



Securities Arbitration Clinic
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Via email to securitiesregs-comments@sec.state.ma.us
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: Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment
Advisers, and Investment Adviser Representatives.

Dear Secretary Galvin:

Thank you for the opportunity to comment on the proposed fiduciary conduct standard for broker-dealers, agents, investment advisers, and investment adviser representatives. We are writing this comment on behalf of the Securities Arbitration Clinic at St. John's University School of Law (the "Clinic"). The Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents small aggrieved investors and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules and regulations governing investor protection and specifically the duties imposed on broker-dealers and their sales representatives.

Generally, the Clinic is supportive of the proposed amendments to the Code of Massachusetts Regulations to establish a fiduciary duty owed by broker-dealers, investment advisers, and sales representatives of both, to their clients. The Clinic strongly supports the actions being taken by the Massachusetts Division of Securities ("MDS") to implement heightened fiduciary standards for investment professionals. The proposed amendments will provide meaningful protections for all investors that the Securities and Exchange Commission's Regulation Best Interest will not provide. MDS's creation of an ongoing fiduciary obligation will strongly benefit the public and surpass the obligations imposed by the SEC in certain

circumstances. We offer a few suggestions below to improve the regulation and increase investor protection.

The Clinic believes that subsection 950 CMR 12.207(c)(1) of the proposed amendment should be expanded to specifically state that a reasonable inquiry should be made regarding a client's risk tolerance. By purposely enumerating this factor, it would ensure that broker-dealers, investment advisers, and their sales representatives do not engage in trading activity that would be inappropriate in relation to the client's risk tolerance. It would be a good protective measure for the client because the broker could not raise the ambiguity of "any other relevant information," or the factors raised in (c)(1)(ii) to justify not inquiring as to the client's risk tolerance. It would be yet another measure to hold investment professionals accountable if they make inappropriate investments for a client.

We support 950 CMR 12.207(c)(2) and (c)(2)(i), which ensures that the client's interests are considered first. Broker-dealers and investment advisers may be incentivized to recommend certain investments that may yield high returns, but the risk may not be aligned with the investor's risk tolerance. It should be clear that although the choice that is made may be the best of the reasonably available options, it still may breach the fiduciary duty of loyalty if it places the broker's interests ahead of the investor's interest. Above all else, the investor's interests are the top priority.

Additionally, the Clinic supports the deterrent function of 950 CMR 12.207(c)(2)(i). The presumption of a breach of the duty of loyalty provides investors with an advantage if they have been improperly advised by their broker or adviser. The overarching subsection requires both the duty of care and duty of loyalty to be fulfilled, which are of the utmost importance to investors. Additionally, this presumption may help preserve the integrity of the markets. Not only will the investment professionals have clearer responsibilities and duties, but the public's confidence in these professionals will also increase.

Moreover, the Clinic supports CMR 950 12.204(1)(a)(29) labeling a breach of fiduciary duty as a "[d]ishonest or unethical business practice[]." However, it would be beneficial to explicitly state an investor has a private right of action for a violation of the standard within the rule itself. Members of the investing public are often not well equipped to understand how they may enforce their rights. The Clinic supports highlighting the private right of action in the amendments because it will best inform investors of their potential rights and remedies.

Securities regulations are meant to protect investors, preserve the market's integrity, and stimulate investing. Broker-dealers and investment advisers should be required to uphold their fiduciary duties to clients for the duration of their relationship. These duties should match the client's expectations. For example, a broker who has developed a fiduciary relationship with a client in regards to one account, should be required to act in accordance with a client's expectations with respect to a second account; a uniform fiduciary duty would benefit the investing public far more than any potential cost to broker-dealers. By making the standards of care more similar for all investment professionals, the negative effects of them "switching hats"

will be greatly reduced. These professionals should only be exempt from a fiduciary obligation if the true nature of the investment advice is limited and episodic. The proposed regulations provide a great step forward for ensuring investors have adequate protection when making investments, and fiduciaries are acting in investor's best interests.

Thank you for the opportunity to comment on this important proposal.

Very truly yours,

/s/

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Legal Intern

/s/

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/s/

Christine Lazaro
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And Professor of Clinical Legal Education