

Massachusetts Credit Unions

Creating Cooperative Power

January 16, 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: Cooperative Credit Union Association, Inc. Comments on Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Requirements

BY EMAIL ONLY: securitiesregs-comments@sec.state.ma.us

Dear Secretary Galvin:

On behalf of the Massachusetts member credit unions of the Cooperative Credit Union Association, Inc. ("Association"), please accept this letter relative to the Office of the Massachusetts Secretary of State's ("Secretary") proposed rule on the fiduciary conduct standard for broker-dealers, agents, investment advisers, and investment adviser requirements ("proposed rule"). The Association is the state credit union trade association, serving approximately 160 state and federally-chartered, not-for-profit Massachusetts financial cooperatives owned by over 3 million consumers as credit union members.

The Association submitted a detailed and robust comment letter to the Secretary on July 26, 2019 relative to the preliminary solicitation ("ANPR") for comments on the very important issue of fiduciary standards within the investment adviser arena. Accordingly, the Association incorporates those views by reference into the comment letter presented today. The Association remains in strong support of its ANPR comments provided, further builds upon those principles, and appreciates the willingness of the Secretary to continue to permit written comments to be received on the proposed rule.

As a preliminary policy statement, it is without question that the Association acknowledges and supports the goal of the Secretary to protect investors. Furthermore, local credit unions agree with the Secretary's intent that credit union members, and all consumers, deserve the best possible service when seeking information about financial or retirement plans. Members have overwhelmingly indicated time and again that trust is the top reason for selecting and using an investments

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provider.¹ By structure, credit unions are owned and governed by their members and therefore abide by the management philosophy of their owners: to act in their best interests. The interrelationship of governance, ethics, and informed decision making directly informs the credit union mission and is the motivation to act in the member's best interest.

Credit Union Vision and Impact

The one vote, one-member governance structure requires credit unions to treat all members equally regardless of net worth. From products offered to financial education, credit unions serve members in all financial situations and life cycles utilizing a variety of networking arrangements to offer investment adviser services to members. Some have clearly defined arrangements with third-party brokers, outlining duties and responsibilities, and others share employees with a broker-dealer. All foster the wholistic nature of offering investment services as complementary to existing products and services based on the primary financial services needs and demands of members. The nature of this business decision, made by member-elected boards of directors, is distinguished from a for-profit motive driven by other financial service providers. The practical result is that credit union plans common throughout the Commonwealth are overwhelmingly and notably small. This observation is particularly true in light of the vast size of the broader industry. It also should be noted that for plans offered, local credit unions are further distinguished as providers receiving high marks from members for quality service.

It is with this background that the following concerns of the Association are offered:

1. Scope of Fiduciary Standard Application

The Association fully supports the objective of promoting investor security through protections that will ensure advice is provided in the consumer's best interest. Any standard of conduct adopted, however, must also preserve access to affordable investment education and advice for those who need it most.

Along with providing investment advice, credit unions also provide an array of financial services to their members including, financial education, insurance, and term shares or certificates of deposit ("CD"). The Association remains concerned that the broad and vague nature of terms and definitions in the proposed rule raises substantive questions as to whether credit union services, not traditionally considered investment advice or investment strategy, will be included within the scope of the proposed rule. It is suggested that the proposed rule fails to define key terms and set forth parameters on their application, thereby potentially overreaching in scope. Open questions remain on matters, including but not limited to:

-whether the offering of a CD and the encouragement to save is investment advice;

-whether the offer of basic insurance to protect assets, such as automobile insurance or long-term care insurance, is considered part of an investment strategy; and

¹

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-whether there are activities that are incidental to investment advice that would sweep the entire operation of a credit union, whose very nature is to promote thrift amongst members, within the confines of the proposed rule.²

The Association urges the Secretary to ensure that the proposed rule does not conflict with or add additional confusion or uncertainty for credit unions. A clear regulatory roadmap, eliminating ambiguity in terms of intent, scope and application, of the proposed rule is requested.

Finally, Massachusetts credit unions have been granted the authority to sell insurance by the Legislature subject to implementing regulations and oversight by two other state agencies: the Division of Banks and Loan Agencies and the Division of Insurance. See M.G.L. c. 171, s.75B; M.G.L. c 175, s. 209, respectively. The addition of a third regulator will significantly add to regulatory complexity in this area without a compelling reason for credit unions. An express exemption from the scope of the proposed rule for credit union insurance sales is welcomed.

2. Effective Date and Reasonable Transition Period

As previously noted by the Association, the Secretary submitted a comment letter on this issue to both the Department of Labor and the U.S. Securities and Exchange Commission (“SEC”), noting the importance of a uniform standard. Ltr. to U.S. Dept. Labor, July 28, 2017, p. 3; Ltr. to U.S. Securities and Exchange Commission, August 7, 2018, p.9. The Association also echoes the need for this synergy within the standard of care landscape. As the distinct “best interest standard” was adopted recently by the SEC to balance the need to ensure that financial professionals place consumer interests ahead of firm interests without the complexity and uncertainty associated with a heightened fiduciary duty, the Association urges the Commonwealth not to move forward with the proposed rule at this time.

Rather, the Association unequivocally requests that the Secretary monitor the implementation of the SEC rule and revisit the proposed rule with this background. The June 30, 2020 SEC date is fast approaching and the Association believes that a regulatory pause is prudent to absorb actual lessons, nuances and clarifications available from the federal system.

Furthermore, the Association respectfully requests a reasonable transition period, at least one year following the implementation of the new federal standard in this area, to finalize the proposed rule. An extended transition period with voluntary compliance so that monitoring, staff education, and compliance training, potentially initiated by your office, is preferred. As credit unions utilize third party registered providers in this product area, piercing an additional layer of awareness and vendor due diligence will be necessary and requires time.

The Association also strongly urges the Secretary to consider mitigation efforts, such as safe harbors, model forms/disclosures, and an additional period not less than six months between the

² M.G.L. c. 171, s. 2, provides in pertinent part, the purpose of a credit union as “...accumulating and receiving the savings of its members in payment for shares or on deposit, in making loans to them at reasonable rates for provident purposes and investing as hereinafter provided, the funds so accumulated....”

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compliance date and enforcement. Compliance burdens and current confusion in the market associated with implementing a final rule at the state level at a time a new rule is underway at the federal level could harm credit union members if the proposed rule becomes effective within a shortened timeframe and with an inflexible plan of compliance.

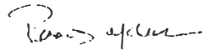
Conclusion

The Secretary has taken a bold step forward with the target of protecting Massachusetts consumers. A significant concern of the Association remains in unintended consequences that the Secretary's efforts and heightened fiduciary standard poses which may cause credit unions to discontinue offering investment services, resulting in the exit of consumers' preferred credit union provider or limited opportunities for the delivery of education about retirement and savings plans. Under these circumstances, Massachusetts credit union members are the losers with reduced or lack of choice.

The Association respectfully asks the Secretary to carefully consider issues presented in this letter so that the offering and delivery of retirement options and services will be clear and will remain uninterrupted for Massachusetts residents served by credit unions.

Thank you for the opportunity to offer these additional comments. If you or your staff seek additional information about the proposed rule's impact on credit unions, then I remain available to assist by email at rmelean@ccua.org or by telephone at 800.842.1242 x. 323.

Sincerely,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

RM/mac/kb