



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

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

Re: Comments on Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives (the “Proposal”)¹

Dear Secretary Galvin:

As noted in our prior comment letter filed July 29, 2019 in response to the Division’s Preliminary Solicitation of Public Comments for an earlier version of the Proposal (the “Preliminary Proposal”), Fidelity Investments² (“Fidelity”) believes that the Massachusetts Division of Securities (the “Division”) has been an effective protector of consumer rights under your leadership and has battled fraud and other forms of misconduct by broker-dealers and investment advisers. We applaud those efforts, particularly in light of our substantial presence and investment in the Commonwealth. This Proposal, however, will add no material protection to Massachusetts consumers and will instead impact consumers’ investment choices, services and costs. Consumers already enjoy substantial benefits and protections under the numerous laws, rules and regulations (including Regulation Best Interest (“Reg BI”)) that govern the activities of broker-dealers and investment advisers. Those rules were carefully developed over time to balance the need for investor protection, investors’ right to choose investment services and products that best meet their needs and financial circumstances, and the efficient operation of our securities markets. The Proposal would disrupt this balance.

Given our longstanding and ongoing commitment to the needs and interests of our customers and the investing public, Fidelity has long supported a requirement that broker-dealers and investment advisers act in the best interest of retail investors when providing investment advice. This is evidenced by Fidelity’s active engagement in the regulatory discussions on the standard of conduct for broker-dealers and investment advisers since 2013, which culminated in

¹ Available at: <https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/Regulations-as-amended-clean.pdf>

² Fidelity was founded in 1946 and is one of the world’s largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and many other financial products and services to more than 27 million individuals and institutions, as well as through 12,500 financial intermediary firms. Fidelity submits this letter on behalf of Fidelity Brokerage Services LLC, an SEC-registered introducing broker-dealer and FINRA member; National Financial Services LLC, an SEC-registered clearing broker-dealer and FINRA member; and SEC-registered investment advisers Fidelity Personal and Workplace Advisers LLC, Strategic Advisers LLC, and Fidelity Management & Research Company, the investment adviser to the Fidelity family of mutual funds.



our support for the Securities and Exchange Commission’s (“SEC”) adoption of Reg BI.³ Reg BI provides a strong, clear, practical and workable fiduciary standard for the provision of investment advice to retail customers.

We appreciate the opportunity to provide comments to the Division on the Proposal. Our comments below reflect our concern that an attempt to impose a Massachusetts-specific standard that conflicts with Reg BI would adversely impact Massachusetts residents. Reg BI was designed to address the concerns identified by the Division while continuing to allow consumers to choose how they want to receive and pay for financial services. We would urge the Division to evaluate the benefits of Reg BI once that federal rule has been implemented and then determine whether any additional action needs to be taken.

Notwithstanding our confidence that Reg BI will well serve the needs of Massachusetts customers, to the extent the Division believes that there are gaps in Reg BI it would be in the best interests of all concerned to discuss the Division’s concerns and attempt to find solutions that are consistent with existing laws. Such discussions could be conducted promptly and efficiently, giving voice to all affected parties—customers, businesses, and the Division.

Fidelity’s Long History of Serving Massachusetts Customers and Strong Commitment to the Commonwealth

Fidelity’s core mission is to assist our customers in achieving their financial goals. Fidelity serves more than 2.1 million individual Massachusetts residents, administering \$352.2 billion in assets. Fidelity also administers \$49.7 billion on behalf of Massachusetts-based institutions, with total administered assets of \$401.8 billion. Over 560,000 Massachusetts households have a Fidelity retail brokerage account, while nearly 45,000 households have a retail advisory account. Fidelity administers retirement plans for over 2,100 Massachusetts employers and nearly 820,000 Massachusetts workplace plan participants. Fidelity also manages the Massachusetts 529 college savings and ABLÉ programs.

In addition, Fidelity has been headquartered in Massachusetts since its inception in 1946 and has maintained a strong community and civic presence ever since. Fidelity operates a major home office base in multiple office locations in Boston, as well as nine Investor Centers throughout the Commonwealth to service the needs of Massachusetts residents. Fidelity has 8,300 employees who are Massachusetts residents, and between our home office locations and Investor Centers, Fidelity leases or owns over 1.6 million square feet of office space in Massachusetts.

³ Public Statement by SEC Chairman Jay Clayton: *Regulation Best Interest and the Investment Adviser Fiduciary Duty: Two Strong Standards that Protect and Provide Choice for Main Street Investors* (July 8, 2019), available at <https://www.sec.gov/news/speech/clayton-regulation-best-interest-investment-adviser-fiduciary-duty> (the “2019 Public Statement”); and Securities and Exchange Division, *Duties of Brokers, Dealers and Investment Advisers* Release No. 34-69013 (March 1, 2013) (Fidelity comments available at <https://www.sec.gov/comments/4-606/4606-3117.pdf>).

The Importance of Having a Choice Between Brokerage Accounts and Advisory Accounts

Fidelity, like many other financial service providers, offers two relevant types of accounts for retail investors to choose from:⁴ advisory accounts and brokerage accounts. These accounts differ in material ways, including with respect to costs, ongoing account monitoring, and trade decision-making. Investors who choose an advisory account seek ongoing advice or portfolio monitoring along with discretionary trading and agree to pay a separate fee for that advice. Investors who choose a brokerage account, on the other hand, seek to manage their own investments and receive advice from time to time. No separate fee is charged for this point-in-time brokerage advice. The table below reflects some of the key differences between brokerage accounts and advisory accounts:

Account Activity	Brokerage	Advisory
Trading authority	Account owner	Investment adviser
Investment advice	Periodically, as requested by the customer. Any advice is incidental to the brokerage transactions effected for the account	Regular/ongoing
Account monitoring	No, but information regarding the account may be provided periodically and is incidental to the brokerage transactions effected for the account	Regular/ongoing
Fee for advice	No	Yes, ongoing fee for advice

A customer's securities holdings, need for brokerage and/or investment advisory services, and preferred fee structure for financial services can vary over time. For example, an investor may seek advice when starting a college savings fund or changing jobs and may be interested in receiving advice at that point in time only. In a brokerage account model, customers can receive that sort of advice without charge; if the customer then decides to act on the advice and executes securities trades, she would incur only transaction costs associated with those trades.⁵ On the other hand, customers may prefer to have their portfolio managed on a discretionary basis by a team of

⁴ Fidelity offers several account types to choose from, including non-retirement, retirement, Health Savings Accounts, and 529 college savings. However, we focus here primarily on the most relevant impacts of the Proposal to the general classifications of brokerage and advisory accounts.

⁵ Fidelity now charges no commissions for online and mobile transactions in ETFs and U.S. equities to its brokerage retail clients, resulting in most trades for retail brokerage customers being executed on a commission-free basis. Please see [Fidelity.com/commissions](https://www.fidelity.com/commissions) for additional details.

professionals who evaluate the market, make trading decisions on their behalf and provide regular account performance and portfolio information. Many customers often have both types of accounts: a brokerage account for some of their assets, and a discretionary advisory account with ongoing monitoring and asset-based fees for others. Fidelity believes that there are benefits to both types of accounts, and that it is imperative to preserve that choice for investors. Congress clearly recognized the importance of both models in the Investment Advisers Act of 1940 (“Investment Advisers Act”) by providing broker-dealers the ability to provide advice incidental to brokerage transactions without charging a fee. To the extent the Proposal conflates the duties and responsibilities of broker-dealers and investment advisers or otherwise preferences the advisory model, it may result in broker-dealers limiting or changing brokerage services offered to Massachusetts customers.

The SEC’s formulation of Reg BI was guided, in significant part, by the recognition that preserving customer access to both investment advisory and brokerage services is critical. As the SEC noted in its release of Reg BI, “we believe that our approach in adopting Regulation Best Interest will best achieve the Commission’s important goals of enhancing retail investor protection and decision making, while preserving, to the extent possible, retail investor access (in terms of choice and cost) to differing types of investment services and securities.”⁶ This was further emphasized by SEC Chairman Jay Clayton, who stated: “Under our approach, Main Street investors will be able to choose the type and level of services they want—from occasional recommendations about particular investments to comprehensive account management—and how they want to pay for those services. I do not believe that a ‘one size fits all’ approach would best serve the diverse interests of our Main Street investors. Further, I believe in this area, a one-size fits all approach could reduce the availability and increase the cost of advice and services, particularly for those with relatively smaller accounts.”⁷ It is essential that any state regulation also preserve investor choice, including account type and cost structure, for Massachusetts consumers.

Regulation Best Interest Provides a Strong and Workable Standard of Conduct that Requires More than Disclosure

As noted, it has long been Fidelity’s view that broker-dealers and investment advisers should act in retail investors’ best interest, and that a standard embracing this obligation would benefit both retail investors and the financial services industry.⁸ We have therefore commended

⁶ See “Regulation Best Interest: The Broker-Dealer Standard of Conduct,” Final rule, Release No. 34-86031; File No. S7-07-18, found at <https://www.sec.gov/rules/final/2019/34-86031.pdf>, page 636.

⁷ 2019 Public Statement by SEC Chairman Jay Clayton, <https://www.sec.gov/news/speech/clayton-regulation-best-interest-investment-adviser-fiduciary-duty>.

⁸ Fidelity has actively engaged for many years in regulatory discussions on the standards of conduct for broker-dealers and investment advisers. We responded to the SEC’s 2013 Request for Data and Other Information, (Securities and Exchange Division, *Duties of Brokers, Dealers and Investment Advisers* Release No. 34-69013 (March 1, 2013) (Fidelity comments available at <https://www.sec.gov/comments/4-606/4606-3117.pdf>); the SEC’s June 2017 Request for Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers, Public Statement by SEC Chairman Jay Clayton: *Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-*

the SEC for its efforts to develop thoughtful, comprehensive proposals through a thorough and inclusive process, which resulted in the adoption of Reg BI. Reg BI provides strong and consistent standards across account types and services, including brokerage accounts and advisory accounts, as well as retirement and non-retirement accounts. In fact, we believe there is no meaningful difference between Reg BI’s standard of conduct for broker-dealers and the fiduciary standard for investment advisers—in both, the customer’s interests must always come first. The table below compares the standards under Reg BI and the Investment Advisers Act.

Standard	Reg BI	Investment Advisers Act
Standard of Conduct	Standard is to act in a customer’s best interest and the broker-dealer must not put its interests ahead of the customer’s interests	Imposes a fiduciary standard of care and the investment adviser must not put its interests ahead of the customer’s interests
When Standard of Conduct is Applicable	Episodic; duty exists at the point in time in which advice is given	Ongoing ⁹
Handling of Conflicts	All conflicts must be identified and disclosed; conflicts that create an incentive for a representative to place firm’s or representative’s interests ahead of investor’s interests must be mitigated; disclose and prevent platform limitations from causing broker-dealer (or representative) to place interests ahead of investor’s interests; sales contests, quotas, bonuses, and non-cash compensation based on sales of specific securities or specific types of securities within a limited time period must be eliminated; requires robust written policies and procedures to assess and manage conflicts of interest	An investment adviser must eliminate or make full and fair disclosure of all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which is not disinterested such that a customer can provide informed consent to the conflict or potential conflict

Dealers (June 1, 2017), available at <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31> (the “2017 Public Statement”) (Fidelity comments available at <https://www.sec.gov/comments/ia-bd-conduct-standards/cl4-2216673-160638.pdf>); and we provided extensive comments to the Department of Labor (“DOL”) on its Fiduciary Rule (“DOL Fiduciary Advice Rule”) *Fidelity Investments* comment letter submitted July 21, 2015 at: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00658.pdf>; *Fidelity Investments* comment letter submitted September 24, 2015 at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03089.pdf>; *Fidelity Investments* comment letter submitted April 17, 2017 at: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01385.pdf>; and *Fidelity Investments* comment letter submitted August 7, 2017 at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00545.pdf>. Fidelity has long advocated for the SEC to develop standards of conduct for broker-dealers and investment advisers when providing investment advice to retail investors. See Letter to Ms. Elizabeth M. Murphy Re: Duties of Brokers, Dealers and Investment Advisers, Release No. 34-69013; IA-3558; File No. 4-606 (July 5, 2013); Letter to The Honorable Jay Clayton Re: Standards of Conduct for Investment Advisers and Broker-Dealers (August 11, 2017).

⁹ Per the Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers, the fiduciary duty under Investment Advisers Act includes the duty to provide advice and monitoring “at a frequency that is in the best interest of the client, taking into account the scope of the agreed relationship.”

In our view, Reg BI establishes an effective framework for broker-dealers to address potential conflicts of interest and significantly advances the goal of ensuring that retail investors understand any applicable fees, services and obligations. Reg BI imposes an enhanced, but practical, standard of conduct on broker-dealers, tailored to the brokerage business model. We believe this standard significantly extends broker-dealers' existing obligations under the Securities Exchange Act of 1934, as amended, and FINRA's rules.¹⁰

Reg BI will become effective later this year. We therefore respectfully request that the Division withdraw the Proposal until it can evaluate the benefits of Reg BI for Massachusetts consumers and the marketplace and whether additional regulation is needed. If the Division proceeds with the Proposal as currently drafted, we believe it could have the unintended consequence of reducing services and/or increasing costs for Massachusetts investors. That is directly contrary to what we believe is the Division's goal.

Concerns with the Proposal

The Proposal in its current form raises several significant concerns. Many of these issues are described in detail in the comment letter submitted by the Securities Industry Financial Markets Association ("SIFMA") in regard to the Preliminary Proposal on July 26, 2019, and in regard to the Proposal on January 6, 2020.¹¹ We wish to highlight the following critical issues.

1. Unintended consequences.

The Proposal raises a myriad of questions. For example, there are many questions related to the Proposal's ongoing duty to monitor, including what activity would cause it to apply and what steps are required to satisfy that duty. Broker-dealers may have a practice of sending out helpful reminders to customers to take certain actions that could be beneficial to customers from a tax perspective, such as an annual reminder to customers that they have not yet reached their IRA

¹⁰ Reg BI Proposal at 21640-1.

¹¹ In particular, Fidelity notes that as a matter of law the Proposal does not and cannot apply to federally-registered investment advisers and their investment adviser representatives. We respectfully suggest that the Secretary avoid unnecessary disputes by confirming that he is not seeking, by this rule, to regulate in a manner contrary to what the law permits.

contribution limits and are therefore missing out on potential tax benefits, or have not yet taken their Required Minimum Distribution and might be subject to tax penalties. Additionally, broker-dealers routinely provide information to customers who have elected to have margin accounts regarding their outstanding margin balance and amounts available to trade. These are important notices that customers value. Surely the Division does not intend to discourage brokers from sending these notices by suggesting that they create an ongoing duty to monitor. But Section 1(5) of the Proposal, as written, may have that counter-productive impact, if some brokers fear that ongoing monitoring duties have somehow been created.

In addition, Section 1(c) of the Proposal states that the use of a number of common industry titles, including but not limited to “financial planner” and “retirement consultant” will create an ongoing fiduciary relationship with a customer that requires regular or periodic monitoring. It is unclear how the use of a title alone could reasonably create an expectation that such monitoring would be provided. Many customers will only receive advice on a one-time or sporadic basis and the title used by their financial professional will not change the content or point-in-time nature of that advice.

In Section 1(b)(4), the Proposal states that a fiduciary duty is imposed for so long as a broker-dealer “receives ongoing compensation” for services that are an “integral component of other financially related services” regarding advising the purchase or sales of securities. We urge the Division to clarify that this provision does not mean that the receipt of 12b-1 fees, service fees, or any other ongoing compensation that results from a transaction, would create an ongoing fiduciary duty. These fees are received as a result of the structure of the securities themselves, even when no advice is provided by the broker-dealer at all.

If the Proposal requires a broker-dealer to monitor a customer’s account “on a regular or periodic basis” to fulfill an ongoing fiduciary duty, many broker-dealers may avoid incurring that obligation by refraining from providing advice in the first place. While broker-dealers can provide limited account monitoring, they are prohibited under Section 202(a)(11)(C) of the Investment Advisers Act from providing ongoing advice and monitoring, or charging for such services, without registering as an investment adviser. That is a role reserved for investment advisers and is one of the reasons that investors choose to pay a fee for investment advisory services.

The Investment Advisers Act provides a limited exemption from investment adviser registration for broker-dealers giving advice only if the “performance of such services is solely incidental to the conduct of his business as a broker or dealer” and no “special compensation” is received for such advice.¹² The SEC has made clear that broker-dealers cannot commit to provide ongoing account monitoring and advice because such services are a primary advisory function that is not “solely incidental” to a brokerage business. In the “Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser,”¹³ the SEC states that Section 202(a)(11)(C)’s exemption would “*not permit a broker-*

¹² See Section 202(a)(11)(C) of the Investment Advisers Act.

¹³ Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser, SEC Release No. IA-5249, found at: <https://www.sec.gov/rules/interp/2019/ia-5249.pdf>.

dealer to agree to monitor a customer account in a manner that in effect results in the provision of advisory services that are not in connection with or reasonably related to the broker-dealer's primary business of effecting securities transactions, *such as providing continuous monitoring.*" (Emphasis added). As Chairman Clayton explicitly noted in his 2019 Public Statement, "let me be clear about what such a requirement would mean: *imposing an ongoing monitoring obligation would effectively prohibit brokers from providing retail customers with advice without registering as investment advisers.* Again, that would mean less access and choice, and higher costs, for retail customers."¹⁴ (Emphasis added).

In short, requiring broker-dealers to provide the same monitoring as investment advisers, without a fee, would likely cause broker-dealers to lose their statutory exclusion from the Investment Advisers Act and threaten free investment advice incidental to brokerage transactions. This Proposal runs the risk of causing Massachusetts investors to lose choice and see increased costs. We do not believe this was the Division's intent.

2. The requirement to "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" is in conflict with the mitigation and disclosure construct established by Reg BI.

In creating Reg BI, the SEC recognized that there are certain unavoidable conflicts inherent in the brokerage business model. These conflicts primarily arise because broker-dealers sell a variety of proprietary and third-party products with fundamentally different cost structures and fees, as well as products primarily sold on a principal basis (e.g., underwritten securities, including municipal bonds). Accordingly, Reg BI permits broker-dealers to use clear disclosure to mitigate conflicts where appropriate. The Division, however, explicitly states that the disclosure or mitigation of conflicts alone would not suffice under its fiduciary requirements. This requirement is not only in direct conflict with Reg BI, but also would impose a higher duty than is required under the Investment Advisers Act, which allows fiduciary investment advisers to manage most conflicts of interest through customer disclosures and informed consent.

We do not believe that the Division intends to require that broker-dealers cease offering products and services through a transaction-based, commission fee business model or engaging in underwriting activities or issuing proprietary products, and we request that the Division clarify this. For example, Principal trading, by its nature, presents a conflict of interest, as the broker-dealer is selling securities from its inventory to the customer. Reg BI acknowledges this market structure and permits the conflict to be mitigated through clear disclosures. If the Proposal prohibits the use of disclosure to mitigate conflicts, investors may not receive advice regarding their municipal or other bond portfolios. As a consequence, demand for municipal bonds would likely decrease, making it more expensive for municipal bond issuers to raise revenue.

Similarly, Fidelity offers various proprietary mutual funds, including a series of zero expense ratio funds to Massachusetts consumers and we do not believe that the Division intends to prohibit the offering of these securities. We also serve as the plan sponsor to the U.Fund College

¹⁴ 2019 Public Statement by SEC Chairman Jay Clayton, <https://www.sec.gov/news/speech/clayton-regulation-best-interest-investment-adviser-fiduciary-duty>.

Investing Plan, which is Massachusetts' 529 Plan. For tens of thousands of Massachusetts parents who need to save money for their children to attend college, a 529 plan is among the smartest, most tax-efficient education savings options available. We do not believe that the Division intends to discourage Fidelity, the plan sponsor, from being able to recommend to parents that they invest in the Massachusetts 529 Plan for their children's college savings.

We further note that Section 2(b)(3) of the Proposal requires firms to "make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer or client." This standard is unworkable. While we agree that a firm should put the interests of its customers first, as is required by Reg BI and the Investment Advisers Act, this language goes further and could be viewed to require a broker-dealer to eliminate all of its conflicts. This same language was considered and rejected by the SEC to make clear that broker-dealers are not required to provide conflict-free recommendations but, rather, must act in their clients' best interest while mitigating conflicts. In addition, this language was also part of the now vacated Department of Labor ("DOL") Fiduciary Advice Rule.

The Proposal Would Negatively Impact Massachusetts Investors

The provision of brokerage services, including the availability of incidental investment advice offered without a fee, is a vital resource for Massachusetts investors who have elected to open a low-cost brokerage account. These customers generally prefer to make their own investment decisions and want to invest in the wide range of products that are available in a brokerage offering. To the extent that the consequences of the Proposal result in operational costs, challenges, and restrictions on the brokerage model—including restrictions and duties that are beyond those of fiduciary investment advisers—we believe that investor choice will be negatively impacted. The now-vacated DOL Fiduciary Advice Rule demonstrated the unintended consequences that unworkable restrictions can have on customer choice. As SIFMA reported in its letter to the DOL on August 9, 2017, pursuant to a study conducted by Deloitte and Touche, preparation for the DOL Fiduciary Advice rule resulted in the following:

1. "[A]s of the Rule's first applicability date on June 9th, 53% of study participants reported limiting or eliminating access to brokerage advice for retirement accounts, which the firms estimate impact 10.2 million accounts and \$900 billion AUM."
2. "Roughly 95% of study participants indicated that they have reduced access to or choices within the products offered to retirement savers because of efforts to comply with the Rule."¹⁵

Fidelity strongly supports the preservation of investment access and choice for Massachusetts customers, which we believe the SEC's Reg BI accomplished through its stringent, clear, and balanced approach. Reg BI clearly recognizes that broker-dealers serve a critical role in providing advice to many customers, and it is thoughtfully crafted to further the express goal of

¹⁵ Products affected include mutual funds, annuities, structured products, fixed income, private offerings, and more, impacting an estimated 28.1 million accounts. Examples of the reduction in mutual fund availability include: 1) the elimination of no-load funds from brokerage platforms; 2) the elimination of mutual funds held directly at the mutual fund company; 3) reduced product offerings; and 4) elimination of other share classes.

increasing investor protection while preserving a broker-dealer's ability to provide free, point-in-time, investment advice.

In contrast, the Proposal in its current form could unintentionally result in a reduction or significant change to brokerage services available to consumers. This would be particularly detrimental to the estimated 98% of low- and middle-income individuals receiving personalized investment assistance who choose to obtain that assistance from broker-dealers without any advisory fee.¹⁶

Given the harm that the Proposal could have to Massachusetts investors, we urge the Division to withdraw the Proposal and await full implementation of Reg BI. As firms are in the process of preparing for full compliance with Reg BI, we suggest that the Division consider the additional protections afforded Massachusetts investors by Reg BI before making any rules that might impose additional requirements with respect to investment advice, and that the Division avoid inconsistent regulation with Reg BI.

In addition to the implementation of Reg BI, we understand that the DOL intends to propose a new fiduciary rule to replace the rule invalidated by the Fifth Circuit Court of Appeals. Depending on the language of the proposed rule, the DOL proposal could have a significant impact on firms and financial professionals who provide advice to individuals investing through retirement accounts, including IRAs, which hold a significant portion of middle-income investors' assets. This is another reason the Proposal is premature. It would be appropriate to wait until the DOL proposed regulation is issued before considering any additional regulation in Massachusetts.

Fidelity appreciates the opportunity to provide comments to the Division on the Proposal. Fidelity is happy to provide further information, meet with the Division to discuss the Proposal, participate in any direct outreach efforts the Division undertakes, or respond to questions the Division may have about our comments.

Sincerely,



David Forman
Chief Legal Officer
Fidelity Brokerage Services LLC

¹⁶ Oliver Wyman report: Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers (April 12, 2011).