

News

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Harold Evensky to SEC: “*CHANGE THE DAMN NAME*” Of Regulation Best Interest

Evensky, financial and investment advice pioneer, author and professor, urges SEC to rename the Reg BI, ‘New Suitability’

Washington DC, March 1, 2021 – On the eve of the March 2 Senate confirmation hearing of Gary Gensler to serve as chairman of the Securities & Exchange Commission, a prominent financial advisor urges the new SEC to change the name of the new broker-dealer rule, Reg BI.

Evensky explains his rationale in social media posts (attached) by the Institute for the Fiduciary Standard, “Reg BI is no best interest standard. Fiduciary is.” Reg BI’s name is “Grossly misleading.”

Evensky’s recommendation is one of several in an Institute paper (linked below) released January 27.

Knut A Rostad, president of the Institute for the Fiduciary Standard, noted that “Renaming Reg BI raises basic issues about broker-dealers’ identity. Here are two. First, Commissioners Kara Stein and Hester Peirce both offered alternative names for Reg BI and raise the question, ‘What’s reasonable.’ The SEC’s own REG BI guidance, notes ‘Broker-dealers are also prohibited from making misleading statements.’” ([Reg BI final rule](#), p. 445).

Second, the SEC states it facilitates “Greater clarity for retail investors.” (Proposed rule, p. 21600 of [Federal Register](#)). Should “greater clarity” include an affirmative duty of broker-dealers to disclose their primary business of product distribution? Is it possible this is *not* “material information?”

“It’s simple. Don’t say you do something you don’t do.”

Evensky is not alone among investing and fiduciary experts in his concerns. **Roger C. Gibson**, CFA, Founding Partner, Gibson Capital, LLC, notes, “It is simple. Don’t say you do something you don’t do. If you don’t put clients’ best interest first, don’t say you meet a best interest fiduciary standard.”

Tamar Frankel, professor emerita, Boston University School of Law, [reminds advisers and regulators](#) how important the fiduciary standard is. “The most effective way to destroy any healthy and lasting economy and financial system is to relieve intermediaries of a duty to be trustworthy. That means to relieve them of the obligation to do what they promise to do for the benefit of their clients.”

*Separately, Berkshire Hathaway's Charlie Munger puts a finer point
On Frankel's warning*

Charlie Munger of Berkshire Hathaway used a choice word of his own, completely separate from this Institute initiative, that put a finer point on Frankel's warning. Munger, in his criticism of Robinhood reported February 26 [by the WSJ](#), called out Robinhood's defense of its practices as “**bullshit**.”

Institute paper highlights key fixes for June 2019 SEC rulemaking

An [Institute January 27 paper](#) by Knut A. Rostad, Ron Rhoades, Brian Hamburger* identifies fixes the SEC should make to Reg BI.

Fixing Defects Paper Summary. The SEC June 2019 rulemaking on conduct standards is as significant as it is fundamentally misguided. The Institute for the Fiduciary Standard has identified five recommendations that would have a critical impact on raising standards to better serve and finally level with investors:

- Rebrand Reg BI as a ‘New Suitability’ standard for broker-dealers; affirm broker-dealer product recommendations are distinct from best-interest fiduciary advice;
- Strengthen broker-dealer ‘New Suitability’ standard by eliminating certain conflicts;
- Provide new guidance and clarity for the broker-dealer standard of conduct;
- Mandate disclosure in Form CRS to express the stark differences between fiduciary advice and product sales and test such language with consumers; exempt registrants if disclosure is also contained in other disclosure statements.
- For the Advisers Act, conflicts of interest that inherently violate the client's best interest must be avoided; disclosure alone is insufficient. Further, strengthen the application of the Advisers Act's fiduciary standard through guidance on state common law.

Edited 030521

About the authors of the paper

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About the Institute for the Fiduciary Standard

The Institute for the Fiduciary Standard is a non-profit formed in 2011 to provide research, education and advocacy on the vital role of the fiduciary standard for investors and the capital markets. For more information, visit www.thefiduciaryinstitute.org.