COMMONWEALTH *financial network*®

January 7, 2020

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

Office of the Secretary of the Commonwealth
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Re: Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives; proposed amendments to 950 CMR 12.204 and 950 CMR 12.205 and proposed 950 CMR 12.207

Dear Secretary Galvin:

I am writing on behalf of Commonwealth Financial Network ("CFN" or "Company") regarding the above referenced fiduciary conduct standard (the "Proposal") recently re-proposed by the Massachusetts Securities Division (the "Division"). CFN is dual registered as a FINRA member broker-dealer and an SEC-registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California. We conduct business in all fifty states and have approximately 2000 independent contractor registered representatives. Over 300 of our representatives and their approximately 400 employees live and work in Massachusetts. As small business owners, the independent financial representatives affiliated with CFN are an integral part of their communities. They provide brokerage and/or advisory services to thousands of Massachusetts individuals, families, small businesses, organizations, and retirement plans. Given the significant impact the Proposal will have on our Company and representatives, we would like to comment on several specific aspects of the Proposal.

CFN and its representatives provide recommendations of investment products and investment advisory services throughout the country. We are deeply concerned that the Proposal conflicts with federal standards and will create complicated and conflicting duties and disclosure requirements. The Proposal will undermine and materially conflict with Regulation Best Interest ("Reg BI") and the disclosures required by Form CRS. State by state standards is unnecessary, considering the increased investor protections provided by Reg BI and will undoubtedly reduce access to transaction-based recommendations. Conflicting state standards will adversely impact our Company's ability to draft disclosures that are reasonably easy for Massachusetts investors to understand. Conflicts between the Proposal and Reg BI will result in additional costs and confusion for investors.

Ultimately, conflicting state standards will cause numerous firms and their representatives to limit, and perhaps even eliminate, offering the types of products and services that are critically needed by "Main Street" investors in Massachusetts. For many smaller investors with less sophisticated needs, a brokerage account is the most appropriate and cost-effective solution. Additional state regulation that increases cost

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and risk to representatives will likely result in representatives not being able to provide this option to investors cost-effectively. Many smaller investors working to save for retirement will not have the option of receiving advice from a trusted relationship and will be left to navigate the complexities of saving for retirement on their own.

Since June, a team of CFN employees has spent long hours working to implement the requirements of Reg BI, including drafting and preparing for the distribution of Form CRS and modifying client agreements and other specific disclosures. Reg BI creates a high standard of conduct that significantly expands client disclosures and imposes strong "best interest" duties on broker-dealers and representatives. Further, Reg BI provides firms with an ability to give investors a choice as to how they receive products and services by allowing securities transaction-based accounts that do not impose on-going monitoring responsibilities unless specifically agreed to by the parties. Reg BI's approach of ensuring that any person who uses titles such as "financial advisor" must be registered as an Investment Adviser Representative is the correct approach.

The vast majority of CFN's representatives are dually registered. It is not unusual for their clients to have brokerage account investments as well as an advisory account. The Proposal as written would impose a duty to monitor brokerage accounts and direct ("application-way") investments for clients having both types of accounts since on-going advisory services are being provided to the client. The Proposal incorrectly equates an on-going relationship with an on-going fiduciary duty. Moreover, because CFN's dually registered representatives routinely use the title "financial advisor" or "planner," an ongoing duty to monitor commission-based, point-of-sale transactions will be required under the Proposal.

Dodd-Frank preserved transaction-based compensation and rejected on-going monitoring of investments by broker-dealers and their representatives. Many investment products provide compensation over time, even though the financial product recommendation is linked to a specific individual transaction, e.g., a mutual fund that pays trail compensation. The Proposal directly conflicts with Dodd-Frank on this point.

Unlike monitoring services provided by investment advisers for which the adviser receives ongoing fee-based compensation, monitoring of transaction-based accounts held by clients who also have advisory accounts or the monitoring of transaction-based accounts because our dually registered representatives are commonly referred to as "financial advisor" or "planner" will require both the Firm and our representatives to provide uncompensated ongoing monitoring services. Form CRS and CFN's client agreements will provide clear disclosures clarifying the roles and responsibilities of dual registrants who provide both transaction-based and advisory services. The Proposal should be modified to conform to Reg BI and allow transaction-based accounts without ongoing monitoring, as discussed herein.

Conflicts of interest are inherent in most businesses. Reg BI's language was intentionally modified to omit a "without regard to" standard as a result of the realization that such a standard would be construed inappropriately to require a broker-dealer to eliminate all conflicts when making a recommendation. The "without regard to" standard effectively prohibits firms and/or representatives from considering any other interest. Claimants and litigants in future legal actions could easily assert that the broker-dealer or representative considered another factor and, by so doing, violated the Massachusetts standard of care. Both firms and their representatives could be left to defend their motivations and actions, even when the actual recommendation provided was in the client's best interest.

Reg BI's Disclosure Obligation requires a broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to disclose, mitigate, or eliminate conflicts. The Proposal requires representatives to "make all reasonably practicable efforts" to avoid or eliminate conflicts of interest and to mitigate unavoidable conflicts. It is unclear as to how firms and representatives can

determine and document how they have considered "all" reasonably practicable alternatives. As currently written, the duty of loyalty presumption in the Proposal ignores the concept of obtaining informed consent through material conflict of interest disclosures and doesn't presumptively satisfy the duty of loyalty. Reg BI already requires that broker-dealers mitigate conflicts that result from compensation to representatives, not merely disclose them. The language in the Proposal conflicts with existing federal securities law as well as Reg BI and should be modified.

The language in the Proposal regarding sales contests, sales quotas, bonuses, and non-cash compensation extends beyond the language in Reg BI and creates a presumption that virtually any special incentive program violates the duty of loyalty. The language in the Proposal is overly broad, and the key teams used are undefined. The Proposal language should conform to Reg BI. We agree that prohibitions regarding sales contests based on specific investment products are appropriate and that firms should use reasonable and neutral measures of performance and productivity in incentive programs.

The current Proposal is particularly harsh for a dual registered Firm such as CFN, and its many dual registered representatives. This is particularly unfortunate since CFN representatives are some of the most well educated and experienced in the industry. Our representatives offer a significant amount of choice to clients regarding products and services based on each client's unique situation, including how those clients choose to pay for and receive those products and services. Maintaining a meaningful distinction between broker-dealer transaction-based roles and responsibilities from the roles and responsibilities inherent in an investment advisory relationship is of critical importance to CFN, our representatives, and our clients. A broker-dealer relationship is fundamentally different from the relationship between an investment adviser and its clients and serves different purposes and needs of investors.

As discussed above, CFN is currently engaged in a significant undertaking to comply with the federal requirements of Reg BI and Form CRS by June 30, 2020. We urge the Division to delay enacting the Proposal until Reg BI has been in effect for a period to provide time to assess its effectiveness. If, after that time, the Division decides to move forward with the Proposal, it is vital that the Proposal is modified as discussed herein. State by state regulation cannot achieve effective and efficient regulation of the financial industry and will significantly raise costs for smaller investors. We strongly urge the Division to reconsider moving ahead with the Proposal. If the Division determines to implement the Proposal, the effective date should be extended by at least 18 months to allow Firms adequate time to modify systems, agreements, and disclosures, and to prepare and train representatives and staff regarding the final Proposal's requirements.

Thank you for your consideration of our comments and concerns.

Very truly yours,

James Adelman

James Adelman
Senior Vice President, General Counsel