

SEC Regulation Best Interest v. Existing FINRA Rules

Element	Proposed ¹ SEC Regulation Best Interest(Non-Fiduciary) Duties	Existing ² FINRA (Non-Fiduciary) Duties
Best Interest Standard	"The proposed standard of conduct is to act in the best interest of the retail customer at the time a recommendation is made without placing the financial or other interest of the broker-dealer or natural person who is an associated person making the recommendation ahead of the interest of the retail customer." 1	FINRA RN 11-02; 7. "... it is well-settled that a 'broker's recommendations must be consistent with his customer's best interests'..." FINRA RN 12-25;3. "In interpreting FINRA's suitability rule, numerous cases explicitly state that "a broker's recommendations must be consistent with his customers' best interests."
Disclosure	"Disclosure of material facts relating to the scope and terms of the relationship." 103	None
	"Prior to or at the time of such recommendation, reasonably disclose all material conflict of interest associated with the recommendation." 110	None
	"... a broker-dealer would need to give sufficient information to enable a retail customer to make an informed decision with regard to the recommendation." 115	De Kwiatkowski v. Bear Stearns. 306 F.3d 1293. "On a transaction-by-transaction basis, the broker owes duties of diligence and competence in executing the client's trade orders, and is obliged to give honest and complete information when recommending a purchase or sale." MSRB Rule G-47 Supplementary Material .01. "The disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment."
Disclosure Timing	"The Disclosure Obligation would apply 'prior to or at the time of' the recommendation." 119	FINRA NTM 05-59; 3. "An investor purchasing a structured product as part of a shelf distribution will, prior to purchase, receive a preliminary prospectus supplement that describes the characteristics and risks of the structured product being offered." MSRB Rule G-47. "No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer... without disclosing to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market."
Obligations Met Through Disclosure?	"... we do not believe a broker-dealer could meet its Care Obligation through disclosure alone." 149	FINRA NTM 05-59 Structured Products; 8. "The SEC has held that, in the enforcement context, a registered representative may be found in violation of the NASD's rules and the federal securities laws for failure to fully disclose risks to customers even though such risks may have been discussed in a prospectus delivered to customers." MSRB Rule G-32. "The delivery obligation under MSRB Rule G-32 is distinct from the duty to disclose material information under Rule G-17, which applies to all primary and secondary market transactions."
Due Diligence	Require a broker-dealer to "exercise reasonable diligence, care, skill, and prudence to... understand the potential risks and rewards 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." 136-7	FINRA 2111 .05 (a). "The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors." (Emphasis in the original)
	Require a broker-dealer "to have a reasonable basis to believe that a specific recommendation is in the best interest of the particular retail customer based on its understanding of the investment or investment strategy... and in light of the retail customer's investment objectives, financial situation, and needs." 141	FINRA 2111 .05 (b). "The customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a)."
Churning	"... require a broker-dealer to exercise reasonable diligence, care, skill, and prudence to 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. 150	FINRA 2111 .05 (c). "Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a)."

Notes: 1. Obtained from SEC Regulation Best Interest; Release No. 34-83062.
2. Multiple sources cited.