

# **MADDOX HARGETT & CARUSO, P.C.**

Representing Investors

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**Via Email Submission to [securitiesregs-comments@sec.state.ma.us](mailto:securitiesregs-comments@sec.state.ma.us)**

June 18, 2019

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: Proposed Fiduciary Rule**

Dear Secretary Galvin:

The purpose of this letter is to provide the Massachusetts Division of Securities (“MDS”) with comments on the above referenced rule proposal which was issued by the MDS on June 14, 2019.

I am an attorney whose practice is exclusively devoted to the representation of individual and institutional investors in their disputes with the securities industry. Moreover, I am the current Chairman of FINRA’s National Arbitration and Mediation Committee (“NAMC”) and a public member of the NAMC; the former Chairman of FINRA’s Discovery Task Force Committee (“DTFC”); a former member of the Securities Investor Protection Corporation (“SIPC”) Modernization Task Force; and a former President and current Director Emeritus of the Public Investors Arbitration Bar Association (“PIABA”).

It is my understanding that MDS is soliciting comments regarding amendments to its rules which would require that broker-dealers, agents, investment advisers and investment adviser representatives be subject to a fiduciary duty. Specifically, the MDS is considering making it a dishonest or unethical business practice for failing to act in accordance with a fiduciary duty when recommending to a customer, an investment strategy, or the purchase, sale, or exchange of any security or securities, or providing investment advisory services to a customer.

It is my opinion that the proposed MDS rules are a critical component of “investor protection” and that the proposed rules are necessary in view of the fact that the SEC’s Regulation Best Interest “fails to establish a strong and uniform fiduciary standard.”

Of equal importance is the fact, as the MDS has noted, that "[t]he need for a conduct rule mandating that investment advice must be provided under a fiduciary standard has been recognized for many years" and that the adoption of the proposed rule will help to both reduce investor confusion and will work to foster public confidence in the financial profession – neither of which can be achieved through disclosure alone.

Finally, it is also important to note that the "fiduciary standard" for broker-dealers and their agents is already recognized by an increasing number of states through both federal/state case law (e.g., California) and by statute (e.g., Nevada) and that the claim of a breach of fiduciary duty has been the most common claim that is asserted in customer-initiated arbitration proceedings that are conducted under the auspices of the FINRA Code of Arbitration Procedure for many years.

Based on all of the preceding, I urge the MDS to immediately approve and issue the proposed rules.

Thank you for providing me with the opportunity to submit my comments on this matter.

Very truly yours,

Maddox Hargett & Caruso, P.C.

*s/ Steven B. Caruso*

Steven B. Caruso