January 6, 2020

The Honorable William Galvin
Office of the Secretary of the Commonwealth
Massachusetts Securities Division
Attn: Proposed Regulations – Fiduciary Conduct Standard
One Ashburton Place, Room 1701
Boston, MA 02108

Submitted Electronically via securitiesregs-comments@sec.state.ma.us

Re: Comments on the Proposed Amendments to 950 CMR 12.204, 12.205 and 12.207, Establishing a Fiduciary Standard of Conduct for Massachusetts Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives

Dear Secretary Galvin:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC" or "the Chamber"), together with the undersigned local chambers of commerce, appreciate the opportunity to comment on the revised proposed fiduciary standard of conduct addressed in the amendments to 950 CMR 12.204, 12.205 and 12.207 (collectively, the "Proposal"). The Chamber joined in two sets of comments on the Preliminary Proposal, both dated July 26, 2019.[1] While we appreciate the

[1] See the Chamber's joint comment letter with the Greater Boston Chamber of Commerce at https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/preliminarycomments/2019-07-26-US-Chamber-of-Commerce-and-the-Greater-Boston-Chamber-of-Commerce.pdf, last accessed on January 2, 2020, and our joint comment letter with 11 other trade associations at https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/preliminarycomments/2019-07-26-Multiple-Commenters-SIFMA-et-al.pdf, last accessed on January 2, 2020.

removal of the inappropriate and impractical "best" test for compensation contained in the Preliminary Proposal, many of the other changes in the revised Proposal raise serious new legal and practical concerns.

Specifically, we are concerned that the revised Proposal fails to achieve its intended goals and will harm the investors it is intended to protect. Rather than ensuring access to quality investment recommendations and assistance for the citizens of the Commonwealth, the Proposal will likely reduce investor access and choice. We urge the Division to extend the comment period to permit a more detailed analysis of some of the new issues raised by the revised Proposal. The very short deadline for comments (a time period of just over three weeks from the release of the Request for Comment, coinciding with several Federal and state holidays as well as significant religious and cultural celebrations) make it difficult for the public to fully analyze the Proposal and the impact it will have on the Commonwealth and its citizens.

Overview:

In general, our concerns about the revised Proposal relate to the following issues that are discussed in greater detail below:

- **The Division Should Not Finalize the Proposal Prior to the Implementation of Regulation Best Interest and Form CRS**—The Securities and Exchange Commission ("SEC") issued strong new Federal regulations protecting investors in Regulation Best Interest ("Reg BI") and the Form CRS Relationship Summary ("Form CRS"). These new SEC rules fundamentally change the duties and obligations of broker-dealers, significantly enhancing investor protection and preventing investor confusion. Unfortunately, in the Request for Comment document accompanying the revised Proposal, the Division again inaccurately describes the requirements of the new rules and incorrectly dismisses them as having little effect.[2]

[2] See Request for Comment, December 13, 2019, pages 2-3, at https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/Request-for-Public-Comment.pdf last accessed on January 2, 2020.

The Division cannot properly assess the impact of Reg BI and Form CRS until the new protections are implemented, and broker-dealers and others develop and adopt new policies and procedures to comply. Finalizing the Proposal based on the Division's assumptions and misperceptions about the rules, and on the Division's desire to challenge the new Federal rules with a conflicting standard before the new Federal rules take effect, will result in unnecessary costs, confusion and harm for the Commonwealth's investors.

- **The Division Should Not Promulgate a Rule that Conflicts with the Strong, New Federal Standards**—Uniform Federal standards for securities professionals provide strong investor protection while also making it feasible for broker-dealers and others to operate efficiently in multiple states. If states such as Massachusetts develop a patchwork of different standards that conflict with Federal law, then the result will be higher costs, fewer investment choices, and less access to financial professionals and investment products for investors in the Commonwealth. The Division should not intentionally promulgate a final rule that conflicts with uniform Federal standards and that will result in reduced investor choices and reduced access to investment products in the Commonwealth.

- **The Proposal Has No Legal Basis for Its Assertion of Regulatory Authority over Insurance and Commodities in Contravention of the Statute**—The Division improperly attempts to regulate insurance and commodities in the Commonwealth, despite explicit statutory language limiting the definition of a security to not include these products. The Division's argument lacks a credible legal basis for this assertion of regulatory authority. Simply because alleged misconduct relating to insurance or commodities is part of a long list of securities and non-securities misconduct that would be grounds for the Division to deny registration to a broker-dealer or investment adviser does not confer authority upon the Division to regulate the underlying products or conduct. The same list provides the Division authority to deny registration to a person issued a mail fraud order by the U.S. Postal Service, but the power to deny registration does not confer on the Division the authority to regulate Federal mail fraud. Similarly, the Division does not have the authority to regulate insurance or commodities transactions.

- **The Proposed Duty of Loyalty Requirements Regarding Mitigation and Disclosure Create an Irreconcilable Conflict**—The new duty of loyalty at 12.207(2)(b) requires financial professionals to disclose all material conflicts of interest and to "make all reasonably practicable efforts" to avoid or eliminate conflicts of interest, and to mitigate conflicts that cannot be avoided. This is already a problematic standard because it is not clear what constitutes "all reasonably practicable" efforts. However, even more troubling is that 12.207(2)(c) then states that "disclosing or mitigating conflicts alone does not meet or demonstrate the duty of loyalty." In other words, even if a broker-dealer or advisor made all reasonably practicable efforts to mitigate conflicts that can't be eliminated or avoided—as required by the rule—they still may not meet the new duty of loyalty. The standards conflict and cannot be reconciled. Therefore, they should not be implemented as written. Financial professionals have to be able to understand what is required by the rule in order to reasonably comply. This cannot be done if the rule states that following its listed conditions does not demonstrate compliance.

- **The Fiduciary Standard Should Place the Interests of the Investor First—the "Without Regard to Any Other Interest" Standard will Result in Frivolous Allegations Ultimately Harming Investors**—As the Division states in its Request for Public Comment: "As fiduciaries, investment advisers and investment adviser representatives must put their clients' interests first…"[3] We agree and note that this is the same standard applied to broker-dealers under Reg BI. However, the language of the Proposal is different—rather than putting investors' interests first, it problematically prohibits the consideration of "any other interest" at all. This standard will lead to frivolous litigation and questionable enforcement activity without providing any increase in protection for investors. An assertion that a broker-dealer or advisor gave any consideration at all to any non-client factor could be an alleged violation, even though the interest of the client came first. Given that some conflicts are unavoidable and frequently present no harm to the customer, this standard effectively requires the financial professional to prove a negative when challenged. It should be replaced with a standard that harmonizes with the Federal standard and "puts the client first."

[3] Request for Comment at 2.

- **The Proposal Faces Significant Preemption Challenges**—Despite the provisions asserting that the Proposal does not conflict with Federal securities law or apply to services related to ERISA plan fiduciaries, any final rule would be preempted by multiple Federal laws. The Division should recognize that adopting standards that conflict with Federal standards is likely to render the regulation invalid and unlawful.

- **The Proposal Requires at Least 18 Months to Implement**—While we do not believe the Proposal should move forward to a final rule, we note that no deadline for implementation is included in the Proposal. If the Division were to proceed to a final rule, it should provide no less than 18 months for implementation. Changes of this magnitude would require significant reorganization and training across a wide array of financial services, and rushing this process would negatively affect the customers who ultimately bear the cost of all regulation.

Specific Comments:

- *The Chambers Support Strong Federal Securities Regulation that Protects Investors and Preserves Their Access and Choice:*

The Chambers' members are consumers of financial services—whether investment advice, investment recommendations, or investment assistance and education—provided by a wide array of financial professionals. Our members choose different types of financial professionals using different business models because our members' needs and capacities vary markedly. Some of our members need and want ongoing investment advice, while others need and want only episodic investment recommendations. We have a strong interest in ensuring that the full spectrum of our members have access to quality, affordable financial services that meets their needs. Critical to ensuring such access is the development and maintenance of well-crafted Federal and state securities laws and regulations.

Unfortunately, we have in recent years faced significant regulatory challenges that harmed our members and threatened their access to the services they require, most notably the U.S. Department of Labor's Fiduciary Rule ("DOL Rule"). The effect of

the DOL Rule was quite pronounced, especially for retirement savers with small account balances. We prepared a report showing that had the DOL Rule been fully implemented: 11 million households would have seen limited or restricted investment products available to them; up to 7 million individual retirement account ("IRA") owners would have lost access to investment advice altogether; nearly three quarters of financial professionals would have stopped providing advice to some of their small accounts; and 35% of those professionals would have ceased serving accounts below $25,000.[4]

- *Negative Consequences of Well-Intentioned Rules*

Our experience with the DOL Rule taught us that overly broad and overly proscriptive rules that do not preserve the different business models for providing financial services end up reducing access to financial services and increasing costs. The DOL Rule is a cautionary tale for regulators that illustrates very clearly the costs of overreaching. The DOL Rule made it harder for many of our members to receive financial assistance or investment advice, and increased costs for many more. Ultimately, to protect investors from the harmful effects of the DOL Rule, the Chamber and a coalition of several trade associations successfully challenged the Rule, which was vacated by the U.S. Court of Appeals for the Fifth Circuit.[5]

The SEC reached the same conclusion regarding the DOL Fiduciary Rule. In the Preamble to Reg BI, the SEC wrote: "Our concerns about the ramifications for investor access, choice, and cost…are not theoretical. With the adoption of the now vacated Department of Labor ("DOL") Fiduciary Rule, there was a significant reduction in retail investor access to brokerage services, and we believe that the

[4] "The Data is In: The Fiduciary Rule will Harm Small Retirement Savers," U.S. Chamber of Commerce, Spring 2017.

[5] *Chamber of Commerce of the U.S.A., et al. v. U.S. Dep't of Labor, et al.*, No. 17-10238, slip op. 46 (5th Cir. Mar. 15, 2018).

available alternative services were higher priced in many circumstances [citations omitted]."[6]

- *The Division Dismissed Choice and Access Concerns Without Addressing Their Merit*

In dismissing our comments about reduced choice and access in previous letters,[7] the Division failed to directly address their merits. Instead it tears down a rhetorical straw man to justify its determination to move forward. In the Request for Comment accompanying the revised Proposal, the Division wrote, "[w]hen preserving 'choice' means preserving the option to choose opaque, poorly-understood products that are sold via heavily conflicted advice, the benefits of such 'choice' are illusory."[8] This is not the choice our comment letter discussed. This is not the choice that Reg BI and Form CRS preserve. This is not an accurate description of our criticism of the Proposal. The Division has misrepresented our legitimate concern that choice in business models and service providers matters, and that we can preserve valid choices while protecting investors. We urge the Division to recognize that transaction or commission-based business models and fee-based models are both necessary to serve the needs of certain investors. The Division must address the merits of our concerns rather than impugning the motives of comments criticizing the Division's policies. Unfounded claims that critics of the Proposal want to harm investors for their own benefit is no substitute for rational analysis of the concerns that Federal regulators and courts have found persuasive.

The Division Should Not Promulgate a Final Rule Prior to the Implementation of Strong, New Federal Standards in Regulation Best Interest and Form CRS

In our earlier comment letter, we noted that the Division released its Preliminary Proposal only a few days after the SEC had completed Reg BI and Form CRS, and we

[6] Securities and Exchange Commission Release No. 34-86031; File No. S7-07-18, "Regulation Best Interest: The Broker-Dealer Standard of Conduct" at pgs. 20-21, accessed on January 2, 2020 at https://www.sec.gov/rules/final/2019/34-86031.pdf.

[7] *See*, July 26, 2019 joint comment letter with the Greater Boston Chamber of Commerce and July 26, 2019 joint comment letter with 11 other trade associations.

[8] Request for Comment at 3.

respectfully suggested that the Division may not have had the time to fully review, understand, and take into account the nature of the changes made by the final SEC rules. Given the timing, it was clear the Preliminary Proposal was drafted prior to the SEC's release of its final rules—the text was built on assumptions about the SEC's potential actions, not the actions is actually took.

Unfortunately, despite the Division having time to review the SEC's final rules, much of the text in the Revised Proposal remains unchanged. Even more concerning, the substantial new changes in the revised Proposal appear to be based on an incorrect understanding of what the SEC final rules actually do, and motivated by a desire to complete a contradictory Commonwealth rule before the SEC rules take effect. To avoid the harm that will result from a rushed Proposal based on an inaccurate understanding of the SEC's actions, we strongly urge the Division to wait until after Reg BI and Form CRS are implemented to proceed.

- *The Division Does Not Accurately Describe the Requirements of Reg BI and Form CRS*

In the Request for Information accompanying the current Proposal, the Division misstates what the new SEC rules require. We are concerned that this incorrect understanding of the SEC's actions is driving both the policy and the timing of the Proposal. This is clear from the Division's statement that, "[t]he time to establish a true uniform fiduciary standard…is now, before industry habit and practices harden around Reg BI and form a barrier to further improvements. [emphasis added]"[9] In other words, the Division is rushing to proceed with the Proposal because it wants to preempt the implementation of Reg BI.

This troubling rush to proceed is premised on an inaccurate understanding of what Reg BI actually requires. For example, in the Request for Comment document accompanying the current Proposal, the Division writes, "[i]n many instances, it appears that the mitigation of conflicts required under Reg BI can be accomplished through disclosure alone."[10] To support this assertion, the Division footnote does not

[9] Id at 5.

[10] Id at 2, footnote 6.

cite Reg BI (the regulation requiring mitigation of conflicts of interest) and instead cites Form CRS (the regulation providing for new disclosure requirements). The Division repeats this incorrect assertion again, stating, "…it appears that compliance with Reg BI may be accomplished primarily or exclusively via disclosure."[11] Again, we respectfully submit that this is not the case, and this continued misunderstanding of Reg BI's requirements (or reading Form CRS in lieu of Reg BI) makes it clear to us that the Division should not proceed with a final rule motivated by the mistaken belief that the new Federal regulations are insufficient to protect investors in the Commonwealth.

As the SEC wrote, mitigation—not mere disclosure—is required where incentives create conflicts of interest in recommendations. The SEC stated that Reg BI:

> "…require[s] broker-dealers to establish 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- dealer to place the interest of the broker-dealer, or such natural person ahead of the interest of the retail customer…While disclosure can be an effective tool for retail customers to increase awareness of a conflict of interest…*we do not believe that disclosure alone* sufficiently reduces the potential effect that these conflicts of interest may have on recommendations made to retail customers. [emphasis added]"[12]

In other words, brokers-dealers must mitigate conflicts that result from compensation to representatives, not merely disclose them. This would also apply to one of the Division's other incorrect but vague criticisms of Reg BI, that it "…permits the continuation of harmful practices such as sales quotas and broad-based sales contests."[13] To the extent that these practices are not eliminated by the prohibition on sales contests in Reg BI, any "harmful" effect (*i.e.* acting on a conflict of interest) would have to be mitigated to prevent the representative from acting on that incentive.

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[11] Id at 3.

[12] Securities and Exchange Commission Release No. 34-86031; File No. S7-07-18, "Regulation Best Interest: The Broker-Dealer Standard of Conduct" at pgs. 325-326, accessed on January 2, 2020 at https://www.sec.gov/rules/final/2019/34-86031.pdf.

[13] Request for Comment at 2.

As we indicated in our prior comment letters, the SEC's actions achieve the essential aims of the Proposal, but do so in a way that protects investors' ability to choose to receive financial recommendations through fee-based or transaction-based business models, depending on their particular needs and capacities. Rooted in fiduciary principles, Reg BI requires broker-dealers to put the interest of their clients first. In developing recommendations, broker-dealers and representatives must adhere to a "standard of conduct [that] draws from key fiduciary principles,"[14] requiring that the representative "…exercises reasonable diligence, care, and skill."[15]

The Division should be concerned with the quality of protection provided by the regulation, not whether it uses the word, "fiduciary." Reg BI fundamentally improves the regulation of financial professionals recommending securities, investment strategies and new accounts to protect consumers. Simply put, the Division's concerns are well-addressed in the new Federal standards without the need for conflicting state standards in the duties of care and loyalty.

State-by-State Standards Result in a Patchwork of Conflicting Rules Harming Investors and Reducing Access to Transaction-Based Recommendations

While the Division asserts that it is not concerned about a patchwork of conflicting standards because its primary responsibility is to investors in Massachusetts, the Division is not properly considering all of the ramifications of the Proposal. If the Division adopts a final regulation establishing a new fiduciary standard, it will conflict not only with Federal standards for brokers-dealers and investment advisers, but also with other potential state standards. A patchwork of different standards from jurisdiction-to-jurisdiction is not desirable for investors, as it will increase costs, reduce investment options, and decrease access to advice across the board, including to investors in the Commonwealth.

Uniform Federal regulation and state regulation in harmony with Federal standards makes it possible for broker-dealers and other financial professionals to operate efficiently across states lines, providing significant costs savings to all investors.

[14] Statement of SEC Chairman Jay Clayton, June 5, 2019.

[15] 17 CFR § 240.15l-1(a)(2)(ii)

When each state begins to erect barriers to these efficiencies, and when the state rules conflict with the Federal rules and each other, investors in all states will bear the higher costs of compliance. Further, the most harmful effect is likely to be on small-account investors in those states.

The Division Impermissibly Attempts to Regulate Insurance and Commodities in Direct Contravention of its Statutory Authority

The Proposal's purported scope far exceeds the Division's authority, and does so without a credible legal basis. While acknowledging that the Massachusetts statute specifically does not include insurance products and commodities in the listed definition of "security," the Division argues that it nonetheless has a "strong interest" in the sale of insurance and commodities by those who are also registered with respect to securities.[16] The Division is attempting to bootstrap its limited authority to deny securities registration to those who have engaged in certain types of listed misconduct (some of which relate to securities and some of which do not) into an illegitimate attempt to regulate the underlying misconduct itself. This is, on its face, an incorrect and impermissible reading of the law.

The ability to deny or revoke registration for securities purposes is a legitimate act of the Division. The statute does indeed list a number of grounds for exercising that authority, including Sec. 204(a)(2)(G) regarding "…any unethical or dishonest conduct in the securities, commodities or insurance business." Where the Division misstates the law is in its conclusion that the direct regulation of the sale of insurance and commodities "…is therefore consistent with Section 204(a)(2)(G) and is necessary to protect investors."[17]

That this is an incorrect reading of the statute is very clear if one considers some of the other types of misconduct for which the Division can deny or revoke registration contained in the same list under the same statute:

- Sec. 204(a)(2)(F)(iii) permits denying Massachusetts registration for having been issued a United States Postal Service fraud order in the last five years;
- Sec. 204(a)(2)(C) permits denying Massachusetts registration for having been convicted within the last ten years of "any felony"; or

[16] Request for Comment at 5.

[17] Id at 6.

- Sec. 204(a)(2)(F)(i) permits denying Massachusetts registration for having a license suspended or revoked in the last five years by any other state, any Canadian province or territory, or the SEC.

None of these grant the Division the authority to regulate postal fraud, authority over general criminal law, or the authority to regulate securities standards in other US states and Canadian provinces. Similarly, permitting the Division to deny Massachusetts securities registration to a person who commits unethical or dishonest conduct in the insurance or commodities business does not grant the Division the authority to regulate the underlying business of insurance and commodities. It merely allows the Division to deny or revoke a particular individual's securities registration. We urge the Division to remove from any final regulation this inappropriate and unsupported assertion of authority over insurance and commodities regulation.

The Proposed Duty of Loyalty Requirements Regarding Mitigation and Disclosure Create an Irreconcilable Conflict:

While we appreciate that the revised Proposal attempts to address concerns raised by comments to the Preliminary Proposal, the revised duty of loyalty creates additional problems. The proposed Sec. 12.207(2)(b) requires financial professionals to disclose all material conflicts of interest and to "make all reasonably practicable efforts" to avoid or eliminate conflicts of interest, and to mitigate conflicts that cannot be avoided.

First, it is not clear how the Division intends this principles-based standard to be applied in practice. We urge the Division to engage in further discussions with the regulated community to address appropriate mitigation strategies for common potential conflicts. For example, some representatives of insurance companies are statutory employees under the Tax Code who demonstrate their employment status, and who qualify for employee benefits, based on selling a certain amount of their insurance company's insurance and investment products (as these products may include securities as well as insurance products, this issue is related to the Division's proper jurisdiction). Other examples of common potential conflicts include recommendations of proprietary products by affiliated representatives, or recommendations of securities where an affiliate is part of a principal transaction.

Rather than trying to guess what "all" reasonably practicable options means in practice, the regulated community and investors in Massachusetts would benefit from clarity with respect to these issues.

Second, the Division "…acknowledges that some conflicts cannot reasonably be avoided or eliminated, [and therefore adopts] the principle-based order of operations approach."[18] Under the "order of operations" approach, the remaining option would be to mitigate the conflict where it can't be avoided or eliminated. However, 12.207(2)(c) goes on to state that "disclosing or mitigating conflicts alone does not meet or demonstrate the duty of loyalty."

In other words, even if a broker-dealer or advisor had made all reasonably practicable efforts to mitigate conflicts that can't be eliminated or avoided—as required by the rule—it still may not meet the new duty of loyalty. These standards are in internal conflict and simply cannot be implemented as written. While the Division offers some explanation in the Request for Comment, it repeats only that disclosure alone is not enough, and never addresses why mitigation is included in 2(c) as insufficient compliance. There is no explanation for what a financial professional is supposed to do after mitigating an unavoidable conflict that can't be eliminated—instead, (2)(c) simply provides a blanket statement that they have not done enough. Financial professionals have to be able to understand and show compliance with the rule, but this cannot be done if compliance with its principle-based conditions are not only unclear, but contradictory.

The Proposal Requires Ongoing Monitoring in Conflict with the Dodd-Frank Act

Despite the fact that the Division bases the need for the Proposal in the failure of the SEC to adopt a uniform fiduciary standard, and suggests that the Proposal would not be necessary had the SEC done what the Dodd-Frank Act gave the SEC permission to do, the Proposal inappropriately expands the duty to monitor investments in very broad terms that directly contradict the requirements of the Dodd-Frank Act.

[18] Id at 9.

Recognizing the role of broker-dealers, Congress in the Dodd-Frank Act specifically preserved transaction-based compensation and rejected ongoing monitoring of investments by broker-dealers, limiting the SEC's regulatory authority with respect to such matters even if the SEC adopted a uniform standard.[19] The Proposal, by contrast, imposes in 12.207(1)(b)(4) an ongoing monitoring obligation if the financial professional receives "ongoing compensation." It is common for a wide array of investment products to provide compensation over time for what was clearly intended by all parties to be an episodic recommendation. There is no policy reason to link the timing of a payment to an ongoing monitoring obligation, especially after Congress specifically rejected this concept. We urge this provision be removed.

The Proposal Has Significant Legal Flaws

The Division asserts that Reg BI is a floor and not a ceiling on regulation, and to support this assertion it cites a statement by SEC Commissioner Jackson.[20] As the Division is no doubt aware, a personal view stated by a single SEC Commissioner is not dispositive of either the law itself or of the views of the SEC. If the Division proceeds to a final rule, it is likely that the rule will be unlawful.

To begin, there are significant preemption issues. While the Proposal contains language in the proposed new Sec. 12.207(4) (addressing fiduciary advice under the Employee Retirement Income Security Act ("ERISA") plans) and Sec. 12.207(5) (that purports to contain the scope of the Proposal to avoid creating new duties on broker-dealers that are preempted by the National Securities Markets Improvement Act of 1996 ("NSMIA")), we believe that significant portions of the Proposal would still be preempted by Federal law.

Put simply, financial professionals cannot demonstrate compliance with the Proposal's requirements without taking actions well beyond those required by Federal

[19] *See* 15 U.S.C 78o(k)(1) "…The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities."

[20] Id at 4.

law, squarely presenting preemption issues. Further, ERISA's preemption provision has been interpreted very broadly by the courts, and the effect of the Proposal on recommendations to plan sponsors and plan participants, including rollover recommendations, is at best unclear. Due to the numerous preemption concerns, and other significant legal issues arising under state law, this Proposal, if promulgated as written, is likely to be unlawful. We urge the Division to modify the Proposal to conform to the requirements of NSMIA, ERISA, the Dodd-Frank Act, Reg BI and state law. We further urge the Division to confirm that the Proposal does not apply to federal covered advisers or their investment adviser representatives.

Geographic scope:

We urge the Division to limit the scope of any final rule to recommendations made to residents of the Commonwealth or individuals residing in the Commonwealth, and to exclude recommendations to out-of-state individuals or entities by financial professionals in the Commonwealth. To do otherwise will even more directly create conflicts among the states, limiting the ability of Massachusetts-based financial services providers to assist clients in other states.

18 Month Minimum Implementation Period:

While we strongly urge the Division not to proceed to a final rule, if it decides to do so, it must be cognizant of the serious compliance challenges and provide a lengthy implementation period. The Proposal would require the reorganization of a wide swath of financial services providers, the development and adoption of new policies and procedures, and extensive training for representatives. The magnitude of the changes needed to comply go well beyond the mere legal analysis and development of new to policies and procedures. For example, financial service providers would have to develop and adopt new internal technology systems related to compensation and compliance. It would be necessary to change the structure of many investment products that dictate compensation amounts and methods. It would be necessary to develop training programs for staff and representatives, and to implement those training programs for all appropriate personnel. It would be necessary to obtain new insurance policies for many representatives, as many policies exclude fiduciary conduct. To achieve all of these and other required changes without incurring

unnecessary costs passed on to consumers, and to ensure the best outcome for investors, any final rule should require at least 18 months to implement.

Conclusion

While we strongly support regulations that protect our members, their customers, their employees and their families by ensuring access to quality investment assistance that best suits their particular needs, the Chambers are also very active in opposing regulation—no matter how well intentioned—that reduces access and choice. The Division's significant modifications to the Proposal would benefit from more study and comment, and we urge the Division to extend the comment period for at least 60 additional days. The Division's motivation for proceeding rapidly appears to be based on a flawed analysis of the effects of Reg BI and Form CRS, and a desire to put in place new rules before the SEC regulations take effect. We are concerned that the Division appears to misconstrue in fundamental ways what Reg BI requires, and we urge it to wait to proceed until the SEC rules have been fully implemented. We also are very concerned that the revised Proposal exceeds the Division's regulatory authority, is preempted by Federal law, creates standards that cannot be administered, and will likely be invalid as a matter of law.

The Chambers and their members share the Division's stated goal of protecting investors, but we believe that the Proposal fails to achieve these goals and would harm many investors—especially small investors. We are happy to discuss these comments and concerns with you, and we are pleased to answer any questions. Strong and efficient regulation cannot be achieved on a state-by-state basis through a patchwork of conflicting state regulations that differ materially from one another and that are intentionally designed to conflict with Federal regulations. Regulation BI provides greatly enhanced protection for all Americans preserving their choice and access to a wide array of financial services and products. We urge the Division to stop proceeding in a manner intended to conflict with and undermine these strong, well-balanced Federal standards.

Sincerely,

Marie Oliva
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Cape Cod Canal Region Chamber

Tom Quaadman
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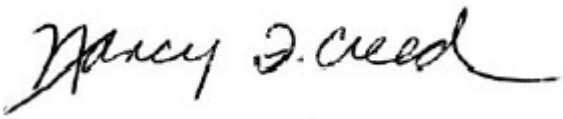

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