In addition to reporting issues, the most vulnerable investors are the retail investors who don't understand private equity well.

I believe a direct violation of Regulation best interest is occurring.
The private Equity Funds are allowed to overpay the broker-dealers in order to sell their funds. When you overpay the sales people, the investors get hurt.

https://www.fa-mag.com/news/possible-billion-dollar-reg-bi-violation-hidden-in-pla in-sight-65381.html

FA-Mag
Possible Billion-Dollar Reg BI Violation Hiding In Plain Sight
DECEMBER 15, 2021 • MELISSA STEIN

Regulation best interest requires that the customer gets the best deal. It specifically requires that the customer gets the best account type: brokerage or advisory.

The recent NASAA report said that Reg BI has not done enough to protect customers. The report mentioned complex products being sold in brokerage accounts.

It is possible that Merrill Lynch, Morgan Stanley, UBS, etc. are all selling private-equity feeder funds through brokerage accounts and charging customers more than if the customers were allowed to buy the same fund in an advisory account. If customers use an RIA (Schwab, Fidelity), the same feeder funds are available in the cheap advisory accounts. I have been told that at least at some of the wirehouses, a small number of customers get the cheap advisory accounts but most customers are forced into the expensive brokerage accounts.

In brokerage accounts, PE feeder funds charge on the entire commitment amount. In an advisory account, they only charge on what is invested. A private equity fund does not need the entire commitment at once. The investor will commit to an investment amount. However, the fund will not ask for all of the money right away. It will call capital over the investment period. Typical investment periods last from 3-6 years. Below is a common four-year investment period. The PE fund requires the investor to put in just 10% in year one. (10%/20%/30%/20%)

The investor commits $1,000,000. He can either pay 1% on the commitment amount or 1% of what he actually invests. If he is forced into a brokerage account, he must pay on the entire commitment. He is charged $10,000 per year for 4 years or $40,000.

If he is permitted into an advisory account, he only pays on what he actually invests:
Year 1: $100,000 total invested fee = $1,000
Year 2: $300,000 total invested fee = $3,000
Year 3: $600,000 total invested fee = $6,000

Year 4: $800,000 total invested fee = $8,000
Total fees in a cheap advisory account = $18,000
Total fees in an expensive brokerage account = $40,000

The customer is paying 10x in year one and more than double over the four-year investment period. He gets no liquidity or other benefit by being in a brokerage account.

On a recent SEC REG BI call in October, Evan Charkes was featured. He is a managing director and associate general counsel for Bank of America, who supports the Merrill Lynch Wealth Management business. Charkes and other firm compliance officials said they were making sure they had evaluated potential conflicts on the advisor and firm level, including, for example, implementing levelized payments to advisors across mutual funds, share classes, annuities and other commission products. Documentation would also be key, panelists said.

Firms have taken great efforts to comply with regulation best interest. It is possible that both the firm's and the advisors have a conflict when recommending feeder funds. PE raises about 50 billion dollars annually through retail. By charging on committed capital, the damages are potentially 500 million dollars already.

DG, a wealthy investor with accounts at several wealth managers told me, "I expect my advisor to be looking out for me. It is in my best interest to only pay on what I have invested and not the full commitment amount."

Disclosure is no longer enough. The customers have to be given the cheapest account type.

Melissa Stein is a private equity investor living in New Jersey.

Below is a summary of the SEC webpage as well as excerpts from the PPM of a Merrill Lynch fund and a Morgan Stanley fund. Both funds are governed by Regulation Best Interest.

We all know the REG BI is being strongly enforced. One of the key parts of REG BI which is in the overview on the FINRA web page is that the account type matters.

"The SEC's Regulation Best Interest (Reg BI) under the Securities Exchange Act of 1934 establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities, ***including recommendations of types of accounts."***

The private equity feeder funds at ML/MS/UBS/RJ/Wells/Stifel, etc. force clients into brokerage accounts which charge on committed capital which is very expensive as opposed to allowing them to be in advisory accounts which only charge on

invested capital which is very cheap. To comply with REG BI, the clients have to be given the option of putting the fund into an advisory account.

The clients have no clue that they have to be given the option of going into a cheap advisory account.

Wealth management firms are blatantly ignoring Regulation Best Interest by forcing investors to pay a fee on committed capital in a **brokerage account** when it is much cheaper to allow them to be charged only on invested capital in an **advisory account**.

https://www.sec.gov/tm/faq-regulation-best-interest

Q: What account recommendations are covered by Regulation Best Interest?

A: Regulation Best Interest expressly applies to account recommendations including recommendations of securities account types generally (e.g., to open an IRA or other brokerage account, or an advisory account), as well as recommendations to roll over or transfer assets from one type of account to another (e.g., from a workplace retirement plan account to an IRA).

There are many options or account types within brokerage accounts. For example, brokerage accounts can include: education accounts (e.g., 529 Plans and tax-free Coverdell accounts); retirement accounts (e.g., IRA, Roth IRA, or SEP-IRA accounts); and specialty accounts (e.g., cash or margin accounts, and accounts with access to Forex or options trading). Different brokerage accounts can also offer different levels of services, such as access to online trading, or can offer different products, for example in higher dollar amount accounts (e.g., access to products with break-points). The staff notes that these are just some examples of brokerage accounts that could be recommended to a retail customer, and to which Regulation Best Interest would apply.

The type of securities account recommended is an investment strategy that has the potential to greatly affect retail customers' costs and investment returns. For example, different types of securities accounts can offer different features, products, or services, some of which may—or may not—be in the best interest of certain retail customers. Accordingly, the staff reminds broker-dealers that the term "investment strategy" (**which includes account recommendations**) is to be **interpreted broadly**. Further, account recommendations will almost always involve a "securities transaction" (such as a securities purchase, sale, or exchange), and thus would generally be subject to Regulation Best Interest in any case. (Posted January 10, 2020)

Q: Are there additional considerations if I am a dually registered financial professional making an account recommendation?

A: If you are a dually registered financial professional (*i.e.,* an associated person of a

broker-dealer and a supervised person of an investment adviser (regardless of whether you work for a dual-registrant, an affiliated firm, or an unaffiliated firm)) making an account recommendation, **you would need to make this evaluation taking into consideration the spectrum of accounts that you can offer (*i.e.,* both brokerage and advisory** taking into account any eligibility requirements such as account minimums), and not just brokerage accounts.[1] (Posted January 10, 2020)

Merrill Lynch Summary Blackstone Total Alternatives Solution VII August 2020

Being charged on committed capital only happens in a brokerage account. That is how the firms make extra money.

1) **Merrill charges on committed capital except for "M" shares which are in advisory accounts at B of A Trust only "TMA" - on those accounts, the charge is just on what is invested in the account "invested capital".**

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The Fund will pay the Administrator an "Administration Fee" equal to 1.00% per annum (the "Administration Fee Base Rate") of the following fee base: (i) from the later of (a) the date of the Initial Closing and (b) the Effective Date of the Underlying Fund through the end of the Underlying Fund's Investment Period, the ***aggregate Capital Commitments*** *of Investors to the Fund; and (ii) thereafter, the Fund's capital account in the Underlying Fund, or, if such capital account balance is not available or its use would be impractical, the Administrator's determination of the value of the Fund's interests in the Underlying Fund, in any case, excluding unrealized gains and losses (the "Fee Base").*

The Administration Fee will be calculated and accrued quarterly as of the last calendar day of each calendar quarter based on the Fee Base as of such day and will be paid within six (6) months following June 30 and December 31 of each year.

The Administration Fee Base Rate shall be reduced to the following amounts for the following tranches: (i) 0.75% per annum with respect to Tranche C Interests; (ii) 0.50% per annum with respect to Tranche I Interests; (iii) 0.35% per annum with respect to Tranche D Interests; and (iv) ***0.15% per annum with respect to Tranche M Interests****. Tranche B Interests shall receive no similar reduction to the Administration Fee Base Rate.*

This 15 bps on M shares is for Icapital. Not a Reg BI violation. I mean you could say that Blackstone and iCapital are thrilled to overpay anyone as it generates more business for them, or that they drove the getaway car.

The Administration Fee payable in respect of Tranche E (employees) Interests is described more fully in the Supplement for Tranche E Investors, available to eligible Tranche E Investors from the Selling Agent.

The difference between (i) the Administration Fee calculated using the Administration Fee Base Rate and (ii) the Administration Fee calculated in respect of the Investors holding Tranche C Interests, Tranche I Interests, Tranche D Interests, Tranche M Interests or Tranche E Interests using the applicable Administration Fee Base Rate set forth above, as applicable,

will be a reduction in the Administration Fee and will be specially allocated to the capital account of each Investor holding the relevant Tranche of Interests.

Such amounts will be distributed to the respective Investors in arrears as of each day on which the Administration Fee is paid. The Administration Fee, with respect to all Capital Commitments, shall accrue from and after the date on which the Fund holds the Initial Closing or such later date as determined by the Administrator in consultation with the Selling Agent. The Administration Fee shall be prorated in a manner consistent with the calculation of the Administration Fee as set forth above

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The Administration Fee will be split in two components:

Icapital gets the admin fee. They get the same for everyone.

Feeder Services Fee. This is a fee equal to 0.15% (per annum) of the relevant Fee Base for Tranche B, Tranche C, Tranche I, Tranche D and Tranche M Interests. The Feeder Services Fee payable in respect of Tranche E Interests is described more fully in the Supplement for Tranche E Investors, available to eligible Tranche E Investors from the Selling Agent.

iCapital gets the 15 bps on every share class- even on the advisory account at Merrill Lynch. They provide back office services. It is hard to argue that they are violating REG BI as they do provide admin services which are needed and it is the same for a brokerage or an advisory account.

Investor Services Fee. This is a fee equal to the following percentage (per annum) of the relevant Fee Base of each Tranche of Interests of the Fund: 0.85% (Tranche B), 0.60% (Tranche C), 0.35% (Tranche I), 0.20% (Tranche D) and **0.00% (Tranche M**). The Investor Services Fee payable in respect of Tranche E Interests is described more fully in the Supplement for Tranche E Investors, available to eligible Tranche E Investors from the Selling Agent.

I believe that most private clients who have 5 million are paying less than 1% annually. Therefore the comparison I am using is actually in favor of the PE funds. Really, it has to be determined on a case by case basis. However, if the firms let the clients choose, everyone would choose an advisory account.

Below cut and pasted from pages 31-32 of 389 ML Blackstone PPM Blackstone Total Alternatives solution from August , sent to me directly from the client .

Tranches: All on committed capital, but a reduction as a person commits more capital. 90% is tranche B which is up to $3,000,000 in committed capital. I note it is called a "tranche of interest" and not a share class to throw off any snoopers.

Tranches of Interests: The Fund offers six (6) different tranches of Interests (each, a "Tranche") with a single class of equity interests: Tranche B, Tranche C, Tranche I, Tranche D, Tranche E and Tranche M.

Tranche B, Tranche C, Tranche I and Tranche D Eligibility

Generally, any Investor with a Capital Commitment of:
(i) less than $3,000,000 will be issued Tranche B Interests;
(ii) greater than or equal to $3,000,000, but less than $5,000,000, will be issued Tranche C Interests;
(iii) greater than or equal to $5,000,000, but less than $10,000,000, will be issued Tranche I Interests;
(iv) greater than or equal to $10,000,000 will be issued Tranche D Interests.

An investor gets the cheaper share class depending on their total PE investment over a rolling 5 year period. It is not relevant to Reg BI. 90% of the investors are putting in less than $3,000,000. The minimum is $100,000. (page 1 of 389) This is for the mass affluent.

Tranche E Eligibility Tranche E Interests are offered only to certain eligible employees of BofA Corp and entities established for the benefit of such employees (each, an "Employee Investor"). The terms and conditions of the Tranche E Interests may differ from the terms and conditions of any other tranche of Interests, including, without limitation, a reduction in the amount of the Administration Fee (as defined below in the section "Administrator Compensation") ultimately allocable to such Interests, and are more fully described in the supplement delivered to eligible Investors (the "Supplement for Tranche E Investors"). See "Administration Fee (including the Feeder Services Fee and Investor Services Fee)" below.

Tranche M Eligibility Tranche M Interests are only available to Bank of America Managed Trust Managed Accounts ("TMAs").

This is the REG BI violation. By forcing clients to be in the B, C and I tranches, they are forcing them to be in a brokerage account and get charged on committed capital and they are not allowing them to be in an advisory account where they are only charged on what is invested. (90% of clients are in the $3,000,000 or under B tranche)- They don't say we are forcing you to be in a brokerage account. They speak in a forked tongue, the way we make the "M" tranche available. The whole thing means double the fine in my opinion.

Merrill offers the advisory shares only to the TMA accounts. To be clear, they could have said that they prohibit 95% of their advisors from doing what is in their clients best interest, instead they say that the M shares are only available to the TMA accounts. It is kind of sneaky, you really need to be looking for this and understand how the share classes -oh I mean - tranches- work

The asset-based program fee is equal to the percentage of the assets held in their TMA that are subject to an asset- backed program (an "Advisory Program"), including amounts invested in the Tranche M Interests.

This is a regular fee-based account that everyone in the industry uses.

There is no minimum Capital Commitment required to invest in Tranche M Interests (other than the $100,000 minimum Capital Commitment required to invest in the Fund).

Even a Piker can invest using the advisory shares: It is only a $100,000 minimum commitment which is the minimum for the fund anyway.

The financial terms applicable to Tranche M Interests are customized for Investors subscribing through a TMA because such Investors are subject to an asset-based program fee equal to a percentage of the assets held in their TMA including amounts invested in the Tranche M Interests that is not applicable to Investors making a Capital Commitment through a brokerage account.

Wow, I mean that is nice that they customized it for TMA, but it sure sounds like a plain old fee based wrap account to me."if it walks like a duck.." This is the language that contradicts the SEC Q & A. The SEC specifically thought of this trick and pre-empted it. They tell people in the Q&A, don't get cute and pretend you only have one type of account. What do they mean by saying "it is not applicable"- the SEC Q&A made it applicable!!!!

The industry has to look at both brokerage and fee-based/advisory accounts; ie "the spectrum of accounts".

They say **"subject"** to an asset-based program fee. That is fine of course and very good for the very few clients that are part of TMA. It is in THEIR best interest. However, since the M share class is available, it has to be offered to everyone and it isn't. I mean everyone has an account that is "subject" to an asset based program fee. In 90% of the cases, the advisor is calling a current clients, suggesting a PE fund and then taking money FROM an account which is subject to an asset based program mee and MOVING it to a new or existing brokerage account and then claiming that since the brokerage account is not "subject to an asset based program fee" it can't have the cheap "M" tranche. I mean- this lawyer is GREAT! .

Depending on a number of factors, it may be more economical for certain Investors making a Capital Commitment through a TMA to invest in the Tranche B, Tranche C, Tranche I and/or Tranche D Interests of the Fund through a brokerage account rather than investing in the Tranche M Interests through a TMA.

I mean, this is grand, they remind the clearly dual registered BofA professionals (that is the term from the PPM they use for ML FA's, BofA people, etc.) at TMA to consider using a brokerage account because maybe it is cheape, but don't allow the BofA professionals any access to the advisory accounts, even though the advisor account is MUCH cheaper in 99%- really 100% of the cases. If this isn't a direct violation of the SEC web page, please tell me what I am a missing. I keep trying to think of a realistic case where someone would be better off in brokerage and it just doesn't exist. It is never more economical.

Remember again that most wealthy clients are paying less than a 1% annual fee in their advisory accounts, yet the PE funds in the brokerage accounts have set fees-usually 1%. My comparison understates how much the clients are being overcharged.

However, Investors would be doing so without the convenience of consolidating their investments through a single account, as well as the additional features, services and benefits of investing through their TMA.

Oh, that's right, the convenience of telling my BofA professional to make sure the online system includes both accounts- gosh ML, that is worth money. I mean, you can't make this up. Find this lawyer and give him a raise. They to have some defense if the 1 in a million client actually reads this and finds out that a brokerage share class was cheaper- "oh, your right, but it wasn't as convenient". My guess is that in the 1960's there is case law when it was a pain to organize the reams of paper and some bank employee did the job for an entire retirement program with over 1,344 boxes and it was actually more convenient and worth something. But...come on….

(TMA) Investors should consult with their BofA Corp Investment Professionals regarding the differences between investing in the Fund through a TMA and a brokerage account in order to make a decision that best suits their individual circumstances and preferences.

Doesn't the above sentence apply to everyone at ML and every client- instead, they are only applying it to the TMA investors - and Merrill Lynch is forcing everyone else to back up up the truck and force clients into the expensive B (brokerage) shares and brokerage accounts. This above 40 words simply destroys ML, and everyone else. That is the whole point of REG BI. They only apply it to the TMA accounts.

It is intentional.

It is mean.

It is sneaky.

If they offered the entire client base the choice of a brokerage account or an advisory account, EVERYONE would choose an advisory account. So they don't give the the clients a choice.

(I also believe the non-solicitation contracts between Broker-dealers and their registered reps/advisors are null and void if the broker-dealer is violating industry regulations)

To bring it home, I calculated the regular and REG BI cost for the two funds on the ML redacted statements. The client who has 8 PE deals and over 1,000,000 in PE pays 60 basis points in his advisory account.

Statement Date 5/28/21

Blackstone Life Sciences Fund 7/6/20 (about a year in the deal)

On a commitment amount of $110,000 and an invested amount of $17,697 for 12 months. He paid $1,110 for 12 months vs. $271. (17,697 * 60 basis points is 106 however, he also pays 165 to icapital so total is 271)

He paid 4.15x extra for the pleasure of being in a brokerage account.

He paid 6.27% of his invested amount of $17,697 in just feeder fund fees to his wealth manager.

If we take out the icapital fee to isolate just the incentive the brokerage firm has to move people from a boring advisory account in the stock market into a PE deal in the juicy brokerage account- to see what the brokerage firm made, the differential is again- huge: $935 for 12 months vs. $106. 8.8x extra to B/D for moving client from stock market and putting client in a PE deal in a brokerage account.)

Account Type	brokerage	advisory	client pays multiple	b/d income multiple	b/d income if client stayed in stock market.
Fee to b/d	935	106		**8.82**	106
Fee to icap	165	165			
Total	1100	271	**4.06**		

Blackstone Total Alternative Solutions: 12/17/20 (about 6 months)

On a commitment amount of 150,000 and 8,250 invested for 6 months: He paid $750 (50% of 1500) for 6 months vs $137. He paid 5.47x for the pleasure of being in a brokerage account for the initial 6 months.

That is also 9.1% of his $8,250 just in feeder fund fees to his wealth manager.

If we eliminate the 15 basis points admin fee to icapital which is on committed capital and we just isolate the charges in a brokerage account vs an advisory account. - to see the extra income a broker makes- which is really what drives this:

25x for 6 months because he moved from an advisory account to a brokerage account.

account Type	brokerage	advisory	client pays multiple	b/d income multiple	b/d income if client stayed in stock market.
Fee to b/d	637.5	24.75		**25.76**	24.75
fee to icap	112.5	112.5			

Total	750	137.25	**5.46**		

When I first dug in, I thought ML missed it, but come one, it is not like ML forgot.

Essentially, everyone at Merrill has to shop retail. However, ONLY the TMA accounts at B of A, which have no minimum and are not for the elite, are automatically given the cheap share class and allowed to shop wholesale. The TMA accounts are also advised to take a last look around as maybe some retailer is going out of business and it may be a tincy tincy bit cheaper. However, the thundering herd and PBIG which is 95% are forced to shop retail and not allowed to look at the everyday wholesale prices.

(Either way, this document is such an internal contradiction and shows how few people read these things and how few people understand PE) The SEC thought about account choice, they know it is important and costs investors money and they told everyone it is going to be broadly interpreted, etc.

Morgan Stanley is doing the same thing!
Fundamental Partners 4-LP Overview First Quarter 2021
Excerpt from PPM below: Page 13/380 or page 7 if looking at Doc itself

Investor Servicing Fee:

The Partnership will pay Morgan Stanley Wealth Management an annual placement trail fee associated with the sale, distribution, retention and/or servicing ("Investor Servicing Fee"). with respect to each Placement Client on a quarterly basis in advance, as follows: (i) for the period commencing on the Fee Step Up Date until the earlier of the end of the Investment Period or the initial drawdown date of a successor fund to the Main Fund, the Investor Servicing Fee will be calculated on the aggregate commitments of the Placement Client; (ii) thereafter, the Investor Servicing Fee will be calculated on the lesser of (x) such Placement Client's aggregate commitments and (y) its proportionate share of the Main Fund's Invested Capital.

The Investor Servicing Fee will be calculated using the following rates: (i)

0.75% for **commitments** less than $5 million; (ii) 0.50% for **commitments** of at least $5 million but less than $10 million; (iii) 0.25% for commitments greater than $10 million.

The Investor Servicing Fee shall also solely be the responsibility of the Manager and not the Limited Partners (pursuant to the offset to the Management Fee described above under "Organizational Expenses; Placement Fees").

Notwithstanding the above, Morgan Stanley Wealth Management shall not receive a Manager Revenue Share, Upfront Placement Fee or Investor Servicing Fee with respect to Morgan Stanley Wealth Management clients that participate in the Partnership through their advisory program, except as otherwise agreed to.

This is very subtle. However, everyone gets gouged on committed capital unless they go thru the advisory program. According to REG BI, they HAVE to be given the option to go thru the advisory program. Clients have to be given options and they have no clue.

Let's be clear, EVERYONE at Morgan Stanley has access to their advisory program. Everyone has an advisory account. In 95% of the cases, Morgan Stanley is calling a current client who has managed money in the advisory program and moves the money to a brokerage account which houses the PE fund. Then MS says, we have to charge you on committed capital because the brokerage account that we FORCED our advisors to move you to is not subject to the advisory program.

However, MS has a huge incentive to keep the funds in a brokerage account. They get to charge on committed capital which is the Reg BI Violation. They also get a back-end revenue share and an up front placement fee. The advisor has a huge conflict.

The advisory account at Morgan Stanley are "greyed out" when you order the subscription docs for your client unless you are in the Graystone group-

It looks like from the PPM that anyone has a choice, but practically, they don't. I asked friends to try and use the advisory shares, they tried. That is why the "short docs" just say committed capital.

Where are the documented conversations with the thousands of retail clients who are getting gouged on committed capital?