The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

July 28, 2017

Timothy D. Hauser
Deputy Assistant Secretary for Program Operations
Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11933
U.S. Department of Labor
Suite 400, 200 Constitution Avenue, NW
Washington, D.C. 20120

VIA ELECTRONIC MAIL: EBSA.FiduciaryRuleExamination@dol.gov

Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82)

Dear Mr. Hauser:

As chief securities regulator for the Commonwealth of Massachusetts, I write again in support of U.S. Department of Labor's (the "Department") final rule defining the term "fiduciary" for purposes of the ERISA with respect to the provision of investment advice for a fee or other compensation in connection with a retirement plan or account (the "Fiduciary Rule" or "Rule").

A recent letter, dated July 25, 2017, from SEC Commissioner Piwowar to the Department includes erroneous and dangerous assertions about the Fiduciary Rule.[1] Despite the SEC's long history of protecting investors, this SEC Commissioner now turns a blind eye to the real abuses in the area of retirement account rollovers, which prompted the Department to act.

The adoption of the Fiduciary Rule represents a clear victory for retail investors and retirement savers. Every financial regulator should applaud and support the Rule, which requires that providers of retirement financial advice must act in the best interest of customers. In view of the protections the Rule will provide, it is shocking and sad that an SEC Commissioner would use the platform of his office to oppose it.

---

[1] Comment Letter in Response to the Department of Labor's "Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions," Commissioner Michael S. Piwowar, July 25, 2017 https://www.sec.gov/news/public-statement/piwowar-comment-dol-fiduciary-rule-prohibited-transaction-exemptions

The Fiduciary Rule Is Needed to Protect Retirement Assets.

The need for the Fiduciary Rule has been demonstrated many times over. For years, state and federal securities regulators have seen the grievous harm retirement savers and investors have suffered through abusive practices in the sale of financial products. My comment letters to the Department on the Fiduciary Rule provided details of Massachusetts enforcement actions that demonstrated the losses suffered by investors as a result of abusive practices and conflicted advice. Many of those enforcement actions involved fraudulent and abusive advice relating to IRA and 401(k) accounts. I incorporate those prior letters into these comments.[2] [3]

We also note that the Department and others have conducted detailed research into the costs of conflicted advice to retirement investors. In 2015, the annual cost of conflicted advice was estimated at $17 billion annually, with over $491 million of that cost being borne by Massachusetts residents.[4]

The Department Appropriately Adopted a True Fiduciary Standard to Protect Retail Investors' Retirement Assets.

The strong ERISA fiduciary standard was specifically designed to protect retirement assets. The fiduciary standard that the Rule embodies is a logical and appropriate way to protect assets in the accounts where these assets now are held.

The current system allows broker-dealer firms to protect themselves by including boilerplate "disclosures" in customer agreements and offering documents. Very often, such disclosures amount to a litany of risks and potential conflicts presented in legalese. Such disclosures have not protected retirement investors, but they have often provided broker-dealer firms with a way to get out from legal responsibility for bad financial advice.

Suggested Rules to Require Disclosure of Conflicts Cannot Substitute for a Fiduciary Standard for Retirement Financial Advice.

The Commissioner's letter urges, incorrectly, that conflict of interest disclosure will protect the assets of retirement savers. We agree that good disclosure is crucial for all participants in the financial markets -- we do not discount its value in any way.

However, the current "suitable recommendation" standard allows brokers and other sellers of financial products to make these kinds of disclosures about conflicts, and the harm that investors have suffered under this system has been well documented. If disclosure had resolved the problem, there would have been no need for the Department to promulgate the Rule.

---

[2] Comments of Secretary of the Commonwealth of Massachusetts William F. Galvin on the DOL Fiduciary Rule Proposal, July 21, 2015. https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00656.pdf

[3] Comments of Secretary of the Commonwealth of Massachusetts William F. Galvin on Proposed Delay of the Applicability Date of the Fiduciary Rule, March 13, 2017. https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/00861.pdf

[4] Report: The Effects of Conflicted Investment Advice on Retirement Savings (White House Council of Economic Advisers, February 2015).

In many important instances, it is clear that disclosure alone is not adequate to protect retail investors. Moreover, such disclosure is often written in ponderous, hard-to-understand language, so it often promotes confusion rather than well-informed investment decisions.

The Commissioner's letter cites the SEC's report on the provision of investment advice by broker-dealers and investment advisers and the widespread confusion that exists in the marketplace about the whether they need to act in customers' best interest. The study finds that "many retail investors do not understand, and are confused by, the roles played by investment advisers and broker-dealers." The report notes that "many investors are also confused by the standards of care that apply to investment advisers and broker-dealers' when providing personalized investment advice about securities,"[5] and it recommends that a uniform fiduciary standard should apply across the various categories of providers of financial advice.

The Department Must Reject Proposals to Create a Watered-Down Fiduciary Standard.

Ultimately, the Commissioner advocates a watered down fiduciary standard for providers of financial advice. This is particularly dangerous to retail investors because it will allow misleading nomenclature and confusing standards to apply to advisers who will not be required to act in the best interests of their customers.

We urge the SEC to join with the Department and state financial regulators to work toward a high uniform fiduciary standard that will apply across the professional categories of broker-dealers, investment advisers, and other sellers of financial products. Moreover, we urge the Department to staunchly defend the Fiduciary Rule, which will protect retirement investors from the demonstrated harms created by conflicted investment advice.

Please contact me or Bryan J. Lantagne, Director of the Massachusetts Securities Division, at (617) 727-3548 if you have questions about this letter or we can assist in any way.

Sincerely,

William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts

[5] SEC Staff Study on Investment Advisers and Broker-Dealers, January 2011. https://www.sec.gov/news/studies/2011/913studyfinal.pdf