



# Plotting the Course

May 7, 2018

## SEC BEST INTEREST RULE

The SEC has proposed a Best Interest Rule or "Reg BI". This is really three proposals. The first would require a broker dealer to act in the "best interests" of the investor. The standard would require a suitability determination and disclosures, including all "key facts" that may suggest conflicts of interest. The second proposal would make more explicit "fiduciary" obligations. Finally the SEC will require broker dealers and investment advisers to use a new Client Relationship Summary, or "CRS" with retail investors. This form would highlight key differences in the types of services offered, and the costs and applicable legal standards.

The CRS proposal would also restrict broker dealers servicing retail investors from using the terms "adviser" or "advisor" as part of their name or title.

State regulators and legislators have also imposed fiduciary standard when dealing with retail investors. In discussing the proposed rule at a Philadelphia forum, SEC Chair Jay Clayton stated that this rule should replace competing standards at the federal and state level. "There are too many regulatory cooks in the kitchen" he told his audience.

Critics of the proposed rule stated that aspects of the rule were unclear in fundamental ways. They cite the failure to include a definition for the term "best interests", and questioned whether the rule would drive up costs for investors.

Proponents state that the proposed rule is important because the Fifth Circuit vacated the DO Fiduciary Duty Rule, stating that the DOL exceeded its statutory authority in promulgating the rule. While the DOL chose not to appeal the decision, AARP and the attorneys general from New York, California and Oregon petitioned the Court to permit them to intervene in the action and continue the appeal. The Court denied the application so it appears that the DOL Rule is dead.

Proposed Reg BI is open for comment for 90 days. Given the rulemaking issues, comment period it does not appear that the rule itself will actually be implemented until late 2020.

We will keep you advised as more information becomes available.

## SEC SHARE CLASS INITIATIVE

The SEC has recently filed several enforcement actions concerning adviser selection of share class, and emphasized evaluation of cost of share class. The SEC recently released answers to questions on this issue.

### WHAT DOES IT MEAN TO HAVE A LOWER COST SHARE CLASS "AVAILABLE" FOR THE SAME FUND?

The availability of a lower cost share class is fund specific. Below is a non-exhaustive list of examples for when SE Division staff would likely conclude that a lower-cost share class was available for the same fund:

- The client could have purchased a lower-cost share class for the same fund because the client's investment met the applicable minimum.

- There was or is language in the fund prospectus that says the fund will waive the investment minimum for a lower-cost share class for the same fund for advisory clients.
- There was or is language in the fund prospectus that says the fund may waive the investment minimum for a lower-cost share class for the same fund for advisory clients, and the adviser had no reasonable basis to believe the fund would not waive the investment minimum for a lower-cost share class for its advisory clients. An assumption by the adviser that a fund would not waive the investment minimum for his or her clients without taking steps to confirm this assumption would not constitute a reasonable basis.
- The investment adviser purchased a lower-cost share class of the same fund for other similarly situated clients.

There may be other circumstances when a lower-cost share class was “available” for the same fund.

## CYBERSECURITY

In a risk alert issued by the SEC, it states the cybersecurity exam initiative is designed to further assess cybersecurity preparedness in the securities industry, including firms ability to protect broker-dealer customer and investment adviser client information. Among other requirements, regulation S-P requires financial institutions, including broker dealers, investment companies and investment advisers to adopt written policies and procedures reasonably designed to insure the security and confidentiality of customer information and records. FINRA defines cybersecurity as the protection of investor and firm information from compromise through the use of electronic digital media. Compromise refers to a loss of data confidentiality, integrity or availability.

It is important to be aware of possible risks to your computer and the information on or passing through it. Your awareness and vigilance can help to decrease the risk to your accounts and information. Threats are posed by identify theft, social engineering attacks, stock spam, spyware and viruses, worms and Trojans.

Some tips on protecting against cybersecurity include, but are not limited to:

Keep your private information private. Protecting yourself from identity theft all begins with making sure your personal and financial information is not shared. Data such as your name, address, Social Security number and account information is valuable and should not be made accessible to others.

Trust your email instincts. Many internet scams involve emails that appear to be from a trusted source. Links and attachments are often used to remotely install malware on your computer without you even knowing it. That is why it’s important for you to handle your emails with caution.

Protect your computer and network. The online security landscape is constantly evolving, so it’s critical to keep updating your defenses against new threats.

And finally, creating a strong, complex password is key to helping prevent a cyberattack.

## CUSTOMER DATA SECURITY

During regular email review, we noted that many Registered Representatives and Advisors are sending and receiving personal data via non-secure email. Personal data includes paperwork such as New Account Forms, account applications, and portfolio statements with social security numbers or account numbers easily visible, images of Drivers Licenses from mobile devices or personal email accounts to the Representative’s Trustmont email account.

In these days of cyber insecurity, these practices expose the client to the possibility of identity theft which may result in fraud or theft of funds. Trustmont policies outline the high priority given to customer data security. Transmitting sensitive information in an unsecure email is a violation of Trustmont procedures.

To send an email securely, simply put the word “Secure:” first in the subject line of the email. For example: Subject: Secure: Your Account Statement. For Erado users, this procedure is slightly different. Please contact Trustmont if you need instructions.

If you have any questions, please contact the compliance department.

**Mandatory Webinar May 17<sup>th</sup>**

Compliance and Operations have teamed together to create a webinar on May 17<sup>th</sup> covering all you need to know regarding Trustmont new account forms. This information will include who to list as the primary and co-owners on accounts such as trusts, corporations and estates; who can and cannot be listed as a trusted contact, and the proper execution of documents. We invite you to send any questions you may have in advance to [compliance@trustmontgroup.com](mailto:compliance@trustmontgroup.com)!!



Trustmont would like to extend a warm "welcome" to the following Registered Representatives:

**Jeffery Dillman**, Pennsylvania

**Bradford Jones**, Tennessee

**George Klander**, Maryland

**David Mock**, Pennsylvania

**Ryan Tarjanyi**, Ohio

We are glad to have you as part of the group and look forward to working with you!

*Save the Date*

**2018 Required Quarterly Webinars:**

May 17, 2018

Aug 16, 2018

Nov 15, 2018

**National Conference**

October 8, 2018



**Missy Cosharek**

10 years with Trustmont