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WHERE'S WALDO?

Finding the Fiduciary in Regulation Best Interest

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INVESTMENTS & WEALTH INSTITUTE®
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"How do we recognize fiduciaries? How are they different? And should these differences bring about different rules to govern them?"

—Tamar Frankel[1]

Finding the subject of a U.S. Securities and Exchange Commission (SEC or Commission) rulemaking can be a bit like playing *Where's Waldo?*

Waldo's fans have discovered that spotting the diminutive character in newer editions has become increasingly difficult because Waldo has shrunk in size and become lost in larger and larger crowds.[2]

Like Waldo, the core duties of an investment fiduciary—in particular, the duty of loyalty—have been hard to spot of late in the SEC's proposed Regulation Best Interest as well as other regulatory initiatives.

BACKGROUND

By the late 1990s and early 2000s at least 98 model fiduciary laws, written by the Uniform Law Commission and based on trust-law principles, had been enacted on the state level. These state laws, which govern investment practices of private trusts, charitable foundations, and public plans, were updated to reflect, among other things, portfolio diversification as a means of reducing risk and protecting principal against inflationary risks.[3]

One important component of the new model laws that remained unchanged, however, was the duty to act solely in the interest of the beneficiary. The new state laws also were consistent with the "sole interest" and diversification requirements mandated by the U.S. Congress when it enacted the Employee Retirement Income Security Act of 1974 (ERISA). Congress, in turn, imposed a standard on ERISA fiduciaries "derived from the common law of trusts"[4] that required a fiduciary to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries …"[5]

Until partisan politics began to dominate congressional oversight of federal agencies, the fiduciary duty applicable to investment advice was not an issue. Government oversight of financial advisors was largely a backwater, nonpartisan affair delegated by Congress to the SEC and, to a lesser extent, the U.S. Department of Labor (DOL or Department). The fiduciary standard, with its twin duties of loyalty and care, was applied to registered investment advisers (RIAs) under the Investment Advisers Act of 1940 (Advisers Act) without debate and to pension advisors under ERISA. Brokers rarely were held to a fiduciary standard, and when they were it was largely dependent on a facts-and-circumstances test defined by the courts.[6] Until the early 2000s, state insurance regulators did not even impose a suitability requirement on annuity transactions.

However, the political environment in Washington began to change in the mid-2000s when partisan divisions emerged on the five-member SEC, evidenced by the increasing number of split votes on major rules and in public statements. During the overhaul of financial services regulation after the 2008–2009 financial crisis, new fractures appeared between the political parties in the debate over the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Under the Obama administration's proposed blueprint for reform, the SEC was given authority to establish a uniform fiduciary duty for broker-dealers and RIAs[7] providing retail investment advice. Coupled with this mandate was authority to harmonize regulation of broker-dealers and RIAs providing similar advisory services.[8]

When Dodd-Frank became law in 2010, these discretionary provisions were included, but not as mandates required to be carried out by the agency. It took eight years for the SEC to act, much of it due to increased political pressure from Congress. Yet notwithstanding its broad mandate, the SEC's eventual product—Regulation Best Interest (Reg BI)[9]—is neither uniform with market conduct rules for RIAs nor, according to the SEC's proposing release, a fiduciary standard. This new—and to many observers, confusing—standard of conduct for brokers reflects a partisan divide in Washington that has resulted in energetic efforts by the GOP-controlled executive and legislative branches to, in effect, reshape and narrow the contours of the fiduciary standard rather than leave it to the courts for interpretation.

Reg BI is, in fact, a political response to the well-known and highly controversial effort by the Obama administration in 2010 to broaden the definition of a fiduciary under section 3(21) of ERISA, a rule intended to cover large swaths of the retirement services industry.

Unlike the Obama administration's earlier call for a fiduciary standard, the DOL fiduciary initiative was not spurred by the 2008 financial crisis but rather came out of an internal agency review.[10] This review resulted in the eventual adoption of a greatly expanded fiduciary definition[11] six years later with strong backing by Obama and Democrats in Congress. The DOL fiduciary rule generally adhered to the common law of trusts by mandating an Impartial Conduct Standard for conflicted investment advice that required investment fiduciaries to prudently offer investment recommendations under the duty of care and under a duty of loyalty "without regard to the financial or other interests of the [firm/agent]."[12]

Industry groups balked at the new requirements, and in particular many DOL recordkeeping requirements contained in the rule's prohibited transaction exemptions, including highly controversial client contract provisions affirming certain fiduciary obligations. Shortly after the rule's re-introduction in 2015, industry opponents began a long and eventually successful campaign that resulted in the filing of about a half-dozen lawsuits to overturn the rule. Although most were dismissed, one final appeal succeeded when the U.S. Court of Appeals for the Fifth Circuit vacated the rule in its entirety on March 15, 2018.[13] As of the publication deadline, DOL has not proposed any new advice regulations. To avoid any uncertainties about the availability of those safe harbors for conflicted investment advice, however, the Department reaffirmed in early May 2018 a temporary enforcement policy that allows continued reliance by firms on basic fiduciary principles of duty and prudence pending further regulatory guidance.[14]

During the nearly eight-year debate over the DOL rule, persistent calls were made by industry opponents and the GOP-led Congress to have the SEC intervene and take over the rulemaking process.

In 2017, SEC Chairman Jay Clayton pledged to take the lead in revising the market conduct for investment advice and work closely with other regulators. Notwithstanding the DOL rule vacature, the debate over Reg BI inevitably draws comparisons, and SEC commentary in the proposing release agrees—to the extent that Reg BI draws from its underlying principles. However, unlike ERISA, which prohibits conflicted advice absent a safe harbor with rigid conditions, securities law relies principally on disclosure as a means of managing conflicts that cannot be avoided. Therein lies the rub in determining whether differences between fiduciaries should bring about different rules to govern them—and the lingering question of whether Reg BI is even a fiduciary standard.

Shortly after the rule's re-introduction in 2015, industry opponents began a long and eventually successful campaign that resulted in the filing of about a half-dozen lawsuits to overturn the rule.

The SEC attempts to strike a careful balance between the defunct DOL rule and existing requirements for RIAs in developing the "best interest" standard for brokers, which from its release in mid-April 2018 has been mired in controversy. Nor would its coverage be as extensive. Unlike the DOL rule, which covered advisory activities for insurance and securities transactions in retirement accounts, the SEC's authority is limited to securities products and advice, although it also would cover securities transactions outside of retirement accounts. Insurance products—with the exception of variable annuities—are not covered by Reg BI. Instead, the principal authority for market conduct rules resides with state insurance commissioners. In November 2017, the National Association of Insurance Commissioners (NAIC) proposed a strengthened suitability standard of its own in a model rule that incorporates elements of a duty of loyalty.[15]

OVERVIEW OF SEC REGULATORY PACKAGE

On April 18, 2018, the SEC released for public comment a regulatory package of nearly 1,000 pages that comprised two rules, additional guidance on the fiduciary standard for RIAs, and a discussion of several other potential rules harmonizing Advisers Act regulation with rules governing broker-dealers.

The centerpiece of the package is Reg BI, introduced in tandem with a second, related rule creating a new Form CRS (Client or Customer Relationship Summary) designed to inform prospective investors of the differences in regulation and services offered by broker-dealers, RIAs, and firms that are dually registered (dual registrants). Form CRS also would serve as a new Part 3 of Form ADV for use by investment advisers. A related requirement under the Form CRS rule proposal would prohibit the use of "advisor" or "adviser" in job titles of stand-alone brokers as a means of reducing investor confusion.

A third release provides interpretative guidance on the fiduciary obligations of investment advisers and requests feedback about whether the Commission should adopt rules requiring advisory firms, similar to requirements for broker-dealers, to deliver periodic account statements to clients, maintain net capital requirements, and to require federal registration of investment adviser representatives as well as continuing education requirements. Other parts of the package provide instructions for completing Form CRS and sample disclosures.

Comments on the entire package were due August 7, 2018.

The focus of this article is Reg BI. Regulation Best Interest should be of interest to all *Investments & Wealth Monitor* readers, given the growing awareness of the fiduciary standard by investors, in addition to the potential impact on firms that advertise their fiduciary status and must now make comparisons to a non-fiduciary best interest standard that will be marketed heavily by other segments of the industry.

REGULATION BEST INTEREST

In a nutshell, Reg BI requires brokerage firms and their agents to act in a retail customer's best interest when providing advice about securities transactions or related investment strategies. A retail customer is defined as:

> *A person, or the legal representative of such person, who: (1) 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 (2) uses the recommendation primarily for personal, family, or household purposes.*

The actual rule is only three-and-a-half pages, but the extensive discussion in the proposing release for Reg BI, including a cost-benefit analysis and review of other alternatives, runs to 403 pages.

Although not defined in the text of the rule, the best interest standard in general requires the firm or its agent, at the time of the recommendation, to "act in the best interest of the retail customer … without placing the financial or other interest" of the firm or agent ahead of the customer's interest.[16] The standard also can be understood in the context of the three major requirements that must be met in order to satisfy the best interest standard: a care obligation, a disclosure obligation, and conflict of interest obligations. In the proposing release, the SEC makes clear that the rule is in addition to, and not in lieu of, other requirements imposed by the Financial Industry Regulatory Authority (FINRA), although there is some overlap.

Care obligation. Reg BI's care obligation requires the firm and its agents (i.e., registered representatives) to exercise "reasonable diligence, care, skill and prudence" in developing investment recommendations. The broker's advice also must take into account the nine suitability factors required by FINRA Rule 2111.[17] In essence, the care obligation tracks ERISA's prudence standard (diligence, care, skill, and prudence) and provides an overlay to FINRA's existing suitability requirements.

Disclosure obligation. Reg BI also requires the firm or agent, prior to or at the time of the recommendation, to disclose in writing material information regarding the scope of services, terms of the agreement, and any material conflicts of interest associated with the advice. Note that prior to this disclosure, the advice recipient would have received the four-page Form CRS providing an overview of the firm's services and conflicts. Reg BI, then, digs deeper into the layers of information required for the customer to make an informed decision.

Conflict of interest obligations. Reg BI also has requirements that reside solely with the firm and not the agent. The firm is responsible for establishing and maintaining written policies and procedures that identify and presumably anticipate managing material conflicts of interest through disclosure, including financial incentives associated with the recommendations.

The proposing release provides examples of material conflicts of interest,[18] including advice in connection with the following:

- Proprietary products
- Products of affiliated firms
- A limited range of products
- One share class versus another share class of a mutual fund
- Principal transactions, i.e., securities underwritten by the firm or an affiliate
- Rollovers from a 401(k) plan to an individual retirement account
- Initial public offering allocations

In the accompanying release that discusses Reg BI, the Commission attempts to walk a fine line by saying the rule is tailored to meet the "unique characteristics" of brokerage firms as it draws on principles underlying the DOL rule:

> *We wish to underscore that proposed Regulation Best Interest focuses on specific enhancements to the broker-dealer regulatory regime, in light of the unique characteristics of the brokerage advice relationship and associated services that may be provided, and therefore would be separate and distinct from the fiduciary duty that has developed under the Advisers Act.*[19]

SEARCHING FOR THE FIDUCIARY STANDARD IN REG BI

In the meantime, interested parties have struggled with the question of whether Reg BI is a quasi-fiduciary standard, a bonafide fiduciary standard *sans* label, or—as one SEC commissioner put it—a "suitability-plus standard."[20]

Without any clear statutory obligation to follow trust-based fiduciary principles, the SEC and state insurance regulators' efforts to create a new standard of care are caught up in a regulatory fog of ambiguity that rarely uses fiduciary terms of art in describing their advice standard. For example, the terms "fiduciary standard," "duty of care," and "duty of loyalty"—and even the word "duty"—are conspicously absent from the text of the proposed rules under consideration by the NAIC, in a separate rulemaking by the New York Department of Financial Services, and in Reg BI.

In fact, at a May 2018 meeting of the NAIC, the committee of state insurance commissioners drafting the best interest standard for annuity transactions retreated from adopting "best interest" language in the rule. According to InsuranceNewsNet, straw polling among members of the drafting committee agreed to pursue a "suitability plus" option in lieu of a "best interest" standard.[21]

In recent testimony before a congressional committee, Clayton took a nuanced approach to describing the best interest standard in Reg BI:

> *What would the broker-dealer have to do to act in the retail customer's best interest? First, the broker-dealer would need to disclose material facts relating to the scope and terms of their relationship with the retail customer, including all material conflicts associated with the recommendation. Second, the broker-dealer would need to exercise reasonable diligence, care, skill and prudence to make recommendations that are in the best interest of the retail customer.*[22]

Clayton went on to add that the third and "most significant" requirement would be the supervisory procedures of the firm "to eliminate, or mitigate and disclose, material conflicts of interest related to financial incentives. To be clear, disclosure alone would not be sufficient."[23]

Without saying so directly, Clayton described the twin fiduciary duties of loyalty and care. Disclosure, of course, is the most common remedy used under the Advisers Act to satisfy the duty of loyalty; Clayton's testimony also referred to ERISA's prudence standard of care in describing the duty of care. Moreover, Clayton argued that the most important condition of the best interest standard would be making the firms, and not the agents, responsible for any breaches of the duty of loyalty by requiring the firms to act in a supervisory role in determining policies and procedures for avoiding, disclosing, or otherwise managing material conflicts of interest in favor of the customer. This requirement roughly parallels a provision in the DOL's now-defunct Best Interest Contract Exemption's requirement that the firm adopt policies and procedures designed to mitigate conflicts of interest.

The last requirement in Reg BI is an interesting departure from trust-law principles in which co-fiduciaries share responsibility for any violations of which they become aware. In this regard, the SEC seems to be saying: "We're not going to call you, the firm, or your agents, fiduciaries; and we're not going to treat you as co-fiduciaries with equal responsibilities to the customer. Instead, we're going to place the responsibility of identifying and managing conflicts of interest under a non-fiduciary duty of loyalty on the firm, and not the agent."

These comments may help explain some of the finer distinctions the SEC has attempted to make in defining the roles and responsibilities of the broker-dealer business model versus a traditional fiduciary relationship in which co-fiduciaries share responsibility for any fiduciary breaches of which they are aware. Over the long run, Reg BI's emphasis on firm oversight—and not the shared responsibilities of the individual agent dispensing advice—may prove to be shortsighted if the objective is to serve the customer's best interest. That is because fiduciaries traditionally are accorded broad discretion in relying on their own professional judgment—and not just the supervisory procedures of the firm—in developing and making investment recommendations.

Nonetheless, Clayton's testimony reinforces commentary in the proposing release that the best interest standard is derived from fiduciary principles underlying both the securities laws and ERISA. His testimony went on to say:

> *The proposed broker-dealer best interest obligation draws from the principles underlying an investment adviser's fiduciary duty, recognizing that both broker-dealers and investment advisers often provide advice in the face of conflicts of interest.*[24]

When coupled with commentary from the proposing release, Clayton's view of the best interest standard includes elements of the DOL rule:

> *We believe that the principles underlying our proposed best interest obligation … and the specific Disclosure, Care, and Conflict of Interest Obligations described in more detail below, generally draw from underlying principles similar to the principles underlying the DOL's best interest [i.e. Impartial Conduct] standard …*[25]

In turn, the proposing release commentary also appears to draw directly from the landmark *SEC v. Capital Gains* decision affirming an adviser's fiduciary duty by suggesting that the SEC plans to interpret a "material conflict of interest" under Reg BI for brokers as a "conflict of interest that a reasonable person would expect might incline a broker-dealer—consciously or unconsciously—to make a recommendation that is not disinterested."[26]

In the *Capital Gains* case, the court elaborated on the importance of eliminating subconscious motivations that might otherwise result in a financial benefit favoring the advisor. The court decision reinforced this view by referencing a canon from the code of ethics of "one of the leading investment counsel associations" in 1940 when the Advisers Act was under consideration by Congress. The canon states:

> *[An investment adviser] should continuously occupy an impartial and disinterested position, as free*

as humanly possible from the subtle influence of prejudice, conscious or unconscious; he should scrupulously avoid any affiliation, or any act, which subjects his position to challenge in this respect.[27]

The SEC did not, however, take a cut-and-paste approach to the entire best interest standard. Far from it. With regard to the duty of loyalty, the SEC chose not to adopt the language recommended by the Dodd-Frank Act (and incorporated in the DOL Impartial Conduct Standards), which would require financial advisors to "act in the best interest of the customer without regard to the financial or other interest" of the firm or its agents.[28]

Instead, the text of the proposed rule requires the firm and its agents to "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 firm or agent ahead of the customer. The SEC explains in the proposing release that inclusion of the "without regard to" language could be "inappropriately construed to require a broker-dealer to eliminate all of its conflicts."[29]

REACTION

The resulting confusion over whether the SEC's best interest standard is no different from a traditional fiduciary standard or merely a suitability-plus requirement has left industry and consumer groups in strong disagreement over the import of the proposal. Indeed, the absence of a best interest definition in the rule itself raised questions among some SEC commissioners when the regulatory package was released for public comment.

Instead of Reg BI breaking new ground, Commissioner Kara Stein said it "would be more accurate to call this proposal 'Regulation Status Quo,'" despite her repeated requests to define "best interest" in the actual text of the rule.

"Instead," she said, "[Reg BI] merely affirms that broker-dealers have to meet their suitability obligations, requires some policies and procedures, and mandates a few disclosures. I said 'reaffirms' because most of this is already required by FINRA or the federal securities laws."[30]

Commissioner Hester Pierce also complained that Reg BI was "not sufficiently clear about what the Best Interest standard is and how it relates to existing broker obligations," adding "[i]t would be better to acknowledge that we are imposing a suitability-plus standard and explain what we mean by the 'plus.'"[31]

In the proposing release, the SEC responded to these concerns, saying the rule did not define "best interest" inasmuch as the question of whether a broker-dealer acted in the best interest of the customer "will turn on the facts and circumstances of the particular recommendation."[32] It went on to say that guidance in the proposing release should help facilitate compliance.

CONCLUSION

Four months after its release the SEC's regulatory package remains mired in controversy. As of the August 7, 2018, filing deadline for public comments, a familiar pattern emerged in which consumer and some advisor organizations that supported DOL's more robust fiduciary package were objecting to the SEC's nuanced approach. On the opposite side, the brokerage and insurance trade groups that fought the DOL rule for the most part roundly applauded the SEC version.

It also appears that the Department's new leadership is content with letting the SEC take the lead, although state insurance regulators are moving forward with their own market conduct rules for annuity transactions.

Despite the new burst of regulatory activity, it is likely that advisors will have to wait at least 18 months or longer before any new best interest standard for brokers and insurance producers will take effect.

In the meantime, Chairman Clayton and members of the SEC staff have been ardent defenders of the proposal, arguing that it draws from fiduciary principles despite not actually being one. As a result of these counterintuitive statements, the question of why not simply use the fiduciary label hasn't been adequately answered. Is it the fear of liability attached to the vast legal precedent under common law that comes with fiduciary status? Is it tacit acknowledgment of the brokerage industry's preference for FINRA's regulatory framework rather than a principles-based standard of care associated with the Advisers Act? Or is it simply to avoid a look-alike DOL rule that was vigorously opposed by congressional critics?

Without these answers, financial advisors and other industry experts are forced to play the *Where's Waldo?* game. Spotting the fiduciary standard—and in particular, the duty of loyalty—indeed has become increasingly difficult.

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Watch for periodic updates on this topic in the Investments & Wealth Institute *Legislative Intelligence* and *Investments & Wealth Monitor*.

ENDNOTES

1. Tamar Frankel, *Fiduciary Law* (Anchorage, Alaska: Fathom Publishing Company, 2008), 25.
2. Waldo the character shrank by a factor of three between the first and final edition; the crowds surrounding him increased from 225 to 850 individuals. See "Where's Wally" (English version), Wikipedia, https://en.wikipedia.org/wiki/Where's_Wally%3F (June 2018).
3. See "Uniform Prudent Investor Act," "Prudent Management of Institutional Funds Act," "Management of Public Employees Retirement System Act" (model rules promulgated by the Uniform Law Commission). Section 5 [Loyalty] of the UPIA states "A trustee shall invest and

manage the trust assets solely in the interest of the beneficiaries," 13, http://www.uniformlaws.org/Default.aspx.

4. See, e.g., *Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U. S. 559, 570.
5. 29 U.S. Code § 1104, "Fiduciary duties."
6. See, e.g., Michael S. Finke and Thomas Patrick Langdon, "The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice" (March 10, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019090.
7. The use of the word "adviser" refers to specific regulation of registered investment advisers under the Investment Advisers Act of 1940. The words "adviser" and "advisor" are also specific terms used in the SEC's proposed rule prohibiting their use by standalone broker–dealer agents. The word "advisor" is otherwise used in a generic context in reference to financial advisors, wealth advisors, etc.
8. See, e.g., "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation," Department of the Treasury (June 17, 2009): 15, https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf.
9. "Regulation Best Interest," Securities and Exchange Commission, Release No. 34-83062; File No. S7-07-18 (April 18, 2018), https://www.sec.gov/rules/proposed/2018/34-83062.pdf.
10. Phyllis Borzi, former Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA), in response to a question by the author at a Washington, DC, industry conference (November 10, 2017).
11. Definition of the Term "Fiduciary," Retirement Investment Advice, U.S. Department of Labor, 81 Fed. Reg. 20946 (April 8, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-04-08/pdf/2016-07924.pdf.
12. "Best Interest Contract Exemption," Department of Labor, 81 Fed Reg. 21002 (April 8, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-04-08/pdf/2016-07925.pdf.
13. *Chamber of Commerce of the USA v. United States Department of Labor*, No. 17-10238 (5th Cir. 2018), http://www.ca5.uscourts.gov/opinions/pub/17/17-10238-CV0.pdf.
14. Field Assistance Bulletin No. 2018-02, Department of Labor (May 7, 2018). The bulletin allows reliance on what the rule calls impartial conduct standards. The Department said it would not take enforcement action against advisors who work diligently and in good faith to comply with these standards that serve as an interim safe harbor under certain prohibited transaction exemptions, most notably the Best Interest Contract Exemption.
15. See, e.g., "Suitability and Best Interest Standard of Conduct in Annuity Transactions," a model rule by the National Association of Insurance Commissioners, November 2017. That version, which was amended later to remove any references to a "best interest" standard, had defined "best interest" as, "at the time the annuity is issued, acting with reasonable diligence, care, skill and prudence in a manner that puts the interest of the consumer first and foremost." http://www.naic.org/meetings1712/cmte_a_aswg_2017_fall_nm_materials.pdf; and "Suitability in Life Insurance and Annuity Transactions," New York Department of Financial Services (December 2017), https://www.dfs.ny.gov/insurance/r_prop/rp187a1text.pdf.
16. Reg BI, sec. 240.15l-1(a)(1), at 404.
17. The nine suitability factors under Rule 2111 (and recited in Reg BI) are: customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance, among other information that may be disclosed to the broker in connection with the recommendation.
18. Reg BI, 112.
19. Id., 43.
20. Statement of Commissioner Hester M. Pierce, open meeting of the SEC (April 18, 2018), https://www.sec.gov/news/public-statement/statement-peirce-041818.
21. John Hilton, "NAIC Group Backs Off From Sharp Best Interest Standard," InsuranceNewsNet (May 31, 2018), https://insurancenewsnet.com/innarticle/naic-group-backs-off-from-sharp-best-interest-standard.
22. Jay Clayton, Chairman, Securities and Exchange Commission, in testimony before the House Committee on Financial Services (June 21, 2018), https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission.
23. Id.
24. Id.
25. Reg BI, 58.
26. Id., 169.
27. *SEC v. Capital Gains Research Bureau*, 375 U.S. 180 (1963).
28. Dodd-Frank Wall Street Reform and Consumer Protection Act, sec. 913(g)(1).
29. Reg BI, 47–48.
30. Statement of Commissioner Kara M. Stein, open meeting of the SEC (April 18, 2018), https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818.
31. Pierce, supra 17.
32. Reg BI, 52.

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