

The NASAA Report on Reg. BI / The SEC's recent RFI / Our submission describing a new technology that filters out all conflicts of interest, both known and unknowable.

Eric Smith

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To: jbrady@nasaa.org <jbrady@nasaa.org>

 3 attachments (22 MB)

Information Provided to SEC - RFI - File No. S7-10-21 on 10-1-2021 Copy.pdf; Carty Final Report 4-21-17.pdf; Wagner Law Group, Opinion of Counsel 10-22-19.pdf;

Dear Executive Director Brady –

Thank you for your willingness to see that this information reaches Commissioners Andrea Seidt and Melanie Lubin (for their part in the monitoring of the effectiveness of the SEC's Reg. BI), not that this information might not be of equal interest to you and other members of the NASAA's staff and other member Commissioners. Please feel to share it with those for whom it may be of interest and potential importance.

We read with great interest the NASAA's Reg. BI-related November 2021 [Report](#) and the article in Financial Planning magazine discussing it and quoting NASAA Committee Chair Andrea Seidt.

https://www.financial-planning.com/news/secs-reg-bi-hasnt-made-many-changes-state-regulators-warn?position=editorial_1&campaignname=V2_FP_Daybreak_2021-11052021&utm_source=newsletter&utm_medium=email&utm_campaign=V2_FP_Daybreak_2021%2B%27%2B11052021&bt_ee=sqOs711MzJXemJMfivokyp09TAKpkDJnjR6qRuLsJN6%2FRfcZYE8PKsD%2BXVrCa0T%2B&bt_ts=1636106147166

Quoting from the “Executive Summary” of the attached Report:

“. . . Reg BI firms . . . **continue to rely on financial incentives that Reg BI was intended to curb**, incentives rarely seen with fiduciary advisers. **In short, too many Reg BI firms are still placing their financial interests ahead of their retail customers in violation of the rule's chief directive.** Clearer regulatory guidance is needed to allow a course correction that would help Reg BI earn the “best interest” label that it bears.”
(emphasis mine)

And, quoting from the article:

“The findings warrant more explanation from the SEC about what NASAA has described as problems with . . . **a lack of mitigation or elimination of conflicts of interest**, NASAA President Melanie Senter Lubin and Reg BI Implementation Committee Chair Andrea Seidt said.” (again, emphasis mine)

Despite concerns that the SEC's Reg. BI has not materially changed things, increasing criticism (especially by the NASAA) may motivate the SEC to reflect on, re-examine, and strengthen Reg. BI and its implementation of it. Perhaps the SEC's recent RFI regarding new technologies for formulation of investment advice (and affecting interactions with client investors) might be a step in that direction.

We considered it an opportunity to make the SEC aware of the recent introduction of a unique decision-assistance technology that enables securities brokers and investment advisors to

score and rank thousands of investment choices in a manner in a manner specific to the needs, goals, and preferences of individual investors . . . and which, in the process, effectively filters out all conflicts of interest, both known and unknowable. It's possible that the information submitted could affect what the SEC views as regulatorily possible and reasonable. If it does, it could possibly prove to be a "game changer" – a solution that could provide the SEC with additional supporting rationales with which to counter industry "pushback" against a toughening of its rules.

In view of its justifiable concerns with these important issues (and its monitoring of Reg. BI), **we believe the NASAA and its state regulator members should be informed of our response to the SEC's RFI and the newly available technology solution described in it. Below and attached is a full copy of our response.**

Since there is apparently no federal "preemption" language in Reg. BI, individual states appear to retain the ability to adopt their own rules and apparently some have done so. **Perhaps this information might also affect what individual states view as possible and reasonable in their own rule-making.**

We hope you and those with whom you will be sharing this find it helpful. If there are any questions concerning this and/or a desire for additional information, please do not hesitate to contact me.

Respectfully submitted,

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From: Eric Smith

Sent: Friday, October 1, 2021 4:56 PM

To: rule-comments@sec.gov

Cc: tradingandmarkets@sec.gov; IArules@sec.gov

Subject: RESPONSE TO SEC RFI – FILE NO. S7-10-21 / INFORMATION ON INVESTMENT ADVISER USE OF TECHNOLOGY TO DEVELOP AND PROVIDE INVESTMENT ADVICE

Ladies & Gentlemen –

Please find attached our response to SEC Request for Information, **File No. S7-1--21**, consisting of the following three documents:

- **"RESPONSE TO SEC RFI – FILE NO. S7-10-21 / INFORMATION ON INVESTMENT ADVISER USE OF TECHNOLOGY TO DEVELOP AND PROVIDE INVESTMENT ADVICE;"** and, the following two documents cited therein:
- **"A Decision-Assistance Technology Serving Clients' Best Interests – An Independent Evaluation,"** by C. Michael Carty, April 21, 2017 ("Carty Final Report 4-21-17.pdf"); and,
- **"Opinion for Decision Technologies Corporation,"** by the Wagner Law Group, October 22, 2019 ("Wagner Law Group, Opinion of Counsel 10-22-2019.pdf").

If there are any questions concerning this submission and/or a desire for additional information, please do not hesitate to contact me.

Respectfully submitted,

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