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Via email to: securitiesregs-comments@sec.state.ma.us

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

Re: Proposed Revisions to 950 CMR 12.200: Registration of Broker-Dealer, Agents, Investment Adviser, Investment Adviser Representatives and Notice Filing Procedures for Federal Covered Advisers.

Dear Secretary Galvin:

PFS Investments Inc. ("PFSI" or "we") is a broker-dealer and investment adviser registered with the Securities and Exchange Commission ("SEC") and is an indirect wholly owned subsidiary of Primerica, Inc. ("Primerica"). Primerica (through its affiliates) has over $12 billion face amount of term life insurance in force and over $1 billion of assets under management for Massachusetts residents. Our nearly 800 licensed representatives help over 91,000 Massachusetts residents strive to become financially secure. The individuals and families we serve typically are middle-income, earning on average between $30,000 and $100,000 a year.[1]

While other financial services companies typically focus on the wealthy, Primerica serves everyday Americans in diverse neighborhoods all across our nation, including in Massachusetts. Our representatives often meet with these individuals and families on nights, and weekends, when they are off work and available, and help them understand the importance of putting aside small amounts in straight-forward investments for the longer term. We find that this face-to-face interaction is essential to encouraging families to have the confidence to start investing. Helping middle-income families and individuals achieve financial security and independence is our mission. The transaction-based brokerage model allows us to do so on a cost-effective basis.

[1] As of December 31, 2018, we had nearly 800 licensed life insurance agents and over 225 securities-licensed representatives in Massachusetts.

Commission-based brokerage is appropriate and essential to serving these buy-and-hold investors.[2]

We are writing in response to the request for comment (the "Request") on the proposed revisions to 950 CMR 12.200 that would apply a fiduciary conduct standard to broker-dealers, agents, investment advisers, and investment adviser representatives (the "Regulation"). We caution that the Regulation will impede access to the help we and other firms offer to Massachusetts residents. Based on our experience, and known reactions of other firms to similar fiduciary rule-type proposals, such as that of the Department of Labor ("DOL") and the state of Nevada, we anticipate that the Regulation will have the effect of reducing, or even eliminating, access to personal financial assistance for middle-income families in the Commonwealth, leaving them to fend for themselves online or to forgo saving altogether.

Rather than risk thwarting Massachusetts's middle-income investors' access to help, ***we urge the Massachusetts Securities Division (the "Division") to reconsider going forward with the Regulation*** until it has had a better chance to evaluate the effect the US Securities and Exchange Commission ("SEC") Regulation Best Interest and related rules and interpretations ("Reg. BI") is having on the market for retail investment advice and services. We believe that Reg. BI meaningfully enhances the standards of conduct for SEC-registered broker-dealers and investment advisers.[3] In particular, we disagree with the Division's statement that Reg. BI is "overly focused on complicated disclosures"[4] as firms are making significant changes to the way they serve investors and how they address conflicts that go far beyond disclosure.

In **Section I** of this letter, we address the anticipated impact of the Regulation on the availability of brokerage services. In **Section II**, we provide recommendations to the Division that may mitigate some of the unintended harm the Regulation is likely to cause. In **Section III**, we update our views on Reg. BI, the changes it is instigating, and why we believe Massachusetts should reconsider going forward with its rulemaking. Finally, in Section IV we discuss legal flaws in the Division's authority to engage in such far reaching rule-making.

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[2] **Addendum 1** to this letter provides more information about Primerica as a company, our mission to help middle-income families achieve financial independence, and the importance of our face-to-face services in encouraging these savings, which is empowered by the transaction-based brokerage model. We urge you to review and consider the information and perspectives included in this addendum as we believe it may aid the Division in its evaluation of the potential costs of additional regulations that may cause firms to curtail brokerage services in the Commonwealth.

[3] *See* Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 Fed. Reg. 33,318 (July 12, 2019) (to be codified at 17 C.F.R. pt. 240), https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12164.pdf (hereinafter, "Regulation Best Interest"); Form Customer Relationship Summary ("CRS"); Amendments to Form ADV, 84 Fed. Reg. 33,492 (July 12, 2019) (to be codified at 17 C.F.R. pts. 200, 240, 249, 275, and 279), https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12376.pdf; Commission Interpretation Regarding Standard of Conduct for Investment Advisers, 84 Fed. Reg. 33,669 (July 12, 2019) (to be codified at 17 C.F.R. pt. 276), https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12208.pdf; Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer, 84 Fed. Reg. 33,681 (July 12, 2019) (to be codified at 17 C.F.R. pt. 276), https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12209.pdf (hereinafter, "Solely Incidental Interpretation").

[4] The Commonwealth of Massachusetts, Request for Comment at p. 3 (Dec. 13, 2019), https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/Request-for-Public-Comment.pdf.

I. The Regulation Jeopardizes Brokerage in Massachusetts

We appreciate that the Division does not intend to end commission-based brokerage services,[5] which we hope is a recognition that brokerage is a cost-effective method of distributing financial products and services to more modest savers and buy-and-hold, long-term investors. Nonetheless, the impact of the Regulation is likely to be just that: firms' ability to continue to serve Massachusetts residents under a commission-based brokerage model will be in jeopardy. As a result, if Massachusetts finalizes its Regulation, we believe that Massachusetts investors will be significantly harmed and disadvantaged, particularly compared to residents of other states.

Among our concerns the Regulation:

- is incompatible with the commission-based (e.g. transactional) brokerage business model,
- chills incentives and rewards that often properly encourage representatives to take the time to serve middle-income families,
- imposes unworkable standards upon broker-dealers that are inconsistent with federal rules, and
- will subject firms providing brokerage services in the Commonwealth to unmanageable hindsight and second-guessing by regulators and the trial bar.

In the face of these challenges, costs, and risks, firms will make the rational choice to opt for the simple solutions: (i) migrate the services available in Massachusetts to fee-based advisory programs, which are subject to account minimums and ongoing fees, (ii) scale back or discontinue brokerage services in the Commonwealth, and (iii) raise fees to cover higher costs.

The Division seems to discount this potential outcome. However, we urge the Division to consider how a firm and its sales force could navigate the ongoing obligations, restrictions, and uncertainties imposed by the Regulation and at the same time motivate its sales force to serve ordinary Bay Staters with modest amounts to invest. Firms must make operable decisions. The risk of a "presumed" fiduciary breach will be too great. There is confirmable evidence to indicate that firms instead will move upscale, shifting resources to seek clients who already have sufficient assets to meet the account minimums and long-term higher costs of advisory services.

We saw exactly this happen in the United Kingdom, where individuals with less than $40,000 have been squeezed out of investment help by its ban on commissions.[6] We also saw it happen as firms

[5] *Id.* In its Request for Comment, the Division declined to ban commissions entirely, stating: "Several commenters expressed concern that the Proposal would inadvertently force the elimination of transaction-based compensation. One commenter urged the Division to ban commissions entirely. The duty of loyalty does not prohibit the payment or receipt of transaction-based compensation. However, this form of compensation creates a conflict that must be addressed and managed in accordance with the Proposal. The Division believes that the framework of the Proposal is sufficient to address the inherent conflict resulting from the existence of transaction-based compensation."

[6] *See* Tracey McDermott & Charles Roxbury, *Financial Advice Market Review, Financial Conduct Authority and HM Treasury Final Report*, 19 (Mar. 2016), https:// www.fca.org.uk/publication/corporate/famr-finalreport.pdf.

prepared to comply with the DOL's fiduciary rule.[7] We saw it again with announcements made by several firms following Nevada's release of a fiduciary proposal.[8] The effect of the Regulation will be similar: working families who should be saving will not have access to an investment professional to guide and encourage them, and their investment options will be more limited. The number of investment savings and retirement accounts in the Commonwealth will decline.

The Division has shown skepticism, stating: "When 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. There is no room for 'you get what you pay for' when it comes to the quality and integrity of investment advice."[9]

We passionately disagree with the Division's characterization of the current quality of the investment services our and many other firms' financial professionals provide to residents of the Commonwealth. First, financial professionals and firms understand that their success depends on the success and results they achieve for their clients and, as such, most provide investment recommendations consistent with a "best interest" standard today. Second, while certain conflicts may influence some financial professionals and firms to make recommendations that are not in investors' best interests, most do not. These potential bad actors do not mean that additional regulation in Massachusetts is needed. Massachusetts already has the authority and enforcement tools under the Massachusetts Uniform Securities Act and regulations thereunder that it needs to prosecute cases against firms and financial professionals that do not act in their customers' best interest. Furthermore, the SEC's enhancements and enforcement capabilities at the federal level offer further protections to Massachusetts residents.

II. Certain Modifications to the Regulation Could Mitigate Harm to Massachusetts Residents

Firms are making significant and meaningful changes to comply with the SEC's enhanced standards in Reg. BI, as discussed in Section III, below. ***Our recommendation is that the Regulation be withdrawn, or, at a minimum, delayed until these changes have had time to be fully implemented, developed, and evolved beyond the June 30, 2020 effective date.*** If the Regulation is not withdrawn in its entirety, we then offer modifications to certain aspects of the

[7] *See* Deloitte, *The DOL Fiduciary Rule: A Study on How Financial Institutions Have Responded and the Resulting Impact on Retirement Investors* (2017), https://www.sifma.org/wp-content/uploads/2017/08/Deloitte-White-Paper-on-theDOL-Fiduciary-Rule-August-2017.pdf.

[8] *See, e.g.*, Kenneth Corbin, *Brokers Vow to Pull Business if Nevada sets Fiduciary Duty,* FinancialPlanning, March 20, 2019, available at https://www.financial-planning.com/news/morgan-stanley-schwab-td-wells-fargo-threaten-to-pull-services-if-nevada-sets-fiduciary-duty; Bruce Kelly, *Morgan Stanley Threatens to Pull Out of Nevada Over State's Fiduciary Rule*, InvestmentNews, March 13, 2019, available at https://www.investmentnews.com/article/20190313/FREE/190319968/morgan-stanley-threatens-to-pull-out-of-nevada-over-states-fiduciary; Gabriel T. Rubin, *States Pursue Their Own Broker-Conduct Rules*, The Wall Street Journal, April 19, 2019, available at https://www.wsj.com/articles/states-pursue-their-own-broker-conduct-rules-11555666200.

[9] Initial Small Business Impact Statement Pursuant to M.G.L. c. 30A, §§ 2 and 5, Massachusetts Securities Division, Proposed Amendments to 950 CMR 12.200 (Dec. 13, 2019).

Regulation.[10] While we believe the Regulation should be withdrawn, these suggestions for changes may reduce the Regulation's harm to Massachusetts residents' ability to save should Massachusetts decide to go forward.

A. Clarify that the Regulation Is Not Intended to Create a Private Right of Action

In our comment letter to the Division in response to its preliminary solicitation of public comments (the "Solicitation") on a fiduciary conduct standard, we requested that the Division clarify that the Regulation does not create and is not intended to create, a private right of action for investors under the Massachusetts Uniform Securities Law or under any other Massachusetts statute.[11] The Division has not provided this clarification in the Regulation or Request for Comment. We respectfully again request that the Division provide such clarification.

To the extent the Regulation would create private rights of action, we believe the Federal Arbitration Act and Securities Litigation Uniform Standards Act would preempt any such rights. We note that the SEC explicitly considered commentators' suggestions to include a private right of action in its Reg. BI rulemaking and declined to do so.[12] As such, the Regulation would be inconsistent with, and contrary to, federal securities rules should the Regulation provide otherwise.

We also note that the DOL's creation of a private right of action under its "Fiduciary Rule" is viewed by many as its fatal flaw, both from a practical perspective because it caused firms to reduce access to financial services and advice, and also from a legal perspective because it formed a key basis for the Fifth Circuit Court of Appeals' opinion striking down the rule. A private right of action with respect to the Regulation's standards would be far worse than under the DOL Fiduciary Rule. This is because the Regulation's ambiguous standards stack the deck against financial services firms by effectively shifting to the firm the burden (and costs) of proving that the fiduciary duty was satisfied.

This burden shift will drive up the risk of frivolous lawsuits for firms doing business in Massachusetts and the costs of defending against them because this shift will likely result in significant hurdles to obtaining dismissals on summary judgment and heighten the potential for state law class actions. Due to the costs of protracted litigation, the pressure to settle these cases (regardless of potential verdict or outcome), rather than to incur the cost to fight and prevail, will be enormous. This will incentivize plaintiffs' lawyers who will allege claims expecting they can extract settlements even if their claims are baseless. As such, a private right of action will increase

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[10] We have not attempted to comment on every concern in the Regulation, but have focused this letter on critical elements that we believe will most threaten the continued provision of retail brokerage services in Massachusetts and disproportionately harm Massachusetts' modest savers and middle-income families. We note there are other issues with the Regulation, including its vague and undefined terms and conflicts with federal law, including, in particular, the broad preemption under the National Securities Markets Improvement Act of state regulation over federally registered investment advisers. While we agree with other comment letters regarding these issues, including the Securities Industry and Financial Markets Association letter dated July 26, 2019, we do not believe addressing these issues alone will ensure the preservation of the brokerage model in Massachusetts.

[11] Including, but not limited to, the Massachusetts Consumer Protection law, section 204 of the Massachusetts Uniform Securities Act, and section 950 CMR 12.204 of the Massachusetts Code.

[12] Regulation Best Interest, at 33327 ("Furthermore, we do not believe Regulation Best Interest creates any new private right of action or right of rescission, nor do we intend such a result.").

the costs of operating in the Commonwealth and can be expected to deter many firms from continuing to operate brokerage services in Massachusetts.

Request: Confirm that Massachusetts intends enforcement of the standards to be limited to the domain of the Massachusetts Securities Division, and that the Regulation would not create a private right of action under the Uniform Securities Act or any other law.

B. Do Not Create Ongoing Fiduciary Duties for Broker-Dealers or Obligations to Monitor that are Inconsistent with Customer Agreements

We appreciate that the Division made changes in an apparent effort to better align the Regulation with the SEC's recent interpretation regarding activities that are "solely incidental" to brokerage services, but we believe further clarification is needed so that the Regulation is compatible with the transaction-based brokerage model and not in conflict with federal law. Specifically:

1. **Clarify that the episodic fiduciary duty applies only *at the time of* the recommendation.** Because the Regulation omits language included in the draft that accompanied the Solicitation that would have applied a fiduciary duty through the "execution of the recommendation," we believe the Division's intent is to apply the fiduciary duty at the time a recommendation is provided. However, in the Request for Comment, the Division states that the fiduciary duty would also apply to "the implementation" of the advice or recommendation. As we explained in our comment letter on the Solicitation, applying a fiduciary duty through execution of a recommendation is a novel approach in the context of the broker-dealer business model and would require significant new recordkeeping and operational changes. Additionally, this obligation could be interpreted to require broker-dealers to break customer-directed trades if they are determined to no longer be in the customer's best interest at the time they are to be executed. This could create conflicts with investors who generally expect to be able to execute transactions (recommended or not) without interference from the broker-dealer, and could even potentially cause a broker-dealer to violate its best execution obligation under federal law.

   Request: Clarify that the fiduciary duty is not intended to extend beyond the time the recommendation or advice is provided to the customer.

2. **Clarify that ongoing compensation or ongoing fees "for advising" does not include a broker-dealer's receipt of trailing commissions, 12b-1 fees, or ongoing compensation from investment products or their sponsors.** We believe the Division intended to clarify the Regulation to provide for an ongoing fiduciary duty where a firm or financial professional receives ongoing compensation "for advising," and not whenever a firm or financial professional receives any ongoing compensation regardless of its purpose, in particular brokerage or transaction-based compensation. We note that it is common for broker-dealers to receive ongoing sales compensation, such as trailing commissions, revenue sharing, and other ongoing compensation, that is for

effecting and executing securities transactions and other brokerage services. These commissions and compensation streams are not for customer recommendations, advice, or ongoing advice and therefore should neither require additional or ongoing services nor result in the imposition of an ongoing fiduciary duty on the broker-dealer or agent. Ongoing fees for advice is a hallmark of an investment advisory relationship; not a brokerage relationship.

Request: Clarify that an ongoing fiduciary duty only applies when a broker-dealer, agent, investment adviser, or investment adviser representative receives ongoing "special compensation" for advice consistent with Supreme Court Case Law and the SEC's interpretations under the Investment Advisers Act of 1940 (the "Advisers Act").

3. **Clarify when the fiduciary duty applies to a contractual obligation to monitor an account on a regular or periodic basis.** The Regulation provides that a fiduciary duty applies "during any period" the broker-dealer, agent, investment adviser, or investment adviser representative "has a contractual obligation to monitor a customer's or client's account on a regular or periodic basis." We believe the intention is not to apply an ongoing fiduciary duty during the entire period the firm or financial professional has a contract with a customer that includes an agreement to monitor the account on a regular or periodic basis. Rather, we believe the intention is to apply a fiduciary duty *at the time* the firm or financial professional has agreed to monitor the account. For example, if a firm or financial professional agrees to monitor an account on the last day of each quarter, the fiduciary duty would apply to the firm or financial professional with respect to such monitoring services on the last day of the quarter, and not during the entire period the contractual obligation exists. Firms and their customers must have the ability to set and agree upon the terms and extent of their service levels.

Request: Clarify that the fiduciary duty applies *at the time* the firm or financial professional has agreed to monitor a customer's account.

4. **Clarify the circumstances under which a broker-dealer could be viewed as engaging in an act, practice, or course of conduct that results in a customer having a reasonable expectation that an account will be monitored on a regular or periodic basis.** The Regulation would apply the fiduciary duty during any period a customer has a reasonable expectation that an account will be monitored on a regular or periodic basis. Similar to the comment above, it is unclear whether the Division's intent is to apply the fiduciary duty during the entire period the customer has a reasonable expectation that monitoring will be provided, or at the specific time the customer expects that the account will be monitored. Additionally, it is unclear what acts, practices, or courses of conduct could be viewed as creating an expectation that an account will be monitored. The Request for Comment indicates that this provision is intended to capture circumstances under which a broker-dealer leads a customer to believe that it is "acting like an investment adviser" and suggests that, in these cases, the

fiduciary duty will be "ongoing," rather than at the time of "regular or periodic" monitoring. As currently proposed and without greater clarity, this provision leaves firms open to after-the-fact second guessing about whether and when they are subject to a fiduciary duty.

Request: So that firms can operationalize compliance with the fiduciary duty, and in order to ensure that the Regulation does not conflict with federal law (i.e., the SEC's solely incidental interpretation under the Advisers Act), clarify that the fiduciary duty applies at the time the customer expects monitoring to occur, and provide additional guidance regarding the circumstances under which an act, practice or course of conduct could be viewed as creating a reasonable expectation that an account will be monitored on a regular or periodic basis.

5. **Eliminate the presumption that certain titles create an expectation that a firm or financial professional will monitor an account on a regular or periodic basis.** The Regulation appears to require any financial professional who uses a title like "financial adviser," "financial planner," "investment consultant," and other similar variations to regularly or periodically monitor customer accounts or portfolios, and to be subject to a fiduciary duty with respect to such monitoring. We do not disagree with the Division's assertion that these titles have marketing value, and that retail investors may perceive such titles as conveying positive traits such as honesty, trustworthiness, helpfulness, and work ethic. However, these traits have nothing to do with whether the investor would expect regular or periodic monitoring from the financial professional. The use of these titles should not dictate service levels.

   As such, we do not see a basis for the Division's proposal to tie the use of certain titles to a duty to monitor an account regularly or periodically. Additionally, we note that financial professionals of dually registered broker-dealers and investment advisers may use the title "financial advisor" under Reg. BI and offer both ongoing advisory services and episodic brokerage services. By requiring regular or periodic monitoring of brokerage accounts (as well as advisory accounts), the Regulation would inhibit financial advisors from being able to provide different service levels for different purposes and would conflict with federal law.

Request: Remove the titling provision from the Regulation. Alternatively, clarify and confirm that the use of titles is one of many factors relevant to determining whether a customer has a reasonable expectation that a firm or financial professional has a duty to regularly or periodically monitor the account or portfolio.

C. Revise the "Without Regard To" Construct and Permit the Duty of Loyalty to Be Satisfied Through Clear Disclosure and Reasonably Designed Policies and Procedures to Mitigate Financial Professional Conflicts

We appreciate that the Division clarified the Regulation to eliminate the "best of" standards, but we believe additional clarification is needed for this duty of loyalty to be operationalized. The

Regulation now frames the duty of loyalty as three separate obligations: (1) disclose all material conflicts of interest, (2) make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot be avoided, and mitigate conflicts that cannot be avoided or eliminated, and (3) make recommendations without regard to the financial or any other interest of any party other than the customer or client. These formulations are vague and will inevitably leave firms open to second-guessing in hindsight.

While we agree that a firm should not put its interests ahead of an investor's interests, we believe the standards for measuring compliance with the duty of loyalty must be clear and objective. It would be difficult, if not impossible, to prove that a firm made a recommendation "without regard to" any interest other than the investor's in any particular circumstance. Moreover, in its rulemaking, the SEC articulated the known harms that resulted from the DOL's use of the "without regard to" fiduciary construct—loss of access to brokerage services for middle-income investors—and expressed its desire to avoid them.[13] In this regard, the SEC stated:

> [W]e are concerned that there is a risk that the "without regard to" language would be inappropriately construed to require a broker-dealer to eliminate all of its conflicts when making a recommendation (i.e., require recommendations that are conflict free), which we believe could ultimately harm retail investors by reducing their access to differing types of investment services and products and by increasing their costs.[14]

Similarly, it is unclear what is required to avoid conflicts, eliminate conflicts that cannot be avoided, and mitigate conflicts that cannot be avoided or eliminated. Firms need a specific and clearly articulated framework to be able to develop a compliance program that can appropriately address their obligations under the duty of loyalty. We therefore request that Massachusetts revise this language to be consistent with the language used in Reg. BI—that a firm or representative should not put its interests ahead of the investor's interests, that all conflicts must be disclosed, and that financial incentives that create conflicts for financial professionals must be mitigated—so that the Regulation avoids unclear and ambiguous terminology and, consistent with Reg. BI, achieves the Division's goal of requiring firms to put investors' interests first.

Finally, the Regulation should eliminate the provision that disclosing or mitigating conflicts alone does not meet or demonstrate the duty of loyalty. This provision is inconsistent with Reg. BI and

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[13] Regulation Best Interest, at 33323 ("The potential for a range of different meanings to be given to the phrase 'without regard to' was heightened by the DOL's use of this same language for purposes of the Impartial Conduct Standards set forth in the BIC Exemption. We recognize, as noted by some commenters, that the DOL interpretation of this phrase does not require 'conflict-free' recommendations. Nevertheless, because of the differences in the approach to the treatment of conflicts under ERISA and under the federal securities laws—ERISA starts by prohibiting conflicts and then through exemptions permits certain conflicts, whereas the federal securities laws generally start with disclosure and become more restrictive—we share commenters' concerns that DOL's use of the 'without regard to' language could alter the way in which conflicts are viewed and cause a substantial portion of conduct that is currently permitted, and reasonably accepted and desired by retail customers, to be limited or eliminated. Based on market participant experience with the implementation of—and reaction to the subsequent overturning of—the DOL Fiduciary Rule, in particular the BIC Exemption, we continue to believe that it is better to use language that provides similar investor protections, but does not raise these legal ambiguities.").

[14] *Id*.

the fiduciary requirements under the Advisers Act, which permit firms to disclose certain conflicts, while requiring other specific conflicts to be mitigated or eliminated.

Request: Align the duty of loyalty with the Conflicts Obligation under Reg. BI and the Advisers Act. Prohibit firms and financial professionals from putting their interests ahead of the customer's interests when making recommendations or providing investment advice and state that firms are required to establish, maintain, and enforce written policies and procedures reasonably designed to identify and disclose material conflicts of interest associated with a recommendation sufficient for informed consent, and mitigate material conflicts of interest that create an incentive for a representative to place the firm's or representative's interest ahead of the investor's interests.

D. Sales Contests and Other Incentives that Do Not Favor Particular Products Should Be Permitted

Though we generally agree that sales contests and non-cash compensation programs should not improperly differentiate among specific investment products, Massachusetts should not prohibit broad-based incentives to encourage representatives to engage in positive behaviors, such as seeking (and reaching out to) potential new customers and encouraging customers to save and invest more assets.

It should not be presumed that all incentives drive negative behavior. In the Request for Comment, the Division states that "Recommendations and advice that are truly best for the customer or client should not require any extra incentive," but we believe this misses the point. Specifically, many incentive programs the Regulation appears to be aimed at eliminating are not aimed at promoting particular recommendations (be they in the investor's best interest or not), but rather are intended to encourage representatives to engage with investors, to visit homes, to meet with them—activities that we view as essential to encouraging savings and investing in an environment that is full of distractions that impede investors from investing without a prod from a financial professional.

We believe that these incentives are critical to ensuring access to education and investments for middle-income investors. Numerous studies suggest that noncash compensation programs and performance-based bonus programs are a valuable and powerful tool to motivate individuals to engage in positive behavior in various industries.[15] They are also widely used across industries and well accepted. One study indicates that over 74% of U.S. businesses use noncash incentives and 46% of those businesses offer travel as rewards.[16] The positive motivational impact of these

[15] *See, e.g.*, Jeanie Casion, *The Right Remedy: A Sales Incentive Case Study*, Incentive Mag., June 7, 2011, http://www.incentivemag.com/article.aspx?id=7268 ("Incentive programs are the primary way that our company is able to encourage the behaviors that are essential to not only successfully launching a product but also sustaining its market share trajectory"); Scott A. Jeffrey, *Justifiability and the Motivational Power of Tangible Noncash Incentives*, Human Performance, Mar. 31, 2009, https://www.researchgate.net/publication/232963008_Justifiability_and_the_Motivational_Power_of_Tangible_Noncash_Incentives (concluding that noncash rewards were more powerful motivators than equivalent cash rewards).

[16] *See* Steve Bova & Kevin M. Hinton, *FICP and SITE Weigh In on Proposed DOL Fiduciary Rule*, IncentiveWise Blog (Apr. 6, 2016, 2:17 PM), https://www.siteglobal.com/blog/ficp-and-site-weigh-in-on-proposed-dol-fiduciary-rule-impact ("Any reduction in incentive travel opportunities may also reduce the number of face-to-face meetings

types of noncash incentives has been shown to be effective.[17] Incentive travel, in particular, has been shown to foster a strong sense of corporate culture within an organization.[18] Consistent with our experience, another study shows that the reward of travel is not simply the extrinsic reward of the trip itself, but also the networking and learning opportunities and intrinsic rewards such as feelings of accomplishment and public recognition.[19] Moreover, incentives have been shown to improve results—not just for the firms that use them, but also for the customers they serve. For example, in the field of medicine, one study showed that financial incentives provided to physicians to improve patient experience resulted in significant improvement of communication, care coordination, staff interaction and patient care experiences, particularly for physicians that had low base line performance.[20]

We currently sponsor programs that reward our representatives with cash and noncash compensation to incentivize them to reach out to potential and existing customers and encourage them to save and invest more assets, which we believe should be viewed as a necessary policy objective to address the savings crisis. This is in large part a material aspect of our mission to help educate and "nudge"[21] middle-income Americans to make the right choices for their financial futures. Our programs are not tied to sales of any particular product, but rather are based on the amount and growth of customer assets for which our representative is responsible. We firmly believe that with the proper alignment of the interests of the customer and the representative, everyone benefits.

In our experience, incentive programs encourage and recognize legitimate business conduct that, in many ways, is essential to providing access to financial services for middle-income Americans. Specifically, these programs motivate representatives to reach out to prospective customers to encourage them to open an account and start saving and investing for their futures. We have found that the best way to get middle-income Americans to save is for our representatives to actively reach out to them and in many cases sit at their kitchen table to educate them on the benefits of

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where financial services employees can receive in-person education to develop advanced skills, learn about new regulations, and develop professionally.").

[17] *See Conscious and Unconscious Reward Preference & Choice: A Biometric Experiment*, Incentive Research Foundation (Nov. 28, 2017), http://theirf.org/research/conscious-and-unconscious-reward-preference-choice-a-biometric-experiment/2328/. *See also* Bill Hastings, Julia Kiely & Trevor Watkins, *Sales Force Motivation Using Travel Incentives: Some Empirical Evidence*, Journal of Personal Selling & Sales Management (Oct. 24, 2013), https://www.tandfonline.com/doi/abs/10.1080/08853134.1988.10754490; Scott Jeffrey, *Justifiability and the Motivational Power of Tangible Noncash Incentives*, Human Performance (Mar. 2009), https://www.researchgate.net/publication/232963008_Justifiability_and_the_Motivational_Power_of_Tangible_Noncash_Incentives.

[18] Pauline J. Sheldon, *The Demand for Incentive Travel: An Empirical Study*, Journal of Travel Research (Apr. 1995), http://journals.sagepub.com/doi/abs/10.1177/004728759503300404.

[19] *Id.*

[20] *See* Hector P. Rodriguez, PhD, MPH, Ted von Glahn, MS, Marc N. Elliott, PhD, William H. Rogers, PhD & Dana Gelb Safran, ScD, *The Effect of Performance-Based Financial Incentives on Improving Patient Care Experiences: A Statewide Evaluation*, Financial Incentives and Patient Care Experiences (Oct. 14, 2009), https://link.springer.com/content/pdf/10.1007%2Fs11606-009-1122-6.pdf.

[21] *See* discussion, *infra,* at Note 45 et seq. and accompanying text, regarding Richard Thaler's and Cass Sunstein's book *Nudge* regarding using "choice architecture" to influence people to make better decisions.

saving for their futures. Otherwise, the distractions and competing priorities they face in their daily lives will result in them never taking that initial step towards their financial security, which seems to elude so many. As our experience shows, in-person outreach is by far more effective than over the phone or via computer, at helping families make positive decisions about managing their own money. Too often middle-income families have "too much month at the end of their money," and our salesforce needs to be incentivized and recognized for helping these families improve their financial well-being. The commissions associated with the modest amounts many middle-income families have to invest is not alone sufficient to motivate face-to-face professional help. Programs that encourage the dissemination of financial education and savings are important and powerful means to produce positive financial outcomes for these families.

Additionally, firms, including us, rely on these types of programs to advance team-building and to incentivize training. These are critical to both driving business success and ensuring that representatives have the tools and knowledge to deliver appropriate levels of service to retail customers. Moreover, FINRA, the SEC, and the North American Securities Administrators Association ("NASAA") have each demonstrated their support of these programs. FINRA even proposed a new rule, as recently as 2016, to expand the availability of such programs, subject to certain conditions.[22]

We recognize that, though our incentives motivate positive behavior that benefits the middle-income communities we serve, at the same time they are susceptible to creating conflicts that can cause negative behavior. To mitigate conflicts, our incentive programs are not contingent on sales of any particular product or the product of any particular product sponsors. We focus on total production. To address the concern that incentives could encourage unnecessary trading in an account, we have structured our supervision program to aggressively identify and address potential instances of churning or recommendations for nonsuitable investments.

While Reg. BI requires firms to eliminate incentives based on the sale of specific securities or types of securities within a limited period of time, it does not prohibit sales contests, sales quotas, bonuses, and noncash compensation that apply to, among other things, total products sold, or asset accumulation and growth, recognizing that such programs can be consistent with requirements to put clients' interests first.[23] If Massachusetts effectively prohibits or materially restricts these

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[22] *See*, *e.g.*, Proposed FINRA Rule 3221 (proposing to eliminate the current noncash compensation rules that apply in the context of investment company securities, variable insurance contracts, direct participation programs, and public offerings, and to replace them with a similar framework that would apply in connection with the sale of *any* security, such that, e.g., sales contests would be permitted if (1) based on the total production of associated persons with respect to *all* securities distributed by the member and not only product-specific contests; and (2) not based on conditions that would encourage an associated person to recommend particular securities or categories of securities) (also codifying existing guidance regarding the permissibility of certain travel for training and education); FINRA Reg. Notice 16-29 (Aug. 2016) (regarding proposed FINRA Rule 3221); Letter to Marcia E. Asquith Re: FINRA Regulatory Notice 16-29 Gifts, Gratuities and Non-Cash Compensation Rules, NASAA, Sept. 30, 2016, http://www.finra.org/sites/default/files/16-29_NASAA_comment.pdf (supporting FINRA's proposed Rule 3221). The SEC approved each FINRA rule that currently permits noncash compensation, thereby finding the rules to be sufficient for the protection of investors.

[23] Regulation Best Interest at 33396 ("While conflicts of interest are also associated with sales contests, sales quotas, bonuses and non-cash compensation that apply to, among other things, total products sold, or asset accumulation and growth, we agree with commenters these conflicts present less risk that the incentive would compromise compliance with the Care Obligation and Conflict of Interest Obligation such that a recommendation could be made that is in a

types of programs, firms like ours will have less ability to attract, motivate and incentivize their representatives to provide face-to-face personal services to the middle-income saver and small balance investors in Massachusetts. The logical outcome from this is that the middle-income market segment may ultimately be abandoned to passive execution-only platforms and robo-advice without human interaction, materially reducing the likelihood that these middle-income Massachusetts families will shift from spending today to saving for tomorrow.

We believe the types of incentive programs we provide, structured as they are to align the interests of the customer and the representative, are entirely consistent with the Division's goal of improving the quality of advice investors receive through the brokerage channel and that such programs do not introduce any additional conflicts, beyond those already inherent in the transaction-based brokerage model.

Request: Clarify that, with proper supervision and disclosure consistent with Reg. BI and applicable FINRA requirements, bonuses, awards, non-cash compensation incentives, and other appropriate financial incentive programs that are not product specific are expressly permitted under the Regulation and its duty of loyalty. Alternatively, provide specific examples of the types of sales contests and incentives that the Division seeks to eliminate.

E. Clarify that the Regulation Does Not Apply to SEC-Registered Investment Advisers or Their Investment Adviser Representatives

While we believe the Division made an effort to clarify that the Regulation is not intended to be applied to SEC-registered investment advisers or their investment adviser representatives ("IARs") (regardless of whether they are registered in the Commonwealth), there remains a troubling lack of clarity on this point in the Regulation and in the Division's related statements and comments.

As you know, as a consequence Congress's adoption of the National Securities Market Improvement Act of 1996 ("NSMIA"), Section 203A of the Advisers Act prohibits states and their political instrumentalities ("States") from requiring the registration, licensing, or qualification of SEC-registered investment advisers and their IARs, yet reserves for the States the right to "license, register, or otherwise qualify any [IAR] who has a place of business located within that State."[24] Under Section 203A(b)(2) of the Advisers Act, States may also continue to "investigat[e] and bring[] enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser," without regard to SEC versus State registration status.[25] The authority of States to investigate and bring enforcement actions against SEC-registered investment advisers is limited, however. In particular, following adoption of NSMIA, the SEC interpreted Section 203A(b)(2) "as precluding a state from *indirectly* regulating the activities of Commission-registered advisers by applying state requirements that define 'dishonest' or 'unethical' business practices unless the prohibited

retail customer's best interest and that does not place the interest of the broker-dealer or associated person ahead of the interest of the retail customer.").

[24] Advisers Act § 203A(b)(1)(A).

[25] *Id.* § 203A(b)(2).

practices would be fraudulent or deceptive absent the requirements."[26] In other words, States should not be permitted to "enforce business practice rules as a means of enforcing anti-fraud rules."[27]

Because the Regulation is not apparently a rule specifically relating to licensing, registration, or other qualifications of an IAR (e.g., a rule requiring an IAR to have passed a Series 65 before acting as an IAR in the State would be), the Advisers Act preempts the Regulation from applying to IARs of SEC-registered investment advisers. Moreover, as we believe the Division recognized in revising the Regulation in response to comments on the Solicitation, NSMIA broadly preempts the Regulation as it may be applied to SEC-registered investment advisers themselves.

Notwithstanding our belief that preemption applies, the Regulation does not clearly carve out IARs of SEC-registered investment advisers from its applicability. Indeed, the Division's website states that the Fiduciary Rule would:

> Deem it an unethical or dishonest conduct or practice for a broker-dealer, agent, investment adviser, or *investment adviser representative registered or required to be registered in Massachusetts* to fail to act in accordance with a fiduciary duty to any customer or client, at 950 CMR 12.207 ….[28]

As, IARs – even of SEC-registered investment advisers – must register in Massachusetts when they serve Massachusetts residents, the Division's website can be read to mean that Massachusetts-registered IARs of SEC-registered investment advisers could be deemed subject to the Fiduciary Rule, notwithstanding the NSMIA preemption issue noted above. Without greater clarity, SEC-registered investment advisers will be left in the untenable position of not knowing whether the Division might nevertheless seek to impose the Regulation on their IARs.

Request: The Division should clarify in an adopting release or include express exemption language in the Regulation itself to the effect of the following (or similar):

> For the avoidance of doubt, "investment advisers" and "investment adviser representatives" for purposes of this fiduciary regulation, 950 CMR 12.207, shall not include federal covered advisers or their investment adviser representatives without regard to whether they are registered or required to be registered in Massachusetts.

[26] Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. 1633 (May 15, 1997), 62 Fed. Reg. 28,112, 28,126 (May 22, 1997).

[27] *Id.*

[28] William Francis Galvin, Secretary of the Commonwealth of Massachusetts, *Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives* https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryruleidx.htm.

F. Effective Date Should Provide Time to Transition and Coordinate with New SEC Rules

As proposed, the Regulation does not include an effective date. In establishing an effective date, we ask that you consider the significant time and resources needed to make the changes that would be required to comply with the new rules without causing significant disruption for our customers.

In particular, if we maintain brokerage services in Massachusetts, the Regulation's requirements that apply to financial professional titles and the ambiguous duty of loyalty and regular or periodic monitoring obligations would require a substantial overhaul of our brokerage platforms, including changes to our policies and procedures and the technology that underlies them. We may also need to make changes to our customer relationships (and documentation and agreements) to support compliance with the Regulation's requirements. Additionally, we will need time to train our personnel about the new obligations.

We also ask Massachusetts to consider the overlay of Reg. BI on these rules and the compliance dates of the SEC's requirements. In particular, Reg. BI and Form CRS are scheduled to become applicable on June 30, 2020. To minimize disruption and ensure a smooth transition, we request that Massachusetts at the bear minimum provide a compliance date of no earlier than June 30, 2020, or extensions thereto. If the Division chooses to not incorporate our suggested changes to the Regulation, as discussed above, then we request a compliance date of at least 18 months from the date adopted.

III. Reg. BI Provides Real Enhancements To Protect Consumers

Building on our comment letter on the Solicitation,[29] we would like to share with you our observations on how firms are responding to Reg. BI and making changes to implement its enhanced standard of care. We believe these changes will result in: (1) reduced conflicts for firms and their financial professional when making recommendations to retail investors; (2) an improved and more deliberate decision making process for developing investment recommendations; and (3) retail investors having a better understanding of the differences between brokerage and advisory services and fee structures and the conflicts inherent to both service models.

Firms are seven-months along in their plans for achieving Reg. BI compliance by the June 30, 2020 effective date. While there is still more work to be done, and we believe Reg. BI will continue to drive change past the effective date, firms' responses show that Reg. BI is more than just a disclosure rule and instead offers meaningful protections to retail investors. Here are examples of actions we are seeing firms take based on our participation in various industry conferences and working groups:

- ***Conflict assessments and mitigation.*** Firms are taking a more comprehensive approach to identifying conflicts. For financial professionals, firms are taking steps to mitigate and eliminate conflicts as Reg. BI requires, including by addressing differences in financial

[29] William Francis Galvin, Secretary of the Commonwealth of Massachusetts, *Preliminary Solicitation of public Comments: Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives* (Jun. 14, 2019) https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryconductstandardidx.htm.

incentives for selling different products and relationships with product sponsors. While the Division is correct that Reg. BI permits certain conflicts to be addressed through disclosure alone, this does not generally apply to conflicts that affect the person responsible for making the recommendation—the individual financial professional. As such, we are also seeing firms assess whether firm-level conflicts could affect the recommendations retail investors receive and making changes where needed.

As the Division acknowledged in the Request for Comment, some conflicts cannot be avoided or eliminated. This is particularly true in the transaction-based fee structure that is a fundamental characteristic of the brokerage business model. The SEC recognized this as well and developed a thoughtful regulatory structure that focuses on addressing the conflicts that are most likely to influence the recommendations retail investors receive—the financial incentives a financial professional may have to recommend one product, strategy, or account over another.

- ***Investment process enhancements.*** Another indicator that Reg. BI is more than just about disclosure is that firms are building systems and developing extensive training programs for financial professionals to support compliance with the Reg. BI Care Obligation. This includes more robust documentation and review of retail investor investment profiles, additional investment diligence processes, and developing specific criteria for supporting when a particular recommendation is in the retail investor's best interest. Additionally, firms are implementing more rigorous requirements for documenting such recommendations—a step that we believe will not only help demonstrate compliance with the Care Obligation, but will also result in improved investor experiences.

- ***Enhanced disclosures.*** Firms are creating new Customer Relationship Summaries in standardized, SEC-prescribed formats so that investors can better understand the differences between different services and fee structures offered by firms, and between advisory and brokerage services. Firms are also enhancing disclosures for brokerage relationships to bring them on par with currently required advisory disclosures, so that investors can better understand and assess brokerage services, fees, and conflicts of interest.

  While the Division states that Reg. BI is overly focused on "complicated disclosures," in our experience firms are taking the SEC's directive that disclosures should be accessible, easy to understand, and in "plain English" seriously and not only applying it to newly required disclosures, but also in reassessing existing disclosures to ensure they also meet these standards. We believe these meaningful changes will help drive more informed investment decision making and better investor experiences.

In contrast to the positive impacts Reg. BI is driving, our years of experience tell us that with the Regulation, Massachusetts risks disproportionally harming the very middle-income investors it is charged with protecting. The Regulation would depart from the simplicity of having a single federal standard and introduce unnecessary complexity, uncertainty, and risk in the brokerage regulatory scheme that will not markedly assist investors and may instead encourage further abandonment by the financial services industry of middle-income investors. In addition to the implementation of Reg. BI, we understand that the Department of Labor ("DOL") intends to

propose a new fiduciary rule to replace the rule invalidated by the Fifth Circuit Court of Appeals. The DOL proposal could impact firms and financial professionals who provide advice to individuals investing through IRAs, which hold a significant portion of middle-income investors assets. To that end, we urge Massachusetts to withdraw the Regulation in light of Reg. BI and to reassess the need for additional regulation once it has been implemented, the DOL and proposed its rule, and the Division has had a better opportunity to assess the changes it is instigating.

IV. The Division's Regulatory Overreach

Similar to the circumstances leading to the vacating of the DOL's fiduciary rule by the U.S. Court of Appeals in the Fifth Circuit, the Regulation's effective elimination of the commission-based brokerage model in the Commonwealth is at odds with both the statutory language (and intent) of the Massachusetts Uniform Securities Act and applicable common law, rendering the Regulation outside of the scope of the Division's rulemaking authority.

- **Frustration of Statutory Language and Authority.** The Massachusetts legislature has expressly defined broker-dealers and investment advisers by statute.[30] In doing so, the legislature has specifically authorized both a brokerage and investment-adviser business models, with their inherent conflicts, as applicable. As described above, the effect of the Regulation could foreseeably result in the elimination (or substantial reduction) of the commission-based brokerage model in the Commonwealth, frustrating the legislature's grant of statutory authority and express intent. While the Secretary is authorized to "make . . . such rules . . . as are necessary to carry out the provisions of this [Massachusetts Uniform Securities Act]," he is not permitted to promulgate rules that are inconsistent with the statute.[31]

- **Unauthorized Change to Common Law.** Upon review of the standard of care applicable to a broker-dealer under common law, the Supreme Judicial Court held that broker-dealers do not owe their customers a per se fiduciary duty, but instead owe them fiduciary duties only in certain, narrow circumstances.[32] As the legislature is only presumed to "effect[] a material change in or a repeal of the common law [if its intent] to do so is clearly expressed,"[33] we note that there is nothing in the Massachusetts Uniform Securities Act reflecting an express intent to change the common law duties broker-dealers owe to their customers, and nothing expressly authorizing the Secretary to do so by rule.

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[30] The Massachusetts Uniform Securities Act defines "broker-dealers" as those "effecting transactions" in securities. G.L. ch. 110A s 401(c). It also exempts "registered broker-dealer[s] or broker-dealer agent[s]" from the definition of "investment adviser." G.L. ch. 110A s 401(m)(1)(F).

[31] *See* Herlihy v. Civil Serv. Comm'n, 44 Mass. App. Ct. 835, 839 (1998).

[32] *See* Patsos v. First Albany Corp., 433 Mass. 323, 336 (2001) (holding that under Massachusetts common law, "general fiduciary duties" apply "only to those stockbrokers who have the ability to, and in fact do, make most if not all of the investment decisions for their customer").

[33] Eyssi v. City of Lawrence, 416 Mass. 194, 200 (1993) (internal quotation marks omitted).

For these reasons, we believe that the Regulation, in its current form, is overly broad (frustrating the legislature's statutory language and intent and overturning the common law without authorization) and exceeds the Secretary's authority.

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Our purpose is to ensure that Massachusetts preserves our ability, and the ability of others, to serve middle-income Americans who tend to have smaller amounts to invest and who need and deserve access to help. Overall, we believe that the Regulation is not necessary and if implemented would harm, and not help, Massachusetts middle-income investors. As the SEC recognized in its rulemaking, with the DOL Fiduciary Rule, firms respond to the added litigation and penalty risks, additional uncertainties and increased compliance costs by curtailing the services they offer to retail investors.[34] The Regulation is likely to have even worse consequences—potentially severely limiting brokerage services in Massachusetts, thereby forcing some investors into more expensive advisory services if appropriate and leaving others with no access to a financial professional who can help them achieve financial security and independence. Moreover, we believe the Division would exceed the scope of its authority if it finalizes the Regulation.

We respectfully request that Massachusetts withdraw the Regulation entirely in light of the new, comprehensive protections provided under the SEC Rule. Absent withdrawal, at a minimum, we request that Massachusetts:

- Clarify that the Regulation does not create a private right of action;
- Revise the Regulation to avoid creating ongoing fiduciary duties or obligations to monitor that are inconsistent with customer agreements and expectations, including by eliminating the titling provision;
- Align the duty of loyalty with the conflicts obligation under Reg. BI;
- Recognize as permissible contests, bonuses, awards, and incentives that do not preference a particular investment product or product type;

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[34] *See, e.g.*, Michael Wursthorn, *A Complete List of Brokers and Their Approach to 'The Fiduciary Rule,'* Wall St. J. (Feb. 6, 2017), https://www.wsj.com/articles/a-complete-list-of-brokers-and-their-approach-to-the-fiduciary-rule-1486413491; Greg Iacurci, *How insurers are losing when it comes to variable annuities*, Investmentnews.com (Aug. 30, 2016), https://www.investmentnews.com/article/20160830/FREE/160839998/how-insurers-are-losing-when-itcomes-to-variable-annuities; Financial Advisor IQ, *JPMorgan Halts Action as DOL Weighs Fiduciary Rule* (Apr. 13, 2017), http://financialadvisoriq.com/c/1611373/186813/jpmorgan_halts_action_weighs_fiduciary_rule?referrer_mod%20ule=emailMorningNews&module_order=0&login=1&code=YW1WdWIyTm9RSE5wWm0xaExtOXlaeXdn%20T1RZeE5EY3lNeXdnTlRFek16azVOek00; Michael Wursthorn, *J.P. Morgan Moves Ahead With Plan to Drop Commissions in IRAs*, Wall St. J. (Mar. 13, 2017), https://www.wsj.com/articles/j-p-morgan-moves-ahead-with-plan-to-drop-commissions-in-iras-1489420979; Janet Levaux, *Merrill Kills Mutual Fund Sales in IRAs; DOL Rule Sparks Move*, Thinkadvisor.com (Nov. 2, 2016), https://www.thinkadvisor.com/2016/11/02/merrill-kills-mutual-fund-sales-in-iras-dol-rule-s/?slreturn=20190123121556; Financial Advisor IQ, *JPMorgan Kills Commission IRAs as Industry Ponders Trump's DOL Stance* (Nov. 10, 2016), http://financialadvisoriq.com/c/1497033/172103/jpmorgan_kills_commission_iras_industry_ponders_trump_%20stance?referrer_module=emailMorningNews&module_order=1&login=1&code=WldaMWJtdEFjMmxtYldF%20dWIzSm5MQ0E0TkRNME56Z3pMQ0F4T1RjNE5UVXdOVGd6.

- Clarify that the Regulation does not apply to SEC-registered investment advisers or their IARs; and

- Provide sufficient time for compliance with the Regulation.

We would welcome the opportunity to meet with appropriate personnel to discuss these matters further. To the extent Massachusetts intends to proceed with this rulemaking, we would like to offer solutions that could relieve some of the potential harm. Please help us fulfill our mission of helping Massachusetts modest savers and middle-income families meet their financial goals.

We thank you for considering our comments and we appreciate the opportunity to share our thoughts regarding this rulemaking.

Respectfully submitted,

Karen L. Sukin

Executive Vice President
Deputy General Counsel
General Counsel, PFS Investments

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Addendum 1: Who We Are and Our Interests in Protecting Middle Income Consumers

A. About Primerica

We take an educational approach and offer financial tools to help our clients reach their goals. We underwrite our own term life insurance products and distribute straightforward investments sponsored by industry-leading third parties. The investment and savings products we offer comprise mutual funds, managed accounts, and annuities. Our "buy term [life insurance] and invest the difference" philosophy has generated $783 billion of term life insurance in force and $57.5 billion in assets under management for millions of middle-income families.

Our clients earn, on average, between $30,000 and $100,000 in annual household income, a category that represents approximately 50% of all U.S. households.[35] We educate customers about the long-term benefit of dollar-cost averaging through systematic investing into a diversified investment portfolio. What makes us different from the larger financial services companies, and allows us to focus on the underserved middle-income market, is that our business model allows

[35] U.S. Census Bureau, *Census Population Survey 2016 Annual Social and Economic Supplement*, last revised Aug. 26, 2016. Based upon 125.8 million households.

our representatives to accept, on a profitable basis under the brokerage model, the smaller-sized transactions typical of middle-income Americans, while providing these clients with personal services that would otherwise be out of their reach. We are proud that we created a successful business model where we can open a brokerage account, and provide client support, for an individual with as little as $25 per month or $250 to invest.

Before finalizing the Regulation, please ask the other financial services firms how they can continue to help modest Massachusetts investors under the new rules.

We know firsthand that individuals with access to a financial representative accumulate greater and more balanced assets than those without, a fact that is supported by numerous studies.[36] Consequently, we have one of the largest and most diverse salesforces in North America with approximately 25,000 brokerage licensed representatives helping over two million middle-income customers with their investment accounts.[37] Our securities representatives generally hold Series 6 and 63 FINRA registrations, and approximately 3,600 of our registered representatives are also registered as investment adviser representatives.

Our representatives serve the communities in which they live. Accordingly, they are well-acquainted with the ever-changing financial challenges facing the middle-income market. The diversity of our salesforce fully reflects the diversity of the middle-income market and continues to be both a primary strength and a goal of ours. There is no doubt that our representatives are a big reason for our success, as well as the success of many middle-income American families saving for their future needs.

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[36] *See*, *e.g.*, *The Role of Financial Advisors in the US Retirement Market*, at 17, OLIVER WYMAN (July 10, 2015), http://fsroundtable.org/wp-content/uploads/2015/07/The-role-of-financial-advisors-in-the-US-retirement-market-Oliver-Wyman.pdf (finding that, on average, individuals that use a financial representative have more assets than nonadvised individuals across all the age and income levels examined and that the differences are meaningful); Robert Litan and Hal Singer, *Good Intentions Gone Wrong: The Yet-To-Be Recognized Costs of the Department of Labor's Proposed Fiduciary Rule*, Economists Inc. (July 2015), https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00517.pdf; Claude Montmarquette and Nathalie Viennot-Briot, *Econometric Models on the Value of Advice of a Financial Advisor*, Cirano (July 2012), http://www.cirano.qc.ca/pdf/publication/2012RP-17.pdf.

[37] As of December 31, 2018 (includes 17,468 in the United States and 6,858 in Canada); 44% of licensed representatives are millennials, 31% of Regional Vice Presidents ("RVPs") are women, 21% of RVPs are African-American and 15% of RVPs are Hispanic.

Our business model is designed to allow us to reach the middle-income market in a sustainable manner. In fact, it encourages our representatives to concentrate on the smaller-sized transactions typical of middle-income clients. However, as is widely known, increased costs and risks associated with heightened regulatory requirements or legal uncertainty have induced many financial services companies to focus on more affluent clients and abandon the middle-income market.

This frailty became increasingly evident during the partial implementation of the DOL Fiduciary Rule and will be exacerbated in Massachusetts if the Regulation is finalized as proposed. This is not speculation, but fact based on the actual experiences of the industry attempting to implement the DOL Fiduciary Rule. [38]

Primerica has tailored its offering of investment products to those that are most understandable and suitable for our middle-income clients. Through PFSI, our affiliated broker-dealer, we offer open-end mutual funds and variable annuities, all from well-known and respected companies. Our platform includes off-the-shelf products with commission levels consistent with those paid to other product distributors.

We gear our financial literacy and investment services toward our middle-income customers, who oftentimes are new or less experienced investors. In this regard, we continually produce plain language educational pieces highlighting fundamental investing concepts. Our primary investing principle, which is consistent throughout our educational pieces, is the long-term benefit of dollar-cost averaging through systematic investing into a diversified investment portfolio. In addition, we emphasize the benefits of a well-structured asset allocation, which spreads investment dollars across different asset classes to reduce risk and increase returns. We encourage our clients to stay with their savings plan and take a long-term view so that they can achieve their personal financial goals.

B. Our Focus on Saving for the Future

Our investment products and principles fit hand-in-glove with the primary financial needs of most middle-income Massachusetts families and individuals, which is to establish a long-term savings plan for future financial needs, such as college tuition and retirement. In response to these needs, Primerica and its representatives have made providing savings education and information a priority. Throughout our history, we have produced and distributed hundreds of thousands of educational brochures and pieces to help American families save and invest for their futures.[39]

We introduce clients to fundamental retirement savings concepts, such as the difference between expected retirement age and life expectancy, the "Rule of 72" which produces the years required to double one's investment based on an assumed rate of return, and how inflation and rate of return affect a long-term savings plan. As a result of our efforts to educate American families about the

[38] *See, e.g.*, Clayton's Statement, *supra* note 6 ("[T]he initial implementation of the DOL Fiduciary Rule illustrated that our concerns for investor access, choice and cost are not theoretical … it was widely reported that there was a significant reduction in retail investor access to brokerage services, and the available alternative services were higher priced in many circumstances.").

[39] For example, some of the current brochures are identified as follows: How Money Works, How Money Works for Kids, Investing at Retirement; Power of Dollar-Cost Averaging; Invest for Success; and ABC's – The Basics of Investing.

need to save for the future, and to provide beneficial, cost-effective, long-term savings solutions, in just about any given year, close to three-quarters of all accounts opened by PFSI are held in retirement or education accounts (e.g., IRAs, ESAs, etc.).

The Survey of Consumer Finances (the "SCF") is conducted by the Federal Reserve Board every three years and is a leading source of data on Americans' wealth. It provides detailed information on the incidence of retirement plan ownership—a critical tool for amassing sufficient savings—and categorizes the results by different criteria, one of which is family income. In its analysis of the results of the 2013 SCF, the Employee Benefit Research Institute (the "EBRI") finds that participation in an employment-based retirement plan (either a defined benefit or defined contribution plan) is strongly linked to family income.[40] According to the EBRI's report, in 2013 the SCF shows that 67.1% of all families with an income of $100,000 or more had someone participating in a plan at a current job. But in middle-income America, with incomes below $100,000, participation is significantly lower; in 2013, just 53.5% of families with incomes ranging from $50,000 to $99,999 had a participant in a plan. In the $25,000 to $49,999 income range, participation is even lower; in 2013, the number of families with a participant in a plan at a current job was just 25.8%.[41] These results show that middle-income market families take advantage of employer-sponsored retirement plans at rates far below their more affluent counterparts.[42]

Also, the SCF takes a more inclusive look at retirement plan ownership by measuring the percentage of all families with a participant in an employer-based plan or an IRA or Keogh plan. A wide variance in participation remains. In 2013, for families with incomes of $100,000 or more, fully 93.0% had a participant in one of these plans. But for families with incomes of $50,000 to $99,999, participation drops to 81.8%, and for incomes of $25,000 to $49,999, participation drops to a lowly 58.9%.[43] Again, the lack of participation is particularly acute in the lower income range, where more than 4 out of 10 families have no retirement account or savings.

Finally, the EBRI report allows further insight by reviewing the SCF data on *total average retirement portfolio account balance* for families in any plan or IRA. The SCF categorizes all families into five net worth percentiles. The average account balances again drop off considerably in the lower three net worth percentiles. These balances are $69,144 for the 50-74.9% percentile, $18,543 for 25-49.9%, and only $10,458 for families with a net worth in the bottom 25%.[44] This data confirms what we know anecdotally that savings is ***heavily*** skewed to higher net worth families, and that everybody else needs to save more. Those families with a net worth in the

[40] *See* Craig Copeland, *Individual Account Retirement Plans: An Analysis of the 2013 Survey of Consumer Finances*, EBRI Issue Brief, no. 406, November 2014, available at www.ebri.org.

[41] *Id*. at 7 (Fig. 2).

[42] This negative trend is an ominous sign for savings in the middle-income market; Oliver Wyman recently found that 84% of more than 4,300 retail investors surveyed only began saving for retirement via a workplace retirement plan. *See* Oliver Wyman, *supra* note 35, at 5.

[43] *See* Copeland, *supra* note 39, at 10 (Fig. 5).

[44] *Id.* at 11 (Fig. 6).

bottom 50%, which would be most middle-income families, are in real financial trouble and need help.

C. Middle-Income Families Need Help to Understand the Need to Save and Invest

In the *New York Times* bestselling book "Nudge,"[45] behavioral economist Richard Thaler and law professor Cass Sunstein draw from behavioral science research to propose ways that sensible "choice architecture" (the context in which people make decisions) can successfully "nudge"[46] people toward better decisions, without giving up their freedom of choice. One of the societal problems they examine is saving for retirement, and the choices that participants make, or fail to make, inside of employer-based retirement plans. In so doing, the authors provide their insights into why saving for retirement and other future goals is such a challenge for many people:

> The standard economic theory of saving for retirement is both elegant and simple. People are assumed to calculate how much they are going to earn over the rest of their lifetime, figure out how much they will need when they retire, and then save up just enough to enjoy a comfortable retirement without sacrificing too much while they are still working.
>
> As a guideline for how to think sensibly about saving, this theory is excellent, but as an approach to how people actually behave, the theory runs into two serious problems. First, it assumes that people are capable of solving a complicated mathematical problem in order to figure out how much to save. Without good computer software, even a trained economist would find this problem daunting. The truth is that we know few economists (and no lawyers) who have made a serious attempt at doing it (even with software).
>
> The second problem with the theory is that it assumes that people have enough willpower to implement the relevant plan. Under the standard theory, flashy sports cars or nice vacations never distract people from their project of saving for a condo in Florida. In short, the standard theory is about Econs [previously described as the "textbook picture of human beings offered by economists", that "think like Albert Einstein, store as much memory as IBM's Big Blue, and exercise the willpower of Mahatma Gandhi"], not Humans [real people that "have trouble with long division if they don't have a calculator, sometimes forget their spouse's birthday, and have a hangover on New Year's Day"].[47]

We agree with the authors' opinion that the decision to save for retirement is one where most people need help (in the form of both education and encouragement) to do the right thing. The authors explain that the act of saving for retirement tests one's self-control, and that "self-control

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[45] Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, Penguin Bks. (2009).

[46] The authors define a nudge as "any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives." *Id.* at 6.

[47] *Id.* at 6 and 106.

issues often arise when choices and their consequences are separated in time."[48] This seems particularly relevant, as when a 37-year-old parent opts to put off saving for retirement, a decision that will not have consequences for 20 or 30 years, in order to buy a new car, a choice that generates immediate gratification. The authors also posit that it is particularly hard for people to make good decisions when they have trouble translating the choices they face into terms that they can easily understand.[49]

Thaler and Sunstein conclude that saving for retirement is, for most people, a hard choice, and that people need a "nudge," or help, to do the right thing. We completely agree, especially for people in the middle-income market with modest resources, where the decision to allocate current income to savings almost always giving up on a new consumer purchase or a current activity, such as a vacation or even a movie. We believe that our representatives, empowered with our educational materials, our philosophy of focusing on this market and our ability to successfully service small balance accounts, are this "nudge" helping Massachusetts residents and other American families to make the difficult decision to save on a daily basis.

D. People that Use Financial Professionals Report Better Savings Results

LIMRA Secure Retirement Institute published a Consumer Survey that shows that "advisors" (defined as paid financial professionals, such as brokers, financial planners, or advisors) add significant value to the customers they serve by encouraging them "to save holistically."[50] For nearly every identified savings goal surveyed (except vacation), LIMRA found that "advisors' customers are significantly more likely to save on a regular basis compared with people who don't consult advisors."[51]

Another study conducted by consulting firm Oliver Wyman confirms that financial representatives add substantial value to their customers' financial well-being.[52] This study focused on the role of financial representatives in the U.S. retirement system, and primarily drew upon proprietary surveys of more than 4,300 retail investors (the "Retail Investor Retirement Survey") and analysis of two datasets from IXI Services, a division of Equifax.[53] Based on the Retail Investor Retirement Survey, the study found that on average, individuals that use a financial representative have more assets than non-advised individuals across all the age and income levels examined. For example, concerning individuals with $100,000 or less in annual income (i.e., middle-income individuals), Oliver Wyman found that advised individuals have a minimum of 38% more assets than non-

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[48] *Id.* at 75.

[49] *Id.* at 74.

[50] *See Matters of Fact: Consumers, Advisors and Retirement Decisions (and Results)*, LIMRA Secure Retirement Institute, May 2015, http://www.limra.com/.

[51] *Id.* at 6. The identified savings goals were as follows: retirement (outside of the workplace), education, specific one-time large purchase (other than home), home purchase, vacation or travel, unexpected expenses/rainy day fund, home improvement, medical costs, and taxes.

[52] Oliver Wyman states that it "was engaged to perform a rigorous investigation of the role of financial advisors in the US retirement market, and quantify differences in investing behavior and outcomes between advised and non-advised individuals." *See* Oliver Wyman, *supra* note 35, at iii.

[53] *See id.* at iii-iv.

advised individuals.[54] Moreover, with respect to individuals in or approaching retirement, the differences in assets are even more significant. On average, advised individuals ages 55 to 64 had 51% more assets than non-advised individuals, and those 65 and older had 113% more assets (i.e., more than double) than the nonadvised.[55] These are meaningful differences in assets for middle-income individuals that use advisors, which should translate into significant improvements in their ability to save and invest for future goals.[56]

Oliver Wyman's analysis of the IXI dataset, representing approximately 20% of U.S. consumer-invested assets, substantiated its findings from the retirement survey. With respect to middle-income savers ($100,000 or less in annual income), Oliver Wyman found that on average, individuals who employ the services of an investment professional, like a broker, have had "at least 50% more" in total invested assets than others since at least 2006, the first year of the dataset.[57] This advantage in total invested assets rose throughout the 2009 recession and its immediate aftermath, and remained at "more than 200% more" in total invested assets from 2011 through 2013, the last year of the dataset. Clearly, the results of the study during the 2009 recession and its immediate aftermath are a testament to the benefit of receiving the assistance of a financial representative during a period of extreme market turmoil.

Oliver Wyman also found that advised individuals more often displayed investing practices "commonly associated with long term investing success," which included having more diversified portfolios, staying invested in the market by holding significantly less cash, taking fewer premature cash distributions, and rebalancing their investments to a desired asset allocation more frequently.[58]

We believe that the Regulation will have the unfortunate consequence of significantly reducing access (by undermining the viability of continuing to offer financial services through the brokerage model to this important market) to beneficial relationships with financial professionals for middle-income Massachusetts and other American households. Our focus is to ensure that these hard-working Americans will be able to save and accumulate enough assets to meet their future needs and the ability to be buy and hold investors through a brokerage relationship is a pivotal part of that focus.

E. Brokerage Services Benefit Middle-Income Investors

Buy and hold middle-income investors benefit from and prefer the simplicity of streamlined brokerage over overly complicated and expensive bundled service advisory programs for the following meaningful reasons:

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[54] *Id.* at 16.

[55] *Id*.

[56] The study states that their findings hold true, even when excluding survey respondents who anticipate receiving income from either an inheritance or trust fund.

[57] Oliver Wyman, *supra* note 35, at 17.

[58] *Id.* at 2.

- ***Paying brokerage commissions can be less expensive than paying an ongoing advisory fee.***[59] The fact is for most middle-class Americans, an investment adviser representative (fee-based advisers), if utilized, would be the most expensive way to get investment education and guidance because they are compensated to actively and continuously manage the invested assets. Middle-income investors, who typically do not have large sums of money to invest, use simple asset allocations, do not trade frequently, and have little need for extensive ongoing monitoring of their investments. As buy-and-hold investors, their investment expenses will generally be less when paying a single commission than they would be if paying ongoing annual account fees that are based on a percentage of the account's assets.

  Advisory program fees are typically higher because they support a full bundle of services including such services as ongoing portfolio monitoring and rebalancing, and more frequent meetings and consultations to discuss client investment objectives and financial circumstances.

  Below are the average financial advisor fees for fee-based accounts. These fees are exclusive of other expenses for investments held in the account, such as transactional fees and fees charged by mutual funds, index funds, or ETFs.

[59] *See, e.g.*, Staff of the U.S. Sec. & Exch. Comm'n, Study on Investment Advisers and Broker-Dealers, at 152 (Jan. 2011) (stating that investors may face increased costs if the broker-dealer exclusion were eliminated, such as where commission-based accounts would incur lower costs compared to fee-based accounts due to infrequent trading); Fee-Based Compensation, NASD Notice to Members 03-68 (Nov. 2003) (reminding members that fee-based accounts must be appropriate for customers, considering among other things the cost of the accounts compared to alternative fee structures available, such as commission-based accounts); Report of the Committee on Compensation Practices (Apr. 10, 1995), https://www.sec.gov/news/studies/bkrcomp.txt (noting commenters' views that fee-based accounts can pose higher costs for small and low-activity accounts); Office of Investor Education and Advocacy, SEC, Investor Bulletin: How Fees and Expenses Affect Your Investment Portfolio (Feb. 1, 2014), http://www.sec.gov/oiea/Article/ib_fees_expenses.pdf (demonstrating how fees can impact investments over time). *See also* Oliver Wyman, *Oliver Wyman Report: Assessment of the Impact of the Department of Labor's Proposed "Fiduciary" Definition Rule on IRA Consumers* (Apr. 12, 2011), at 21 (stating that "investors would pay an average of 73% to 196% more in direct costs in a fee-based advisory model").

Average Financial Advisor Fees | 2017 Report[60]

Investment Amounts	Average Advisor Fees (%)	Annual Advisor Averages
$50,000	1.18%	$590
$100,000	1.12%	$1,120
$150,000	1.09%	$1,635
$250,000	1.07%	$2,675
$500,000	1.05%	$5,250
$1,000,000	**1.02%**	**$10,200**
$1,500,000	0.94%	$14,100
$2,000,000	0.91%	$18,200
$2,500,000	0.88%	$22,000
$5,000,000	0.84%	$42,000
$7,500,000	0.77%	$57,750
$10,000,000	0.69%	$69,000
$20,000,000	0.65%	$130,000
$30,000,000	0.59%	$177,000

As the information above illustrates, the less a saver has to invest, the higher the fee a registered investment adviser typically charges on an ongoing basis (often in excess of 1% annually for accounts under $1,000,000).

Additionally, the average fees for fixed-fee fiduciary advisers are as follows:

Average Fixed Fees (Annual Fees Per AUM)[61]

Investment Amounts	Average Fees (Annual)
$1 - $499,999	$7,500
$500,000 - $999,999	$11,000
$1,000,000 - $1,999,999	$12,500
$2,000,000 - $7,499,999	$37,500
Over $7,500,000	$55,000

[60] *Average Financial Advisor Fees & Costs | 2017 Report | Understanding Advisory & Investment Management Fees,* AdvisoryHG, http://www.advisoryhq.com/articles/financial-advisor-fees-wealth-managers-planners-and-fee-only-advisors/.

[61] *Id.*

The average hourly rate for fee-for-services financial planning is $200 per hour for clients who do not seek an ongoing relationship. In addition to charging hourly fees, some firms charge an additional annual retainer ranging from $6,000-$11,000 per year depending on location.[62]

More modest investors typically do not use or need all of the services offered through advisory programs, and thus would be paying for these services without any benefits. However, these investors still need access to a financial professional who will answer their calls, aid them through market downturns, help them choose investments from time to time based on their financial circumstances and needs, as well as to "nudge" them to save just a little bit more to help them move closer to financial independence and security—benefits that just are not available through execution-only platforms or impersonal robo-advisers.

The Regulation risks making transactional brokerage accounts inaccessible to Massachusetts investors, forcing them to choose to pay higher fees for advisory services, where they can meet the required account minimums, or preventing them from accessing investment services and assistance from a human financial professional.

- ***Many middle-income investors cannot access fee-only advice programs.*** Access to advisory programs is typically subject to having enough assets to meet the program's account minimum. This is because investors must have sufficient assets to implement the program's investment guidelines and asset allocations, and the assets must generate sufficient fees for the investment firm to support the services provided through the program, plus compensating the representative for the time and commitment necessary to educate the client in regard to the engagement. Further, it is well-understood that advisers who charge fees for services only have time to service a limited number of clients because of their ongoing obligation to meet with each client and manage their assets. Recognizing this, most fee-based financial advisers exclusively seek out and prefer affluent individuals who are likely to be more worth their limited time. Because fees earned are based on assets under management, 80% of fee-based advisers aim to serve individuals with at least $250,000 in assets.[63] Those who do serve individuals with less assets often have high account minimums, such as $50,000 or higher.[64]

  Without access to a brokerage representative, many middle-income investors with small amounts to invest will not be eligible for advisory services and because of the different economics between the brokerage and advisory models, representatives have little to no incentive to actively and personally solicit small balance middle-income investor accounts.

  By eliminating access to assistance from a financial professional through a brokerage account, the Regulation will leave middle-income investors who are not eligible for advisory services with a choice of execution only or online self-help robo-advice—vehicles

[62] *Id.*

[63] *Financial Planning for the Middle-Class*, Kiplinger, August 2011, http://www.kiplinger.com/article/retirement/T023-C000-S002-financial-planning-for-the-middle-class.html.

[64] Karen Damato, *3 Reasons to Pay Commissions, Not Fees, to a Financial Adviser*, Wall St. J., Feb. 18, 2015, https://blogs.wsj.com/totalreturn/2015/02/18/3-reasons-to-pay-commissions-not-fees-to-a-financial-adviser/.

that do not offer the one-on-one help and encouragement a financial professional can provide to an individual or family trying to achieve financial independence and security.

- ***Some investors prefer to pay commissions.*** Some investors do not desire, or want to pay for, ongoing advisory services and prefer to pay only for the services they use, when they use them. Fees are charged for advisory services for so long as the investor holds assets in the advisory account, regardless of whether he or she uses the all of the services in the bundle.

The Regulation has the potential to significantly reduce or eliminate brokerage in Massachusetts in favor of advisory services, depriving ordinary Massachusetts residents of access to financial professionals who offer, and are compensated for, investment services on a transaction basis. Massachusetts residents who meet the account minimum will be forced into a more expensive and less-efficient method of receiving financial advice. As such, the Regulation is likely to prevent many middle-income investors from accessing affordable help and assistance with choosing investments and saving for their future.

Addendum 2: Summary of Broker-Dealer and Adviser Obligations to Retail Investors Under SEC Rulemaking

Obligation	Broker-Dealers	Investment Advisers
Act in the best interest of the investor	Yes, at the time of the recommendation	Yes, over the course of the relationship
Do not put interests ahead of the investor's interests	Yes, at the time of the recommendation	Yes, over the course of the relationship
Understand risks, rewards, and costs	Yes	Yes
Understand investor's investment profile	Yes	Yes
Address conflicts	• All conflicts must be *disclosed or eliminated* • *Mitigate* conflicts that create an incentive for a representative to place firm's or representative's interests ahead of investor's interests • *Disclose and prevent* platform limitations from causing broker-dealer (or representative) to place interests ahead of investor's interests • *Eliminate* sales contests, quotas, bonuses, and non-cash compensation based on sales of specific securities or specific types of securities within a limited time period	• All *material* conflicts must be *disclosed or eliminated* • Conflicts that cannot be fully and fairly disclosed should be *eliminated or mitigated* such that full and fair disclosure and informed consent are possible
Disclose material facts about the relationship	Yes	Yes
Deliver Form CRS Relationship Summary	Yes	Yes
Provide ongoing advice and monitoring	No, unless agreed	Yes, unless agreed to limited scope arrangement