

## Regulation Best Interest Chart

The Securities and Exchange Commission (hereinafter “SEC” or “Commission”) best interest proposal creates a standard of conduct for brokers that is met by satisfying three underlying obligations:

- ① a “Disclosure” Obligation,
- ② a “Care” Obligation AND
- ③ a “Conflict of Interest” Obligation.

The chart below endeavors to match these underlying obligations with those imposed on investment advisers as fiduciaries under the Investment Advisers Act of 1940 and subsequently clarified in the Commission’s proposed interpretation of an adviser’s standard of conduct. In doing so, the chart frames the best interest obligations within the twin fiduciary duties of care and loyalty from which they were inspired.

*“[Best interest] is definitely a fiduciary principle, just like the fiduciary duty in the investment adviser space is a fiduciary principle” – SEC Chairman Jay Clayton.*

One final note and an important caveat to the chart below is that some investor protections afforded by virtue of an adviser’s fiduciary relationship to his clients are captured elsewhere by FINRA rules for broker-dealers. For example, brokers are subject to best execution and anti-fraud protections under FINRA rules that for advisers are borne out of their fiduciary duty of care.

	<b>Investment Adviser</b>	<b>Broker-Dealer</b>
<b>Duty of Care</b>	<p><b>Duty to Provide Advice that is in the Client’s Best Interest</b> – Duty to act and provide advice that is in the <u>best interest</u> of the client.</p> <p>Includes duty to make a <u>reasonable inquiry</u> into a client’s financial situation, level of financial sophistication, investment experience, and investment objectives (which we refer to collectively as the client’s “investment profile”) and a duty to provide personalized advice that is <u>suitable</u> for and in the <u>best interest</u> of the client, based on the client’s investment profile.</p> <p><b>Duty of Prudence and Reasonableness</b> – Exercise due care (prudence and reasonableness) when acting on behalf of clients</p> <p><b>Reasonable Basis for Recommendations</b> – An adviser must have a reasonable, independent basis for its recommendations</p> <p><b>Duty to Avoid Misleading Clients</b> – Employ reasonable care to avoid misleading clients</p> <p><b>Duty to Seek Best Execution</b> – Duty to seek <u>best execution</u> of a client’s transactions where the adviser has the responsibility to select and monitor broker-dealers to execute client trades</p> <p><b>Duty to Monitor</b> – Duty to provide advice and monitoring over the course of the relationship; a continuing obligation</p>	<p><b>Best Interest Standard of Conduct</b> – Duty to act in the <u>best interest</u> of the retail customer at the time a recommendation is made without placing the financial or other interest of the broker ahead of the interest of the retail customer</p> <p><b>Best Interest “Care” Obligation</b> – A broker, dealer or natural person who is an associated person of a broker or dealer, in making the recommendation, must exercise <u>reasonable diligence, care, skill, and prudence</u> to:</p> <ul style="list-style-type: none"> <li>• understand the potential risks and rewards associated with the recommendation, and have a <u>reasonable basis</u> to believe that the recommendation <u>could be</u> in the <u>best interest</u> of at least some retail customers</li> <li>• have a <u>reasonable basis</u> to believe that the recommendation is in the <u>best interest of a particular</u> retail customer based on the retail customer’s investment profile as well as the potential risks and rewards associated with the recommendation</li> <li>• have a <u>reasonable basis</u> to believe that a <u>series of recommended transactions</u>, even if in the retail customer’s best interest when viewed in isolation, is <u>not excessive</u> and is in the retail customer’s <u>best interest</u> when taken together in light of the retail customer’s investment profile</li> </ul>

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	<b>Investment Adviser</b>	<b>Broker-Dealer</b>
<b>Duty of Loyalty</b>	<p><b>Duty of Loyalty</b> – The duty of loyalty requires an investment adviser to put its client’s interests <u>first</u></p> <ol style="list-style-type: none"> <li>1. <b>Duty to act in the best interest of the client</b> and</li> <li>2. <b>Duty to place the interest of clients above its own</b></li> </ol>	<p><b>Best Interest Standard of Conduct</b> – Duty to act in the best interest of the retail customer at the time a recommendation is made <u>without placing the financial or other interest of the broker ahead of the interest of the retail customer</u></p>
	<p><b>Duty to Avoid Conflicts of Interest</b> – Must seek to <u>avoid conflicts of interest</u> with its clients, and, at a minimum, make <u>full and fair disclosure</u> of <u>all material conflicts</u> of interest that could affect the advisory relationship. Disclosure should be sufficiently specific so that a client is able to decide whether to provide <u>informed consent</u> to the conflict of interest.</p> <p><b>Full and Fair Disclosure (“Full and Frank”)</b> – To meet its duty of loyalty, an adviser must make <u>full and fair disclosure</u> to its clients of <u>all material facts</u> relating to the advisory relationship.</p> <p><u>Disclosure</u> of a conflict <u>alone</u> is <u>NOT</u> always <u>sufficient</u> to satisfy the adviser’s duty of loyalty and Section 206 of the Advisers Act.</p> <p>It would <u>NOT</u> be consistent with an adviser’s fiduciary duty to infer or accept client consent to a conflict where either (i) the facts and circumstances indicate that the client did not understand the nature and import of the conflict, or (ii) the material facts concerning the conflict could not be fully and fairly disclosed</p>	<p><b>Best Interest “Disclosure” Obligation</b> – Must disclose all material facts relating to the scope and terms of the relationship and all material conflicts of interest associated with a recommendation</p> <p><b>Best Interest “Conflict of Interest” Obligation</b> –</p> <ol style="list-style-type: none"> <li>1. Must establish, maintain, and enforce written policies and procedures <u>reasonably designed</u> to identify and at a minimum disclose, or eliminate, <u>all material conflicts</u> of interest that are associated with recommendations</li> <li>2. Must establish, maintain and enforce written policies and procedures <u>reasonably designed</u> to identify and disclose, and mitigate, or eliminate, material conflicts of interest <u>arising from financial incentives</u> associated with such recommendations</li> </ol> <p>A broker-dealer <u>CANNOT</u> meet its Care Obligation through disclosure alone: <i>“Where a broker-dealer is choosing among identical securities with different cost structures, we believe it would be inconsistent with the best interest obligation for the broker-dealer to recommend the more expensive alternative for the customer, even if the broker-dealer had disclosed that the product was higher cost and had policies and procedures reasonably designed to mitigate the conflict under the Conflict of Interest Obligations, as the broker-dealer would not have complied with its Care Obligation.”</i></p>

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