



Marcia E. Asquith
Corporate Secretary, EVP
Board and External Relations

Direct: (202) 728-8831
Fax: (202) 728-8300

January 29, 2024

Office of Regulations and Interpretations and
Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Via electronic submission and postal mail

Re: Retirement Security Rule: Definition of an Investment Advice Fiduciary
(RIN 1210-AC02) and Proposed Amendment to Prohibited Transaction
Exemption 2020-02 (ZRIN 1210-ZA32)

Dear Assistant Secretary Gomez:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) welcomes the opportunity to comment on the Department’s two proposals referenced above: the proposed amendments to the definition of “fiduciary,”¹ and the proposed amendments to Prohibited Transaction Exemption 2020-02² (together, “Proposals”).³ FINRA shares the Department’s mission of protecting retirement investors, including by allowing broker-dealers and other financial firms to provide useful and appropriate products and services to investors in an efficient manner.

As the Department has noted, the regulatory landscape for financial firms and professionals has evolved meaningfully in recent years, including most significantly, with the Securities and Exchange Commission’s (SEC’s) adoption of Regulation Best Interest (“Reg BI”) in 2019, along with a new rule to require broker-dealers and investment advisers to provide a brief relationship summary (Form CRS) to retail investors, and

¹ See Retirement Security Rule: Definition of an Investment Advice Fiduciary (November 2, 2023), 88 FR 78890 (November 3, 2023) (“Fiduciary Definition Proposal”).

² See Proposed Amendment to Prohibited Transaction Exemption 2020-02, Application No. D-12057 (November 2, 2023), 88 FR 75979 (November 3, 2023) (“PTE 2020-02 Proposal”).

³ FINRA is not commenting on the related proposed amendments to other prohibited transaction exemptions (84-24, 75-1, 77-4, 80-83, 83-1, 86-128) that were published alongside the Proposals.

related interpretations under the Investment Advisers Act of 1940 (“Advisers Act”).⁴ An important aspect of FINRA’s core regulatory work of protecting investors is examining for and enforcing compliance with the SEC’s Reg BI, in support of the SEC.

Over the past three and a half years, FINRA’s experience reviewing firms’ compliance with Reg BI has been positive, including with respect to recommendations made to retail retirement investors. We have observed meaningful changes in industry practices relating to, among other things, how member firms make recommendations, compensate representatives, and manage other conflicts of interest. We also have identified areas where some member firms could strengthen their compliance programs, and we have published examination reports⁵ and various compliance resources⁶ to assist member firms with those efforts. FINRA holds firms accountable when they put their own interests ahead of the interests of retail customers, and we have the tools to do so under Reg BI.⁷

In adopting Reg BI, the SEC was particularly attuned to the lessons learned from the Department’s previous fiduciary rulemaking, and aimed to improve investor protection by enhancing the quality of broker-dealer recommendations to retail customers in a manner that is workable for the transaction-based relationship offered by broker-dealers. We believe retail customers are well-served by the robust protections offered by Reg BI and by the SEC’s purposeful consideration of how to preserve investor access (in terms of choice and cost) to differing types of investment services and products.⁸

⁴ See Exchange Act Rule 15l-1; Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019) (“Reg BI Adopting Release”); Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019) (Form CRS Relationship Summary; Amendments to Form ADV); Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019) (Commission Interpretation Regarding Standard of Conduct for Investment Advisers); and Investment Advisers Act Release No. 5249 (June 5, 2019), 84 FR 33681 (July 12, 2019) (Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion From the Definition of Investment Adviser).

⁵ See, e.g., 2024 FINRA Annual Regulatory Oversight Report (January 9, 2024) available at <https://www.finra.org/rules-guidance/guidance/reports/2024-finra-annual-regulatory-oversight-report>, and 2023 Report on FINRA’s Examination and Risk Monitoring Program (January 10, 2023), available at <https://www.finra.org/rules-guidance/guidance/reports/2023-finras-examination-and-risk-monitoring-program>.

⁶ We recently highlighted for member firms the guidance and other available resources related to Reg BI — including a FINRA dedicated webpage available at <https://www.finra.org/rules-guidance/key-topics/regulation-best-interest>, with relevant materials - to support their compliance efforts. See *Regulatory Notice 23-20* (December 2023) (FINRA Highlights Available Guidance and Resources Related to Regulation Best Interest).

⁷ FINRA has issued settlements with firms and individuals for Reg BI violations and filed disciplinary complaints against individuals that include Reg BI violations. FINRA has expelled two member firms whose misconduct included Reg BI violations.

⁸ Additionally, the SEC staff has noted that, although the specific application of Reg BI and the fiduciary standard that applies to investment advisers may differ in some respects and be triggered at different times, “they generally yield substantially similar results in terms of the ultimate responsibilities owed to retail investors.” See SEC Staff Bulletin: Standards of Conduct for

In this vein, we focus our comments generally on the ways in which the Proposals diverge, or appear to diverge, from Reg BI, and the potential implications for broker-dealers who would need to operate under both regulatory regimes. One way the Department could achieve its goal of broader regulatory consistency and avoid “the imposition of obligations that conflict with investment professionals’ obligations under other applicable laws”⁹ would be to incorporate the rule text of, and SEC guidance concerning, Reg BI, at least with respect to how broker-dealers can meet the conditions of PTE 2020-02. In the event that the Department does not proceed in that direction, and determines to move forward with its Proposals, we believe there are opportunities to reduce the extent to which the proposed rules and exemptions would subject broker-dealers to requirements that may conflict with or add to their obligations under Reg BI, as highlighted in the examples below, which are not intended to be exhaustive.¹⁰

In addition to aligning the requirements to the extent possible, we suggest that the Department consider whether its preamble discussions introduce, or appear to introduce, new or different concepts that may create regulatory uncertainty. Moreover, we encourage the Department to interpret the Proposals on an ongoing basis in a manner that aligns their requirements with SEC interpretive guidance regarding common concepts under Reg BI as both sets of rules continue to evolve.

Examples of Instances Where the Proposals Diverge (or Appear to Diverge) from Reg BI

- **The Term “Recommendation”**

Under the Proposed Fiduciary Definition §2510.3-21(c)(1), “a person renders ‘investment advice’ with respect to moneys or other property of a plan or IRA if the person makes a recommendation of any securities transaction or other investment transaction or any investment strategy involving securities or other investment property.” The preamble explains that, for purposes of the proposed rule, “the Department views a recommendation as a communication that, based on its content, context, and presentation,

Broker-Dealers and Investment Advisers Care Obligations (April 20, 2023), available at <https://www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers>.

⁹ See Fiduciary Definition Proposal, *supra* note 1, 88 FR 78890, 75898-75899 (“As the SEC has adopted regulatory standards for broker-dealers that are based on fiduciary principles of care and loyalty also applicable to investment advisers under the Advisers Act, and the NAIC has adopted a model law that includes a best interest standard, the Department believes that it is possible to honor the unique regulatory structure imposed by the law governing tax-preferred retirement investments, adopt a regulatory approach that provides a broadly uniform standard for all retirement investors, as contemplated by Title I and Title II of ERISA, and avoid the imposition of obligations that conflict with investment professionals’ obligations under other applicable laws.”). See also, e.g., 88 FR 75938 (“This proposal would make the rules that govern fiduciary advice to plan and IRA investors more consistent with federal securities laws, and thereby promote clarity and efficiency.”).

¹⁰ FINRA is not expressing a view on extending a best interest standard to recommendations that are outside the scope of Reg BI, such as recommendations of non-securities products and those made to plan sponsors.

would reasonably be viewed as a suggestion that the retirement investor engage in or refrain from taking a particular course of action.”¹¹

The preamble states: “In evaluating whether a recommendation has been made under the proposal, the Department intends to take an approach *similar* to that taken by the SEC and FINRA in the broker-dealer context” (emphasis added). The Department also states that it has “worked to ensure alignment with the regulatory regimes of the SEC and other regulatory agencies.”

Some aspects of the Department’s discussion of “recommendation” could be further aligned with how that term has been interpreted under Reg BI and FINRA’s suitability rule. For example, the Department cites the SEC’s Reg BI Adopting Release discussion of the factors considered in determining whether a “recommendation” has taken place, including whether the communication “reasonably could be viewed as a ‘call to action.’” We recommend that the Department expressly incorporate this guiding principle into its description of a “recommendation.” We are also concerned that the Department’s approach to capturing “indirect (e.g., through or together with any affiliate)” actions within the meaning of a recommendation may be inconsistent with how the term has been interpreted for broker-dealers.

Clearer reliance on the well-established concepts concerning the meaning of “recommendation” (including by reaffirming the longstanding distinction between “recommendations” and “investment education”) would resolve the ambiguities that arise from the discussion of the term in the preamble and would better ensure that broker-dealers and their financial professionals, compliance officers, and counsel can correctly determine when they will be providing investment advice under the Department’s fiduciary standard.

- **PTE 2020-02: Example in Section II(A)(1)**

In Section II(A)(1), the Department supplements the text of the best interest standard with an example¹² which the Department states is intended to provide additional clarity and to be “consistent with the SEC’s standards for both registered investment advisers and broker-dealers.” We appreciate the Department’s goal of regulatory consistency with respect to a best interest standard under both the Proposals and Reg BI. Our concern, however, is that because there does not appear to be similarly worded guidance under Reg BI, the example and related preamble discussion¹³ may result in less

¹¹ See Fiduciary Definition Proposal, 88 FR 78890, 75904.

¹² See PTE 2020-02 Proposal, *supra* note 2, 88 FR 75979, 76000 (“For example, in choosing between two investments offered and available to the Retirement Investor from the Financial Institution, it is not permissible for the Investment Professional to advise investing in the one that is worse for the Retirement Investor but better or more profitable for the Investment Professional or the Financial Institution.”).

¹³ *Id.* at 75983 (“To provide additional clarity, the Department is proposing to add an example to the operative text from the 2020–02 preamble specifying that it is impermissible for the Investment Professional to recommend a product that is worse for the Retirement Investor because it is better

than full alignment between the standards.

In the Reg BI Adopting Release, the SEC made clear that the rule is not intended to require a broker-dealer to provide conflict-free recommendations, and that “a broker-dealer could recommend a more expensive or more remunerative security or investment strategy if the broker-dealer has a reasonable basis to believe there are other factors about the security or investment strategy that make it in the best interest of the retail customer, based on that retail customer’s investment profile.”¹⁴ Based on our reading of the Proposals’ text and preamble, we believe that the Department intends to take a similar approach, and accordingly suggest that it revise its proposal to be more consistent with the SEC’s intentions under Reg BI.

- **PTE 2020-02: Materiality Standard for Conflicts of Interest Disclosure**

Some of the proposed disclosure obligations relating to conflicts of interest appear to use inconsistently the term “material,”¹⁵ which may lead to uncertainty as to when the Department intends for a materiality standard to apply.¹⁶ The Department stated that it anticipates that financial institutions will be able to satisfy this disclosure requirement in part through disclosures required by other regulations, including Reg BI.¹⁷ Reg BI requires disclosure of “all material facts relating to conflicts of interest that are associated with the recommendation.”¹⁸ Consistent use of the term “material” in the Proposals’ rule text and related preamble discussion concerning disclosure of conflicts of interest would

for the Investment Professional's or the Financial Institution's bottom line. In other words, the requirement for Investment Professionals not to subordinate the Retirement Investor's interests to their own is not satisfied if the Investment Professional merely considers the Retirement Investor's interests along with its own and the Financial Institution's in choosing which product to recommend to a Retirement Investor. The Department notes this standard is consistent with the SEC's standards for both registered investment advisers and broker-dealers.”)

¹⁴ See Reg BI Adopting Release, *supra* note 4, 84 FR 33318, 33331. See also *id.* at 33380-81.

¹⁵ For example, the introductory paragraph to Section II – Investment Advice Arrangement omits the term “material” (“Section II(b) requires Financial Institutions to [...] provide investors with [...] a written description of the services they will provide and their Conflicts of Interest [...]”), as does Section II(b)(4) (“a written statement that the Retirement Investor has the right to obtain specific information [...] with sufficient detail to permit the Retirement Investor to make an informed judgment [...] about the significance and severity of the Conflicts of Interest [...]”). On the other hand, proposed Section II(b)(3) includes the term “material” (“A written description of the services to be provided and the Financial Institution’s and Investment Professional’s material Conflicts of Interest [...]”).

¹⁶ Neither Reg BI nor PTE 2020-02 includes materiality within the definition of “conflict of interest.” Under the PTE 2020-02, “A ‘Conflict of Interest’ is an interest that might incline a Financial Institution or Investment Professional – consciously or unconsciously – to make a recommendation that is not in the Best Interest of the Retirement Investor.” (Section V(c)). Under Reg BI, “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.” (17 CFR 240.151-1(b)(3)).

¹⁷ See PTE 2020-02 Proposal, 88 FR 75979, 75985; note 12.

¹⁸ 17 CFR 240.151-1(a)(2)(i)(B).

be important to achieve the Department’s goal of avoiding “duplication of disclosures”¹⁹ in this context. If the Department intends to require a different level of disclosure than under Reg BI, an explanation of the intended differences would be helpful.

- **PTE 2020-02: Right to obtain specific information concerning costs, fees, and compensation**

Proposed Section II(B)(4) requires the financial institution to provide a “written statement that the Retirement Investor has the right to obtain specific information regarding costs, fees, and compensation, described in dollar amounts, percentages, formulas, or other means reasonably designed to present full and fair disclosure that is materially accurate in scope, magnitude, and nature, with sufficient detail to permit the Retirement Investor to make an informed judgment about the costs of the transaction [...].” Although it may not be the Department’s intent,²⁰ this requirement appears to encompass a greater level of specificity and individualization than the disclosure required under Reg BI.

With respect to disclosure of fees and costs, Reg BI requires full and fair disclosure of “all material facts relating to the scope and terms of the relationship with the retail customer, including [...] [t]he material fees and costs that apply to the retail customer’s transactions, holdings and accounts [...].” The Reg BI Adopting Release explains that this disclosure obligation “does not mandate individualized fee disclosure particular to each retail customer” and instead, that “broker-dealers may disclose ‘material facts’ about material fees and costs in terms of more standardized numerical and narrative disclosures.”²¹

With respect to disclosure of compensation, Reg BI requires disclosure of all material facts relating to conflicts of interest that are associated with the recommendation.²² The SEC explains that this provision “does not require specific written disclosure of the amounts of compensation received by the broker-dealer or the financial representative.”²³ For example, the SEC does not require “broker-dealers to disclose the amount, if any, they compensate their financial professionals per transaction,

¹⁹ *Id.*

²⁰ See PTE 2020-02 Proposal, 88 FR 75979, 75994 (“As amended, PTE 2020–02 would require financial institutions to provide investors with the following additional disclosures:

(1) a written statement of the best interest standard of care owed; and

(2) a written statement that the retirement investor has the right to obtain specific information regarding costs, fees, and compensation.

Under the Investment Advisers Act of 1940 and SEC Regulation Best Interest, most SEC-registered investment advisers and broker-dealers with retail investors already provide disclosures that the Department expects would satisfy these requirements.”).

²¹ See Reg BI Adopting Release, 84 FR 33318, 33355.

²² 17 CFR 240.151-1(a)(2)(i)(B).

²³ See Reg BI Adopting Release, 84 FR 33318, 33363.

or for year-end bonuses.”²⁴

In adopting Reg BI, the Commission encouraged broker-dealers, as a best practice, “to assist retail customers in understanding the specific fees and costs that apply, and to provide more individualized disclosure where appropriate, or in response to a retail customer's request.”²⁵ However, the SEC did not make individualized disclosures mandatory.

In our experience, investors rarely ask for individual disclosures of fees and costs; nonetheless, a mandatory disclosure requirement would cause broker-dealers to develop and maintain robust systems, policies and procedures so they can provide these disclosures if sought by investors. We note that any more detailed or individualized disclosure obligations of this type would have a disproportionate impact on broker-dealers, in light of their business model and compensation and fee structures. Accordingly, the Department’s proposed disclosure requirement may have the unintended effect of encouraging firms and their financial professionals to offer retirement advice only through investment advisers. We urge the Department to conform its approach to Reg BI in terms of the type and scope of information that must be provided or available to investors concerning fees, costs, and compensation.

Further, the examples highlighted in this letter are not intended to be exhaustive. We note that the Department has proposed and considered proposing (in the case of website disclosure) other disclosure obligations that could impose conflicting or additional requirements to those in Reg BI. Consistent with our comments, we encourage the Department to conform the disclosure requirements in PTE 2020-02 to Reg BI to the extent possible.

- **PTE 2020-02: Policies and Procedures**

In Section II(C)(2), which sets forth the requirement that the Financial Institution’s policies and procedures mitigate Conflicts of Interest,²⁶ the Department proposes an amendment that adds examples to the operative text that are designed to clarify “some actions that Financial Institutions may not take because a reasonable person could conclude that they are likely to encourage Investment Professionals to make

²⁴ *Id.*

²⁵ *See supra* note 21. The Commission also indicated that it would consider requiring more personalized fee disclosure in the future.

²⁶ We note that the existing PTE 2020-02 goes beyond Reg BI, in that it requires mitigation of conflicts at the firm and financial professional level. Reg BI’s mitigation requirement is focused on conflicts of interest that create an incentive for an associated person to place his or her interests ahead of the interest of the retail customer. *See* Reg BI Adopting Release, 84 FR 33318, 33387. Firm-level conflicts can generally be addressed through disclosure, but mitigation is required for material limitations on the securities or investment strategies that may be recommended to a retail customer. *See* 17 CFR 240.151-1(a)(2)(iii)(C); *see also* Reg BI Adopting Release, 84 FR 33318, 33393.

recommendations that are not in the Retirement Investors’ Best Interest.”²⁷ Specifically, the proposed amendment states that “[f]inancial institutions may not use quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other similar actions or incentives that are intended, or that a reasonable person would conclude are likely, to result in recommendations that are not in Retirement Investors’ Best Interest.” The preamble further states “[a] Financial Institution should not offer incentive vacations, or even paid trips to educational conferences, if the desirability of the destination is based on sales volume and satisfaction of sales quotas.”²⁸

The proposed addition to Section II(C)(2) imposes broader restrictions than Reg BI, which requires broker-dealers to identify and eliminate 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.²⁹ The proposed changes to Section II(C)(2) would add to this list of effectively prohibited practices and would appear to prohibit these practices even if they are not based on sales of specific products, specific types of products, or limited time periods.³⁰

In Reg BI, the Commission made clear that the elimination requirement “does not apply to compensation practices based on, for example, total products sold, or asset growth or accumulation, and customer satisfaction.”³¹ The Commission also clarified that it did “not intend to prohibit training or education meetings, including attendance at company-sponsored meetings such as annual conferences, provided that these meetings are not based on the sale of specific securities or types of securities within a limited time period.”³²

Additionally, we note that the inclusion of differential compensation (including at

²⁷ See PTE 2020-02 Proposal, 88 FR 75979, 75986.

²⁸ *Id.* at 75987.

²⁹ 17 CFR 240.15l-1(a)(2)(iii)(D). These are practices that the Commission believed, “particularly when coupled with a time limitation, create high-pressure situations for associated persons to engage in sales conduct contrary to the best interest of retail customers.” See Reg BI Adopting Release, 84 FR 33318, 33396. In addition to Reg BI, broker-dealers are subject to FINRA’s non-cash compensation rules, which are intended to mitigate and prevent point-of-sale incentives that might cause a representative to recommend investments based on factors other than the investor’s financial needs and profile. FINRA Rules 2310 (Direct Participation Programs), 2320 (Variable Contracts of an Insurance Company), 2341 (Investment Company Securities), 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) impose restrictions on non-cash arrangements that are in connection with the sale and distribution of securities covered by those rules. The non-cash compensation rules prohibit a member firm or associated person from directly or indirectly accepting or making payments of any non-cash compensation, subject to specified exceptions.

³⁰ Although the new text includes a “reasonable person” standard, we believe that in practice it may have the same effect as an outright prohibition in light of the description of this language in the preamble, and the compliance challenges associated with a “reasonable person” standard.

³¹ See Reg BI Adopting Release, 84 FR 33318, 33396 (citation omitted).

³² *Id.* at 33396-33397 (citation omitted).

the firm-level) in this list may be particularly significant for broker-dealers. As the Commission acknowledged in adopting Reg BI, “broker-dealers can receive different payments from different product providers (e.g., mutual funds) for a variety of reasons, such as payments for inclusion on a broker-dealer’s menu of products offered (sometimes referred to as shelf space).”³³ Under Reg BI, conflicts associated with those payments generally can be addressed under the conflict of interest framework through disclosure, and where relevant, mitigation.³⁴ If the Department intends to require firms to eliminate differential compensation, it may have a disproportionate impact on broker-dealers and may have significant negative impacts on the availability of brokerage services to retirement investors.

We noted that the Department emphasizes that the best interest standard does not foreclose advice based on investment menus that are limited to proprietary products or investments that generate third-party payments and offers guidance to Financial Institutions that offer a restricted menu of products, setting forth an example of how such a firm could satisfy the policies and procedures requirement.³⁵ We believe, however, that the last prong of this example may create some compliance uncertainty, in its statement that the Investment Professional may not consider “any factors or interests other than the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor.”³⁶ This language could be viewed as imposing a different standard than the requirement in Section II(A)(1) of the Impartial Conduct Standards to “not place the financial or other interests of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor’s interests to their own.”

We encourage the Department to carefully consider the potential implications of these proposed restrictions and conform its approach to Reg BI in terms of the treatment of specific types of compensation practices.

Conclusion

FINRA appreciates the unique challenges associated with operating as a regulator in a sphere of overlapping jurisdiction. Addressing the topic of the many regulatory “cooks in the kitchen” (including the SEC, FINRA, the Department, state insurance regulators, state securities regulators and others), former SEC Chairman Jay Clayton said in 2018, following the SEC’s proposal of Reg BI, “differing standards confuse investors and may impose compliance costs on investment professionals — costs that are passed on to the consumers. [...] So it is incumbent on us as regulators to work together to ensure a

³³ See Reg BI Adopting Release, 84 FR 33318, 33362-33363.

³⁴ See *supra* note 2626.

³⁵ See PTE 2020-02 Proposal, 88 FR 75979, 75983.

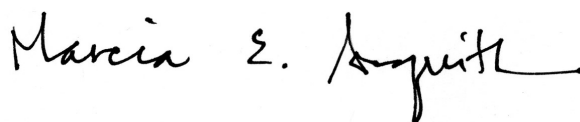
³⁶ *Id.* at 75987 (“[...] the Investment Professional’s recommendation is not based on the financial or other interests of the Investment Professional or on the Investment Professional’s consideration of any factors or interests other than the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor.”).

seamless relationship from the perspective of the customer.”³⁷ Thus, after adoption of Reg BI, FINRA revised its suitability rule to avoid overlapping requirements for broker-dealers.³⁸ Similarly, in response to the SEC’s proposed Regulation Best Execution,³⁹ FINRA submitted a comment letter, along with the Municipal Securities Rulemaking Board (“MSRB”), indicating our intent, if the proposal is adopted, to take appropriate steps to avoid regulatory duplication and provide regulatory clarity, by adjusting our respective best execution rules and guidance accordingly.⁴⁰

We appreciate the Department’s interest in better understanding whether the Proposals may result in conflicting obligations on advice providers. In the event the Department determines to move forward with the Proposals, we would urge the department to consider deferring to Reg BI more broadly, or at a minimum, hewing more closely to Reg BI’s definitions, requirements, and interpretations, in order to help address potential ambiguities that may complicate good faith attempts at compliance, avoid conflict with existing rules, and better ensure that the Proposals’ objectives are achieved.

We are grateful to the Department for considering this letter at this time. We would be glad to work with the Department to address our comments if that would be helpful. Please let us know if you have any questions or would like to discuss any of these comments further.

Sincerely,



Marcia E. Asquith
Corporate Secretary, EVP
Board and External Relations

³⁷ See Chairman Jay Clayton Speech: “The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice” (May 2, 2018), available at <https://www.sec.gov/news/speech/speech-clayton-2018-05-02>.

³⁸ See *Regulatory Notice 20-18* (June 2020) (FINRA Amends Its Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest).

³⁹ See Exchange Act Release No. 96496 (December 14, 2022), 88 FR 5440 (January 27, 2023) (Regulation Best Execution).

⁴⁰ See Joint FINRA-MSRB Comment Letter to Vanessa Countryman, Secretary, SEC, re: Regulation Best Execution (Release No. 34-96496; File No. S7-32-22) (February 7, 2023), available at <https://www.finra.org/sites/default/files/2023-02/FINRA-MSRB-Joint-Comment-Letter-20230207-Regulation-Best-Execution.pdf>.