

SEC advice rule: Here's what you need to know

We sifted through the nearly 1,000-page proposal and picked out some of the most important points.

April 19, 2018 [By Greg Iacurci](#)

The Securities and Exchange Commission has [officially proposed its investment-advice rule](#), the first step in a long regulatory process that could fundamentally change the way broker-dealers and their representatives do business.

The proposal, published Thursday evening, includes three documents totaling 916 pages. The public will have 90 days to comment on its contents.

Here are the most important things to know about the proposed rule.

- **Not a uniform standard.** The rule would not create a uniform fiduciary standard for brokers and investment advisers — meaning the two-tiered approach to investment-advice standards would be preserved. “An investment adviser’s fiduciary duty is similar to, but not the same as, the proposed obligations of broker-dealers under Regulation Best Interest,” the SEC says in the proposal. It continues: “We are not proposing a uniform standard of conduct for broker-dealers and investment advisers in light of their different relationship types and models for providing advice.”
- **“Best interest” standard for brokers.** Brokers would be [held to a “best interest” standard](#) when interacting with retail customers. The intent is for brokers to act in clients’ best interest — meaning they can’t place the firm’s or their individual financial interests first. (Under existing rules, they must make a recommendation that’s merely “suitable.”) The standard would apply for recommendations about securities transactions or an investment strategy involving securities. It would not apply to unsolicited transactions, or to dually registered — hybrid — RIAs when making recommendations in an investment-adviser capacity. The SEC does not refer to the standard as a [“fiduciary” standard](#).
- **Disclosures and financial incentives.** The SEC seeks to implement its new broker standard through a combination of enhanced disclosures and obligations related to certain financial incentives (such as conflicts associated with compensation and the sale of proprietary products). As the SEC notes, though: “We do not intend for our standard to prohibit a broker-dealer from having conflicts when making a recommendation.”
- **No private right of action.** The SEC doesn’t intend for the standard to create a new private right of action. The private legal action created by the Department of Labor’s fiduciary rule —

the [best-interest contract exemption](#), or BICE — is one of the financial services industry’s primary objections to that regulation.

- **The rule includes [title reform](#).** It would restrict firms solely registered as broker-dealers and brokers from using the term “adviser” or “advisor” when communicating with a retail customer “in specified circumstances.” This includes names or titles that use the term in whole or in part, such as financial adviser (or advisor), wealth adviser (or advisor), trusted adviser (or advisor), and advisory.
- **However, it leaves the door open to work-arounds.** The SEC notes that the title restriction would not apply to those “acting on behalf of a bank or insurance company, or when acting on behalf of a municipal advisor or a commodity trading advisor.” Terms other than “adviser,” such as “financial consultant,” are fair game because the SEC doesn’t believe retail investors would confuse them for investment advisers.
- **Hybrid RIAs catch a break.** Dually registered firms and “dual-hatted” individuals can present themselves as an “adviser” or “advisor” in name or title. Individuals can only do so if they provide investment advice to investors on behalf of the investment adviser — not if they’re merely associated with a dually registered firm but only provide brokerage services.
- **Relationship-summary disclosure.** Along with title reform, advisers and brokers would be required to provide investors with a document — no more than four pages long — summarizing their relationship with the customer. This would be in addition to existing reporting and disclosure requirements. The goal is to give investors information about the “relationships and services the firm offers, the standard of conduct and the fees and costs associated with those services, specified conflicts of interest, and whether the firm and its financial professionals currently have reportable legal or disciplinary events.”
- **The fiduciary standard for advisers may change.** In the proposal, the SEC offers its interpretation of advisers’ existing fiduciary obligations and also seeks comments on three “potential enhancements to their legal obligations.” It is considering “areas where the current broker-dealer framework provides investor protections that may not have counterparts in the investment adviser context.”
- **Other alternatives.** The SEC says it considered alternatives to its best-interest broker standard, including fiduciary, disclosure-only and principles-based standards, in addition to one “akin to conditions of” the DOL fiduciary rule’s best-interest contract exemption. The SEC believes the best-interest approach is better for retail customers and broker-dealers because the “potential costs would be less — and the benefits would be greater.”
- **Serious disagreement.** There is [serious disagreement among the SEC commissioners](#) on both sides of the political aisle about the efficacy and contents of the rule. Republican Commissioner Michael Piwowar said he had “some misgivings”; Republican Hester Peirce said the rule title “Regulation Best Interest” is a misnomer and that it would be more appropriate to say the SEC is proposing a “suitability-plus standard.”

Democratic commissioners expressed similar criticisms, though in stronger terms. Kara Stein was the only commissioner to vote against releasing the proposal package, saying it was too weak and would “maintain the status quo.” Robert Jackson Jr. said the proposal only “strengthens the suitability standard” for brokers.