail customer or employer refuses to provide or cannot obtain (in which case industry averages/benchmark information is used)
 - C. Preference for actual information about the plan, but industry average/benchmark information also acceptable
 - D. Industry average/benchmark information

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- What does the SEC mean by this? What should firms be prepared to have in place by June 30th?
- SEC's published statements have not elaborated, but some staffers at SEC and FINRA have
 - Adopting policies and procedures reasonably designed to meet the requirements
 - Conducting a gap analysis with respect to existing disclosures, and developing a Reg BI disclosure that fills in the gaps
 - Identifying and addressing all existing conflicts
 - Completing and delivering all required disclosures (i.e., both Reg BI and Form CRS)

Polling question 5

- As noted above, SEC and FINRA staffers have provided a number of examples of what would constitute “good faith effort” compliance with Reg BI. Do firms feel comfortable that they will achieve good faith effort compliance by the June 30 deadline?
 - A. Yes
 - B. No

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Litigation update

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- Training is a key component of Reg BI's Compliance Obligation
- FINRA's Reg BI "preparedness" report suggests multiple channels for training that firms can consider
 - Newsletters or notices
 - "Lunch and learn" events
 - Dedicated in-person or on-line training
 - Seminars or sessions at firm events (such as sales summits)
 - Regularly scheduled ongoing meetings between compliance and business personnel
- Some practices we've seen
 - Training in two phases – general Reg BI/Form CRS, and then changes to policies and procedures and processes
 - Requesting evaluations of training to ensure understanding, and to collect constructive feedback

Polling question 6

- Have firms finished training, or will they continue training through the rest of the year?
 - A. Finished training
 - B. Finished general training on Reg BI/Form CRS, and training on changes to policies and procedures will continue through the rest of the year
 - C. All training will continue through the rest of the year

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- Lawsuits filed by two different parties against SEC to challenge Reg BI
 - A group of State Attorneys General
 - Network of independent RIAs
 - Consolidated into one action at the 2d Circuit
- Basis for law suits – SEC did not comply with Congressional mandates set forth in Dodd-Frank
- Briefs submitted and argued
- Unknown whether decision will come down before June 30th

Polling question 7

- Do you think that the SEC's rules will be vacated?
 - A. Yes
 - B. No
 - C. Don't know, but I hope so!
 - D. Don't know, but I hope not!

State Best Interest Adoption

Questions?

Thank you



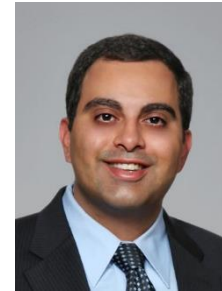
Nicole James Gilchrist
Senior Counsel
Thrivent Financial
nicole.gilchrist@thrivent.com



Michelle Carroll Foster
Regional Vice President
State Relations, ACLI
MichelleFoster@acll.com



Eric Arnold
Partner
Eversheds Sutherland
ericarnold@eversheds-sutherland.com



Issa Hanna
Counsel
Eversheds Sutherland
issahanna@eversheds-sutherland.com

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