

~~[retail customers of obtaining investment advice from broker-dealers, and could cause some retail customers to forgo advisory services through broker-dealers if they were priced out of the market.]~~<sup>[725]</sup>~~[As a result, and for a number of other reasons described above, the Commission preliminarily believes that requiring broker-dealers to comply with a fiduciary standard coupled with a set of requirements akin to the full complement of conditions under the BIC Exemption could impose costs to broker-dealers (including small entities) and impact retail customers and the market for investment advice, and would not be entirely consistent with the regulatory approach of the Commission.]~~<sup>[726]</sup>

~~[G.—]~~ **General Request for Comment** ~~[For the foregoing reasons, the Commission preliminarily believes that Regulation Best Interest might have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this initial regulatory flexibility analysis. The Commission specifically solicits comment on the number of small entities that may be affected by Regulation Best Interest, and whether Regulation Best Interest would have an effect on small entities that has not been considered. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact. We also request comment on the proposed compliance burdens and the effects these burdens would have on smaller entities.]~~ We acknowledge certain commenters urged the Commission to take additional or different regulatory actions than the approach we have adopted, including the alternatives discussed above. We do not believe that any rulemaking governing retail investor-advice relationships can solve for every issue presented. After careful consideration of the comments and additional information we have received, we believe that Regulation Best Interest, as modified, appropriately balances the concerns of the various commenters in a way that will best achieve the Commission’s important goals of enhancing retail investor protection and decision making, while preserving, to the extent possible, retail investor access (in terms of choice and cost) to differing types of investment services and products.

## VI. STATUTORY AUTHORITY AND TEXT OF ~~[PROPOSED]~~ THE RULE

<sup>[725]</sup> ~~See, e.g., note 75 supra, and accompanying text. But see, notes 76-77, and accompanying text.]~~

<sup>[726]</sup> ~~Id.]~~

Pursuant to ~~the~~ Dodd-Frank Wall Street Reform and Consumer Protection Act Section 913(f), Pub. L. 111-203, 124 Stat. 1376, 1827 (2010), and Exchange Act sections 3, 10, 15,

15(c)(6), 15(l), 17, 23 and 36 thereof, 15 U.S.C. 78c, 78j, 78o, 78o(c)(6), 78o(l), 78q, 78w and 78mm, the Commission is [~~proposing to adopt~~]adopting § 240.15l-~~1~~1 and adopting amendments to [~~amend~~]§ 240.17a-3 by adding new paragraph (a)(25), and to revise § 240.17a-4(e)(5) of Title 17 of the Code of Federal Regulations in the manner set forth below.

### **List of Subjects 17 CFR Part 240**

Brokers, Reporting and recordkeeping requirements, Securities.

### **Text of the [~~Proposed Rules~~]Rule**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is [~~proposed to be~~] amended as follows:

### **PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The [~~general~~] authority citation for part 240 [~~continues to read as follows and~~]is revised by adding sectional authorities for section 240.15l-1 [~~are added~~] to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, [~~78dd,~~]78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq.~~;~~; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

Section 240.15l-1 is also issued under Pub. L. 111-203, sec. 913, 124 Stat. 1376, 1827 (2010).

\* \* \* \* \*

2. Add § 240.15/-1 to read as follows:

**§ 240.15/-1 Regulation Best Interest.**

(a) Best Interest Obligation.~~[-(1)-]~~

(1) A broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall 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, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.

(2) The best interest obligation in paragraph (a)(1) shall be satisfied if:

(i) Disclosure Obligation. The broker, dealer, or natural person who is an associated person of a broker or dealer, prior to or at the time of [~~such~~]the recommendation, [~~reasonably discloses to~~]provides the retail customer, in writing, [~~the~~]full and fair disclosure of:

(A) All material facts relating to the scope and terms of the relationship with the retail customer, including~~all material~~:

(i) that the broker, dealer, or such natural person is acting as a broker, dealer, or an associated person of a broker or dealer with respect to the recommendation;

(ii) The material fees and costs that apply to the retail customer's transactions, holdings, and accounts; and

(iii) The type and scope of services provided to the retail customer, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer; and

(B) All material facts relating to conflicts of interest that are associated with the recommendation.

(ii) Care Obligation. The broker, dealer, or natural person who is an associated person of a broker or dealer, in making the recommendation, exercises reasonable diligence, care, and skill~~, and prudence~~ to:

- (A) Understand the potential risks~~[-and]~~, 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;
- (B) Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks~~[-and]~~, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker, dealer, or such natural person ahead of the interest of the retail customer; ~~[-and]~~
- (C) Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer, or such natural person making the series of recommendations ahead of the interest of the retail customer.
- (iii) Conflict of Interest [~~Obligations.~~][(A)]Obligation. The broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to ~~[-identify]~~:

(A) Identify and at a minimum disclose, in accordance with subparagraph (a)(2)(i), or eliminate, all [material] conflicts of interest[ that are associated with such recommendations.]

associated with such recommendations;

(B) Identify and mitigate any conflicts of interest associated with such recommendations that create an incentive for a natural person who is an associated person of a broker or dealer to place the interest of the broker, dealer, or such natural person ahead of the interest of the retail customer;

(i) Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations, in accordance with subparagraph (a)(2)(i), and

(ii) Prevent such limitations and associated conflicts of interest from causing the broker, dealer, or a natural person who is an associated person of the broker or dealer to make recommendations that place the interest of the broker, dealer, or such natural person ahead of the interest of the retail customer; and

(C) Identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the

sales of specific securities or specific types of securities within  
a limited period of time.

(iv) Compliance Obligation. In addition to the policies and procedures

~~[(B)The]~~required by paragraph (iii), the broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to ~~[identify and disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives associated with such recommendations.]~~achieve

compliance with Regulation Best Interest.

(b) *Definitions.* Unless otherwise provided, all terms used in this rule shall have the same meaning as in the [Securities Exchange Act of 1934]. In addition, the following definitions shall apply for purposes of this section:

(1) *Retail Customer* means a natural person, or the legal representative of such natural person, who:

(A) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and

(B) Uses the recommendation primarily for personal, family, or household purposes.

(2) *Retail Customer Investment Profile* includes, but is not limited to, the retail customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail customer may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.

(3) *Conflict of Interest* means 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.

3. Amend § 240.17a-3 by adding new ~~[paragraph]~~paragraphs (a)(~~25~~24) – (a)(~~35~~) to read as follows:

**§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.**



(a)\*\*\*

(24) [Reserved.]

(25) [Reserved.]

(26) [Reserved.]

(27) [Reserved.]

(28) [Reserved.]

(29) [Reserved.]

(30) [Reserved.]

(31) [Reserved.]

(32) [Reserved.]

(33) [Reserved.]

(34) [Reserved.]

(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 pursuant to § 240.15l-1, as well as the identity of each natural person who is an associated person, if any, responsible for the account.

(ii) For purposes of this paragraph (a)(~~25~~35), the neglect, refusal, or inability of the retail customer to provide or update any information ~~[required under]~~described in paragraph (a)(~~25~~35)(i) of this section shall excuse the broker, dealer, or associated person from obtaining that required information.

\* \* \* \* \*

4. Amend § 240.17a-4 by revising paragraph (e)(5) to read as follows:

**§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.**

\* \* \* \* \*

(e)\*\*\*

(5) All account record information required pursuant to § 240.17a-3(a)(17) and all records required pursuant to § 240.17a-3(a)(~~25~~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.

\* \* \* \* \*

By the Commission.

Dated: [~~April 18, 2018~~]June 5, 2019

[~~Brent J. Fields~~]Vanessa  
A. Countryman Acting  
Secretary

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