



Sent by email: securitiesregs-comments@sec.state.ma.us

January 7, 2020

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: Concerns regarding proposed fiduciary conduct standard

Dear Secretary Galvin:

On behalf of the thousands of Massachusetts businesses that Associated Industries of Massachusetts (AIM) represents, we appreciate the opportunity to comment on the proposed “Conduct Standard for Broker-Dealers, Agents, Investment Advisors, and Investment Advisor Representatives impacting the state’s fiduciary conduct standards”¹ (“Proposal”).

AIM submitted comments regarding the preliminary proposal in July 2019. We wish to reiterate our serious concerns regarding this proposal and urge that you delay issuing a final rulemaking until implementation of the Securities and Exchange Commission’s (“SEC”) Regulation Best Interest (“Reg BI”). We believe that the proposal is unworkable and could have negative implications for those the proposed rule seeks to protect among other negative impacts to the Massachusetts economy.

Following many years of substantive review, debate, study and analysis the SEC adopted Reg BI on June 5th, 2019, to create a uniform and thoughtful approach to raising the standard of care for broker-dealers (“BD”) while maintaining choice and access for all investors. Reg BI substantially raises the bar from existing suitability standards and adds meaningful new investor protections. It provides significant and material changes to the way brokerage services will be provided and impacts nearly every aspect of a broker-dealer’s operations.

We would strongly encourage Massachusetts to allow Reg BI to be fully implemented before moving forward with a state-specific fiduciary rule. We believe that once Reg BI is fully operational and the Division and other regulators begin examining for compliance, the Division will find that Massachusetts investors are receiving substantial additional protections while continuing to have access to the numerous choices and opportunities that they have today.

¹ <http://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryconductstandardidx.htm>

We support strong and efficient regulations of financial services to ensure a balanced regulatory regime for the industry and investors. These goals, however, cannot be achieved on a state-by-state basis through a patchwork of conflicting state regulations that differ materially with respect to one another as well as to federal regulations. We are concerned that the Massachusetts proposal will have several unintended consequences, including higher costs for investors, less access to investment options, investor confusion, compliance challenges, and unnecessary costs for state and local government entities.

The impending impact of Reg BI is significant and material for both businesses and investors. The implementation process will be critical for the industry, investors, and states to achieve new compliance thresholds. The SEC has publicly stated that it will take this time and has committed resources to seek feedback from the public on how to implement the new rule.²

We would also observe the following regarding the proposed fiduciary conduct standard and why Massachusetts should allow Reg BI to be fully implemented before proceeding with any rule making:

- The Proposal would result in higher fees, less access to brokerage services, and does not address cross border issues, creates great risk of errors and confusion, gaps in advice due to inconsistencies between state and federal rules, and broker-dealers could be prohibited from providing any advice regarding Individual Retirement Accounts (IRAs).
- The Proposal could significantly disrupt the state's bond market and underwriting process, leading to new costs for governmental entities. As drafted, BDs are required to "avoid conflicts of interest" which include principal transactions, the process by which a BD will buy a security from or sell a security to, the account of a client. This is a frequently used process that controls costs for clients because the BD does not have to rely on a secondary market to make a transaction. If principal transactions are considered a conflict of interest, financial services firms may be forced to withdraw from the underwriting process or sell bonds in the secondary market.
- The Proposal creates several problematic conflicts with federal law, such as the Employee Retirement Income Security Act of 1974 ("ERISA"), in addition to new duties and standards creating confusion in the industry and disrupting investor access to transaction-based financial services. Different standards would significantly increase cost and may either make services unaffordable for some Massachusetts small businesses and residents or require financial institutions to limit or eliminate the availability of their services to a variety of Massachusetts small businesses and residents seeking access to investment and retirement services. Therefore, we would encourage the Division to provide clarity so that it cannot be misinterpreted, especially as it relates to any activity on behalf of an employee benefit plan subject to ERISA.
- The Proposal does not consider Executive Order "EO" 562, to reduce unnecessary regulatory burden. EO 562 was issued to state agencies and also invited other state and Constitutional officers not covered by the Executive branch to review regulations in light of several factors especially rules that exceed federal law and rules that may have an "unduly and adverse" impact on citizens and customers of the Commonwealth. We would urge that this proposal be reviewed in light of EO 562 especially Section 3

² <https://www.sec.gov/news/press-release/2019-89>

(d) (c) (e) in light of the impending federal Reg BI rules.³

We believe that investors in Massachusetts would be better served by coordinated and complementary Federal and state regulation than by protracted litigation resulting from overbroad state regulations. We request the Massachusetts Securities Division wait to evaluate the SEC's Reg BI before proceeding with any rulemaking.

Should you have any questions please feel free to contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "John R. Regan". The signature is written in black ink and is positioned above the typed name and title.

John R. Regan
President & CEO
Associated Industries of Massachusetts (AIM)

³ <https://www.mass.gov/doc/executive-order-no-562/download>