

COMPARING

CFP BOARD'S

***CODE OF
ETHICS AND
STANDARDS
OF CONDUCT***

TO THE SEC'S

**REGULATION
BEST INTEREST**

INTRODUCTION

On March 29, 2018, CFP Board announced that its Board of Directors unanimously approved a new *Code of Ethics and Standards of Conduct* (*Code and Standards*). The *Code and Standards* has an effective date of October 1, 2019 and an enforcement date of June 30, 2020. On June 5, 2019, the Securities and Exchange Commission (SEC) issued Regulation Best Interest (Reg BI).

CFP® professionals who are registered representatives of broker-dealers will be subject to both the *Code and Standards* and Reg BI. While the *Code and Standards* and Reg BI contain many similar requirements, there also are some important differences.

CFP Board is providing this guidance to those CFP® professionals who are subject to Reg BI, to help them understand CFP Board's perspective on some important similarities and differences between CFP Board's *Code and Standards* and the SEC's Reg BI. CFP Board does not intend for this guide to provide a comprehensive list of similarities and differences between Reg BI and the *Code and Standards*, but it addresses key areas of particular significance to CFP® professionals.

This guide refers to the following documents:

Code and Standards: <https://www.cfp.net/ethics/code-of-ethics-and-standards-of-conduct>

Commentary on the Code and Standards: <https://www.cfp.net/ethics/compliance-resources/2018/11/commentary-on-new-code-of-ethics-and-standards-of-conduct>

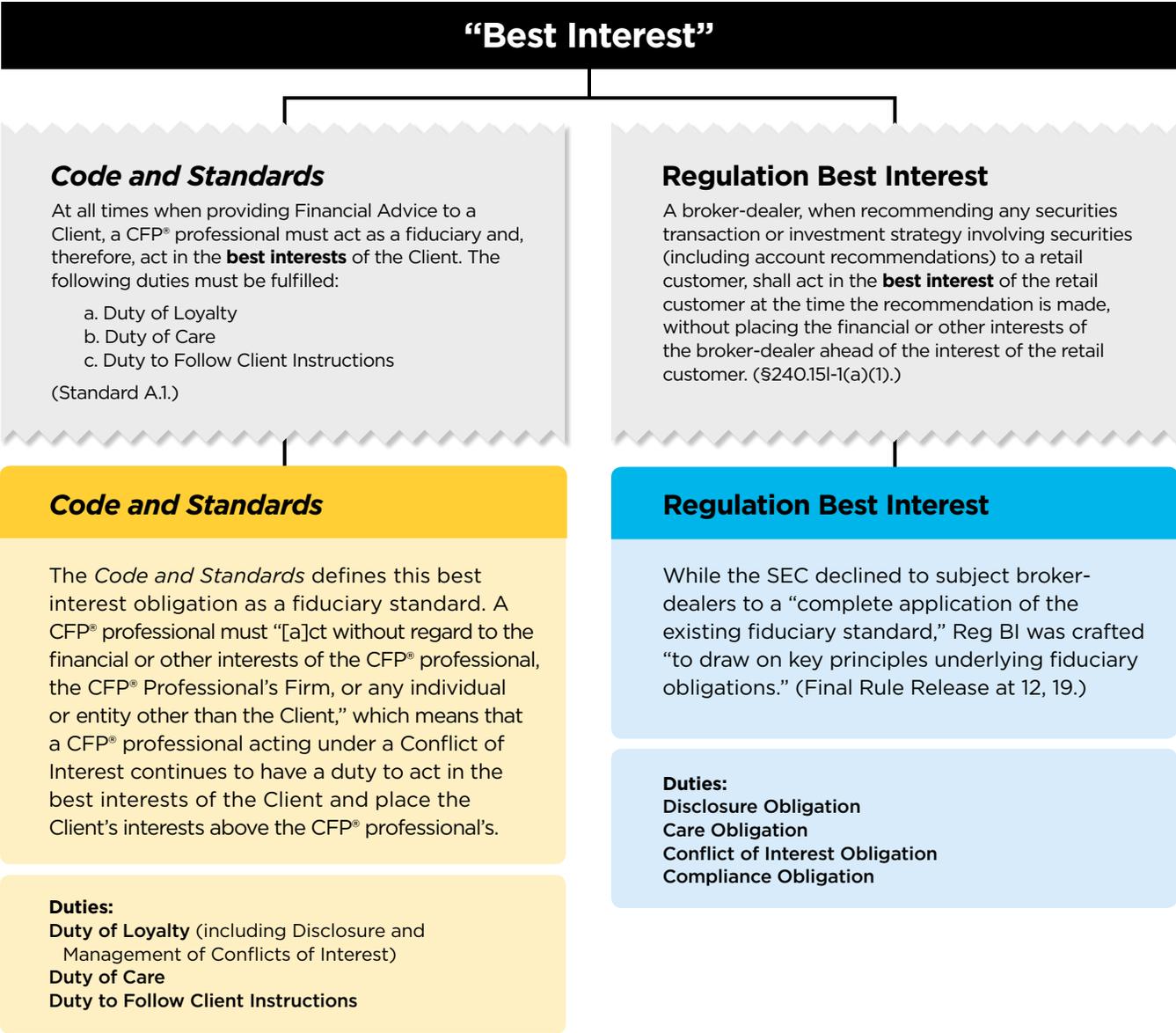
Reg BI Final Rule Release: <https://www.sec.gov/rules/final/2019/34-86031.pdf>

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STANDARDS OF CONDUCT

Both the *Code and Standards* and Reg BI impose a “best interest” standard. CFP Board explicitly adopted a fiduciary standard. The SEC said that it did not.



For more information on CFP Board’s Fiduciary Duty, review the guidance resources that CFP Board has developed to help CFP® professionals understand the new *Code and Standards*, including FAQs, articles, videos, and case studies applying the *Code and Standards* to real world situations.

FAQs: [Duties Owed to Clients](#)
Video: [The Fiduciary Obligation](#)
Article: [CFP® Professional’s Fiduciary Duty When Providing Financial Advice](#)
Case Study: [The Fiduciary Duty Applies to an Opinion About a Financial Asset](#)

DUTY OF CARE

The *Code and Standards* and Reg BI include similar client-specific duties of care. CFP Board requires “prudence” while the SEC says that prudence is covered by other terms. Any difference in the duties of care will be revealed when the SEC interprets Reg BI.

Code and Standards

The Duty of Care in the *Code and Standards* utilizes the “prudent professional” standard, which is a higher Standard for fiduciaries than a “reasonable person” standard.

CARE
SKILL
DILIGENCE
PRUDENCE

Regulation Best Interest

“The Care Obligation in Reg BI is intended to incorporate and enhance existing suitability requirements applicable to broker dealers under the federal securities laws.” (Final Rule Release at 245.)

In its initial rule release, the SEC included “prudence” as a requirement under the Care Obligation. (Proposing Release at 134, 405.) After careful consideration of public comments, the SEC decided “diligence, care, and skill” conveys the need for prudence and “its inclusion was superfluous and unnecessarily presented the possibility for confusion and legal uncertainty.” (Final Rule Release at 256-257.)

In the Final Rule Release, the SEC clarified that “removing ‘prudence’ does not lessen or otherwise change the requirements or the SEC’s expectations under the Care Obligation.” (Final Rule Release at 257.)

CARE
SKILL
DILIGENCE

CODE AND STANDARDS:

At all times when providing Financial Advice to a Client, a CFP® professional must act with the **care, skill, prudence, and diligence** that a prudent professional would exercise in light of the Client’s goals, risk tolerance, objectives, and financial and personal circumstances. (Standard A.1.b.)

REGULATION BEST INTEREST:

Brokers, including CFP® professionals, when making a recommendation, must exercise **reasonable diligence, care, and skill** to

- A. Understand the potential risks, rewards, and costs associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers;
- B. Have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer’s investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker or the broker’s firm ahead of the interest of the retail customer;
- C. Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer’s best interest when viewed in isolation, is not excessive and is in the retail customer’s best interest when taken together in light of the retail customer’s investment profile and does not place the financial or other interest of the broker or the broker’s firm ahead of the interest of the retail customer. (§240.151-1(a)(2)(ii).)

DUTY OF LOYALTY

Both the *Code and Standards* and Reg BI impose a duty of loyalty that seeks to limit the effect a conflict of interest may have on a recommendation. CFP Board explicitly requires the Client's interest to come first. The SEC does not. CFP Board requires the Financial Advice to be "without regard" to the interests of anyone but the Client's. The SEC does not use similar language.

"[p]lace the interests of the Client **above** the interests of the CFP® professional **AND** [a]ct **without regard to**"

Code and Standards

A "CFP® professional will owe Clients the same fiduciary duty when providing Financial Planning and when providing other Financial Advice, thereby eliminating any confusion concerning the applicable standard whenever the CFP® professional provides both types of services." (Commentary at 3.)

Consumers expect financial professionals to act in their best interest. "As CFP Board's mission is to promote the public interest, CFP Board must set standards that take into account the public's reasonable expectations, including the expectation that a CFP® professional will act as a fiduciary when providing Financial Advice to a Client." (Commentary at 5.)

"without placing the financial or other interests of the broker-dealer **ahead of** the interest of the retail customer"

Regulation Best Interest

"By replacing the "without regard to" language ...with the "without placing the financial or other interest...ahead of" phrasing, [the SEC] did not intend to create a 'lower' or 'weaker' standard." (Final Rule Release at 62-63.)

"[W]hile a broker-dealer will inevitably have some financial interest in a recommendation—the nature and magnitude of which will vary—the broker-dealer's interests cannot be placed ahead of the retail customer's interest." (Final Rule Release at 64-65.)

For more information, watch CFP Board's video on [The Duty of Loyalty](#)

CODE AND STANDARDS:

A CFP® professional must

- i. **Place the interests of the Client above the interests of the CFP® professional and his or her firm;**
- ii. Avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain informed consent, and properly manage the conflict; and
- iii. **Act without regard to** the financial or other interests of the CFP® professional, his or her firm, or any individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client's interest above the CFP® professional's...

(Standard A.1.a.)

REGULATION BEST INTEREST:

A broker-dealer when recommending any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, **without placing the financial or other interests of the broker-dealer ahead of the interest of the retail customer.** (§240.15l-1(a)(1).)

CONFLICTS OF INTEREST

Mere disclosure of conflicts of interest is insufficient to satisfy either the *Code and Standards* or Reg BI.

CFP Board requires a CFP® professional to disclose, obtain informed consent, and manage all conflicts. The SEC requires a broker-dealer to disclose all conflicts and mitigate representative-level conflicts. However, while the *Code and Standards* requires a CFP® professional to adopt and follow business practices reasonably designed to prevent conflicts from compromising his or her ability to act in the Client's best interests, Reg BI does not explicitly establish a standard by which a broker-dealer's mitigation efforts will be evaluated. Any difference between the standards will be revealed when the SEC interprets Reg BI.

Code and Standards

CFP Board has determined that many conflicts operate at the firm level and are outside the control of the CFP® professional. (Commentary at 5.)

Under the *Code and Standards*, CFP® professionals must disclose both firm-level and individual conflicts of interest and also manage those conflicts of interest such that they are not allowed to influence a CFP® professional's Financial Advice.

There are some conflicts that, as a practical matter, cannot be avoided. The *Code and Standards* leaves it to the CFP® professional to determine how to manage conflicts to ensure they are not allowed to taint the Financial Advice. (Commentary at 5-6.)

Regulation Best Interest

"[The SEC does] not believe that disclosure alone sufficiently reduces the potential effect that these conflicts of interest may have on recommendations made to retail customers. Instead, [it] believe[s] that broker-dealers are most capable of identifying and addressing the conflicts that may affect the obligations of their associated persons with respect to the recommendations they make, and therefore are in the best position, to affirmatively reduce the potential effect of these conflicts of interest such that they do not taint the recommendation." (Final Rule Release at 326.)

"By requiring that a broker-dealer establish policies and procedures reasonably designed to "mitigate" these conflicts of interest, [the SEC] mean[s] the policies and procedures must be reasonably designed to reduce the potential effect such conflicts may have on a recommendation given to a retail customer. Thus, whether or not a broker-dealer's policies and procedures are reasonably designed to mitigate such conflicts will be based on whether they are reasonably designed to reduce the incentive for the associated person to make a recommendation that places the associated person's or firm's interests ahead of the retail customer's interest." (Final Rule Release at 330-331.)

CFP Board requires management of conflicts while the SEC requires mitigation. The terms management and mitigation may be interpreted similarly.

While the SEC has not yet interpreted how registered representatives should disclose and mitigate conflicts of interest, CFP Board has issued compliance resources that provide guidance to CFP® Professionals on how to disclose and manage conflicts of interest under the *Code and Standards*.

Article: [Avoiding or Managing and Disclosing Conflicts of Interest](#)

Case Study: [The Duty to Disclose and Manage Material Conflicts of Interest Involving Proprietary Products](#)

CODE AND STANDARDS:

Manage Conflicts. A CFP® professional must adopt and follow business practices reasonably designed to **prevent Material Conflicts of Interest** from compromising the CFP® professional's ability to act in the Client's best interests. (Standard A.5.b.)

REGULATION BEST INTEREST:

The broker or dealer establishes, maintains, and enforces written policies and procedures reasonably designed to...**identify and mitigate** any conflicts of interest associated with such recommendations that create an incentive for a natural person who is an associated person of a broker or dealer to place the interest of the broker, dealer, or such natural person ahead of the interest of the retail customer. (§240.15l-1(a)(2)(iii)(B).)

DISCLOSURES CONCERNING CONFLICTS OF INTEREST

CFP® professionals may make oral or written disclosures of Material Conflicts of Interest under the *Code and Standards*, whereas Reg BI generally requires written disclosure of material facts. A CFP® professional who is a registered representative must comply with this Reg BI requirement.

oral or written

Code and Standards

CFP Board recognizes that in some business models and in some circumstances, providing written disclosures of conflicts of interest may present logistical challenges, and thus the *Code and Standards* does not include such a requirement. CFP Board has made clear, however, that evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. (Commentary at 8.)

written

Regulation Best Interest

"[B]roker-dealers must provide an initial disclosure in writing that identifies the material fact and describes the process through which such fact may be supplemented, clarified or updated." (Final Rule Release at 138.) "Providing retail customers written summary information about material facts relating to a recommendation and indicating that additional information will be forthcoming, the point at which the additional information will be delivered, and the method by which it will be conveyed, highlights for retail customers a useful summary of information while allowing for the practical realities of the process by which securities recommendations are made and transactions are executed." (Final Rule Release at 139.)

For more information about CFP Board's Duty to Disclose and Manage Conflicts of Interest, review CFP Board's compliance resources, including FAQs, articles, and case studies, applying the *Code and Standards* to real world situations.

FAQs: [Disclosures Required When Providing Financial Advice and Financial Planning](#)

Article: [Disclosures to Clients-What and When](#)

Case Study: [The Duty to Disclose Material Conflicts of Interest When Responding to a Client's Investment Inquiry](#)

CODE AND STANDARDS:

When providing Financial Advice, a CFP® professional must make full and fair disclosure of all **Material Conflicts of Interest** with the Client that could affect the professional relationship. This obligation requires the CFP® professional to provide the client with sufficiently specific facts so that a reasonable client would be able to understand the CFP® professional's material conflicts of interest and the business practices that give rise to the conflicts, and give informed consent to such conflicts or reject them.

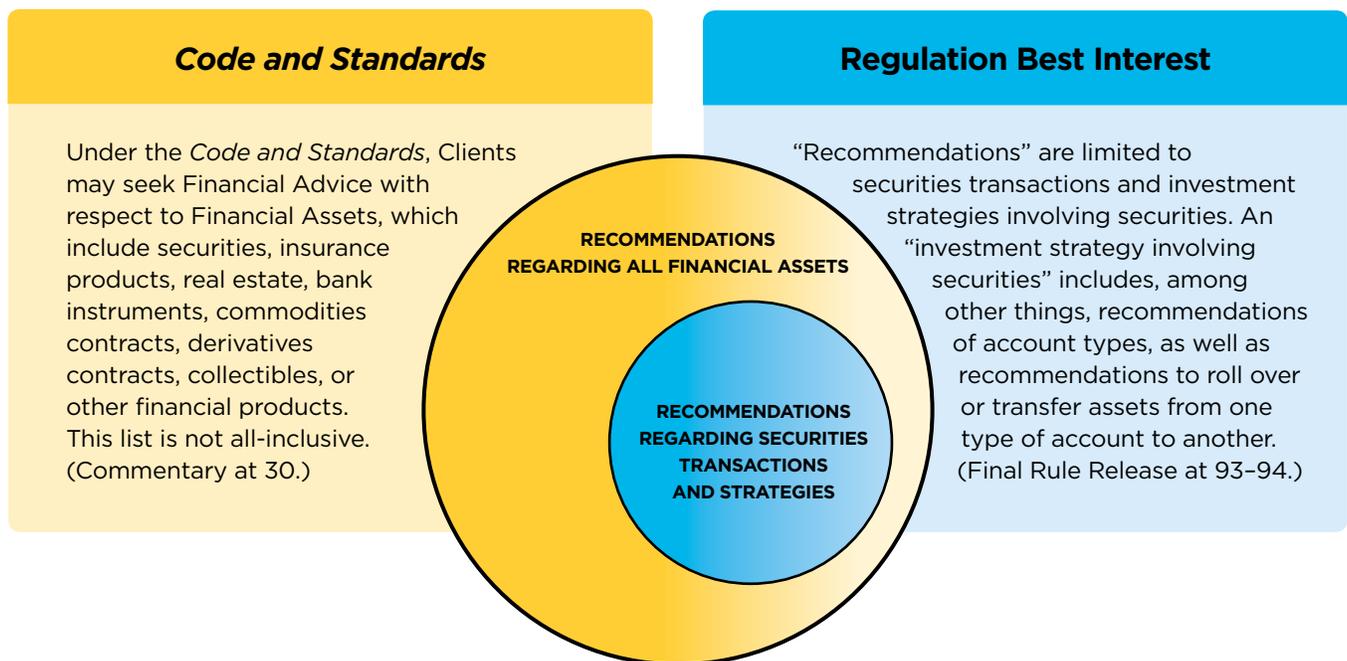
iii. Evidence of **oral disclosure** of a conflict will be given such weight as CFP Board in its judgment deems appropriate. Written consent to a conflict is not required. (Standard A.5.)

REGULATION BEST INTEREST:

The broker, dealer, or natural person who is an associated person of a broker or dealer, prior to or at the time of the recommendation, provides the retail customer, **in writing**, full and fair disclosure... (§240.15l-1(a)(2)(i).)

WHAT RECOMMENDATIONS THEY COVER

Both the *Code and Standards* and Reg BI apply to recommendations concerning securities, transactions, and investment strategies. The *Code and Standards* also applies to a broader range of recommendations.



For example, the *Code and Standards* applies to recommendations to take action with respect to tax strategy and insurance transactions whereas Reg BI does not.

For more information, watch CFP Board's video on [Financial Advice](#)

CODE AND STANDARDS:

Financial Advice is

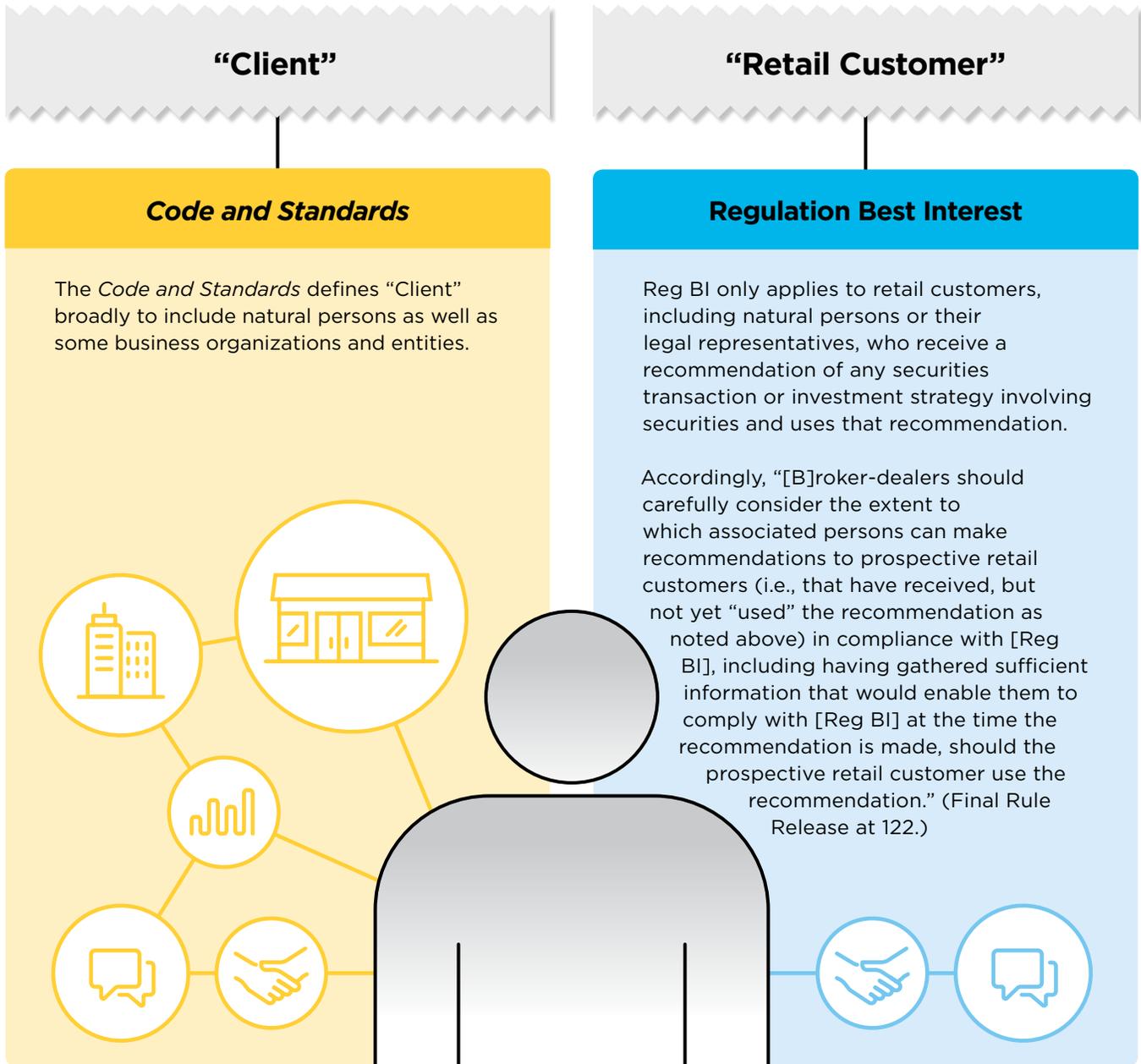
- a. [a] communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to
 1. [t]he development or implementation of a financial plan;
 2. [t]he value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets;
 3. [i]nvestment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters; or
 4. the selection and retention of other persons to provide financial or Professional Services to the Client; or
- a. (b) [t]he exercise of discretionary authority over the Financial Assets of a Client. "Financial Assets" include securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products. (Glossary)

REGULATION BEST INTEREST:

Whether a **recommendation** has taken place is not susceptible to a bright line definition. Whether a broker-dealer has made a recommendation that triggers application of Regulation Best Interest should turn on the facts and circumstances of the particular situation. Factors considered in determining whether a recommendation has taken place include whether the communication "reasonably could be viewed as a "call to action" and "reasonably would influence an investor to trade a particular security or group of securities." (Final Rule Release at 79-80.)

WHICH RELATIONSHIPS THEY COVER

The scope of “Client” under the *Code and Standards* is broader than the scope of “retail customer” under Reg BI.



CODE AND STANDARDS:

A **Client** is any person, including a natural person, business organization, or legal entity, to whom the CFP® professional provides or agrees to provide Professional Services pursuant to an Engagement. (Glossary)

REGULATION BEST INTEREST:

Retail customer means a natural person, or the legal representative of such natural person who (i) 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 the broker or dealer; and (ii) uses the recommendation primarily for personal, family, or household purposes. (§240.15l-1(b)(1).)



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