



January 7, 2020

The Honorable William Francis Galvin
Office of the Secretary of the Commonwealth
Attn: Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

RE: Proposed Fiduciary Conduct Standard Regulations

Dear Secretary Gavin:

I write to offer comments on the rule proposal entitled “Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisors and Investment Adviser Representatives” (950 CMR 12.200). I appreciate the opportunity to do so.

The mission of the Massachusetts Taxpayers Foundation is to provide accurate, unbiased research with balanced, thoughtful recommendations that strengthen the state's finances and economy in order to foster the long-term well-being of the Commonwealth.

It is in furtherance of that mission that I outline three concerns with the rule as proposed, as it may result in unintended negative consequences, raising barriers to entry or limiting access to services for individual investors.

1. Potential Negative Impact on the financial services sector in Massachusetts.

The Massachusetts financial services sector is an important one in the Commonwealth and one that is increasingly mobile. While unintended, a consequence of the proposed rule is to add considerable Massachusetts-specific complexity and compliance costs to the industry. These costs will be in addition to the costs of implementation and compliance with the Securities and Exchange Commission's Best Interest Regulation (“Reg BI”) that replaced the longstanding “suitability standard” for Broker-Dealers (“BD”) with a “best interest standard” that becomes effective on June 30th, 2020. The proposed Massachusetts rule is considerably different from, and sometimes in conflict with, the federal standard making it very difficult for companies to comply with both rules at the same time.

I urge you to postpone the issuance and effective date of these regulations until Reg BI has been fully implemented, so that a proper evaluation can be made of any perceived shortcomings or concerns with the federal regulatory scheme and the efficacy of the additional Massachusetts-specific regulatory scheme can be more carefully considered.

1. Potential cost increase of municipal debt issuance

One of the Proposal's many requirements is for broker-dealers and agents to "avoid conflicts of interest" and to "make recommendations and provide investment advice without regard to the financial or other interest of the broker-dealer." In the context of a principal transaction between the broker-dealer and its retail client, this standard would be virtually impossible to satisfy. Principle transactions are in the underwriters' interest, as that is the reason for their participation in the underwriting syndicate. If, however, that BD turns around and sells that same bond to a retail client in Massachusetts, that may also be seen as acting in the BD's interests even though by doing so the retail clients would benefit because they would have access to securities that may be unavailable or more expensive to purchase on the open market.

Because disclosure of the mutual benefit to the client would be insufficient to satisfy the proposed rule, this requirement is likely to have two harmful impacts. First, the rule could decrease participation by BDs in the bidding for new issue municipal bonds, making it more difficult and expensive for municipalities to issue debt. Second, the caliber of the underwriting could suffer as established entities exit the market and are replaced with less reputable ones. Additionally, the proposed rule could also make municipal bonds more expensive for investors since they will have to purchase them on an agency basis, not a principal basis, with the additional commission and expenses associated therewith.

MTF suggests that a potential way to address this concern is to exempt principal transactions from the regulation. Alternatively, more explicit guidance on how broker-dealers can engage in principal trading and comply with the regulations would be very helpful.

2. Impact on municipal financing

More generally, MTF is concerned with the proposed rule because of the detrimental impacts it could have on municipal budgets and the Massachusetts economy. Many municipalities are already fiscally challenged by rising health care costs, a growing unfunded pension and OPEB liability, demands for increased education spending and other unmet needs. Therefore, we are concerned with the unintended consequences this regulation could have on municipal budgets should the cost of issuing debt increase as a result.

In closing, I respectfully request that you consider our concerns hold the regulations until Reg BI has been implemented and evaluated. We support reasonable consumer protections and industry oversight, and urge you to provide them in a way that doesn't add to the cost of municipal debt issuance or unnecessarily add costs to the financial sector.

Sincerely,



Eileen McAnney,
President