

July 26, 2019

Via e-mail: [securitiesregs-comments@sec.state.ma.us](mailto:securitiesregs-comments@sec.state.ma.us)

Office of the Secretary of the Commonwealth  
Attn: Proposed Regulations – Fiduciary Conduct Standards  
Massachusetts Securities Division  
One Ashburton Place, Room 1701  
Boston, MA 02108

**Re: Edward D. Jones and Co., L.P. Comment on Proposed Fiduciary Duty Conduct Standard**

Dear Secretary Galvin:

Edward D. Jones and Co., L.P. (“Edward Jones”) appreciates the opportunity to comment on the Massachusetts Securities Division (the “Division”) recently proposed fiduciary duty regulation (the “Proposal”).

Edward Jones is one of the largest financial firms in Massachusetts, serving the investment needs of more than 39,000 Massachusetts households through 153 financial advisors who are dually registered to provide investment advisory and brokerage services.<sup>1</sup> We serve the needs of individual investors from all economic backgrounds and income levels to help our clients achieve their financial goals.

Edward Jones has consistently sought to act in its clients’ best interests and has long supported the creation of a best interest standard of care. While we commend the Division’s efforts to elevate the standard of care for financial services professionals, we are deeply concerned about the Proposal’s impact on investors. If the Proposal is adopted as is, it will restrict the choices available to our clients by limiting our ability to provide brokerage services that historically have helped many achieve their financial goals – especially those with more modest savings.

We offer our thoughts and recommendations on the Proposal below.

**I. The Proposal will limit Massachusetts investors’ access to brokerage services.**

Edward Jones’ clients range from young families starting to save for their children’s college education to retirees who have successfully saved for a secure retirement. In our experience, these clients benefit from having the choice of brokerage and advisory services currently available to achieve their financial goals. We have many clients who choose the transaction-based, point-in-time assistance available through a brokerage relationship while other clients

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<sup>1</sup> Nationally, we serve more than seven million investors through more than 17,000 financial advisors.

prefer the ongoing advice and services available through an advisory relationship. We have also found that many of our clients benefit from utilizing both types of relationships. Currently, more than 25% of our clients nationwide maintain at least one brokerage account and at least one advisory account to meet their overall investment needs. In Massachusetts, that percentage is slightly higher with more than 29% of Massachusetts client households maintaining at least one brokerage account and one advisory account simultaneously.

We are concerned that the Proposal will restrict the choices available to our clients — and to investors generally — by effectively limiting the ability of financial services firms to provide brokerage services to Massachusetts investors. While the Proposal purports to preserve firms' ability to offer brokerage services, the Proposal extends an ongoing fiduciary duty to dually-registered firms providing advice to a client "in any capacity." This effectively means that only firms offering no advice will be able to provide brokerage services to investors.

The proposal stands in contrast to the SEC's recently adopted Regulation Best Interest, which enhances investor protection while still preserving investors' ability to choose the type and level of service they desire as well as how to pay for those services. The SEC specifically rejected a uniform fiduciary standard for both brokerage and advisory relationships noting that "[s]uch an approach could result in a standard of conduct for broker-dealers that is not appropriately tailored to the structure and characteristics of the broker-dealer model."<sup>2</sup> We are concerned that the Division's proposal is not appropriately tailored and believe it raises significant questions about how firms will be able to continue to serve investors in a brokerage relationship.

In our view, requiring application of an ongoing fiduciary duty standard to what is inherently a transaction-based, episodic relationship will result in Massachusetts investors losing significant access to brokerage services. As a result, investors who wish to receive advice and guidance will likely be forced into fee-based advisory relationships, which will result in increased costs for some investors. The loss of access to brokerage services likely will also result in Massachusetts investors having fewer choices in the products and services available and potentially losing access to the ability to work with financial professionals. As Chairman Clayton recently expressed, "I do not believe that 'a one-size fits all' approach would best serve the diverse interests of 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."<sup>3</sup>

We urge the Division to give due consideration to the SEC's viewpoint as reflected in the now finalized SEC Best Interest Rule prior to moving forward with this rulemaking. Should the Division move forward with this Proposal, we believe it will be necessary for the

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<sup>2</sup> SEC Release No. 34-86031, at p. 634.

<sup>3</sup> "Regulation Best Interest and the Investment Adviser Fiduciary Duty: Two Strong Standards that Protect and Provide Choice for Main Street Investors", Chairman Jay Clayton remarks in Boston, Massachusetts on July 8, 2019.

Division to provide clarity and guidance as to how firms will be able to adhere to this fiduciary standard while continuing to meet the needs of investors through a brokerage relationship.

We have seen rulemaking previously that impaired investors' ability to choose a transaction-based relationship. In October 2011, the Department of Labor ("DOL") put forth the first version of its proposed fiduciary standard, which was intended to apply to IRAs.<sup>4</sup> That flawed proposal, similar to the regulations now proposed by the Division, called for a blanket fiduciary standard without clear exemptions to accommodate the millions of Americans who have chosen transaction-based IRAs. That same year, Oliver Wyman published a study examining the potential impact on IRA investors of the initial Department of Labor fiduciary rule proposal. The data in the study comprised approximately 40% of IRA accounts and 40% of IRA assets in the United States at the time. Significantly, the study found that 98% of IRAs with less than \$25,000 were in brokerage relationships and that the proposed DOL rule would have eliminated access to meaningful investment services to seven million IRAs as a result of losing access to brokerage services and not meeting account minimums for an advisory relationship.<sup>5</sup>

Later in 2011, the DOL withdrew its initial proposed rule and, in April 2015, re-proposed a rule that acknowledged the need to carefully and explicitly protect the ability for investors to save in their IRAs through transaction-based relationships.<sup>3</sup> Edward Jones continued to disagree with the DOL rule overall, concluding that even the re-proposed rule and the later proposed BIC exemption failed to adequately serve the interests of individual investors choosing a transaction-based relationship. Nonetheless, the DOL's recognition that its 2011 proposal was inadequate to serve the needs of all IRA savers was an important acknowledgement of the flaws in that initial approach.

While the financial services industry has evolved over the past eight years and the DOL's proposed rule took a somewhat different approach, the Oliver Wyman study's findings remain instructive; the potential negative impacts of the Division's proposed rulemaking would be quite similar, particularly for low and middle-income investors.

We urge the Division to redraft the Proposal to preserve Massachusetts investors' choice and access to brokerage services. Massachusetts investors benefit greatly from the choices they currently have in working with financial services professionals who offer different ways of investing and a variety of investment products that meet the wide array of investors' changing investment needs. This flexibility enables investors to utilize different products as their financial needs change and to plan holistically and comprehensively with the assistance of their financial advisor.

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<sup>4</sup> See "Definition of the Term 'Fiduciary'", Fed. Reg. Vol. 75, No. 204, p. 65263.

<sup>5</sup> Oliver Wyman report: Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers (April 12, 2011).

**II. Edward Jones supports a consistent best interest standard across the industry.**

Edward Jones has long supported a best interest standard of care that enhances investor protection, preserves investor choice, and ensures investors have access to meaningful assistance and guidance. We are concerned that a multitude of inconsistent standards will only serve to confuse investors, increase costs, and diminish access to advice, products, and services.

We believe the SEC's recently adopted Regulation Best Interest meaningfully raises the bar for financial professionals serving investors' needs through a transaction-based brokerage relationship, and includes many important investor protections while preserving investors' choices. We encourage the Division to consider the benefit to investors of the adoption of a clear and consistent standard, tailored to preserve investor choice; and conversely, the loss of choice and confusion that will occur in jurisdictions where conflicting standards exist.

We appreciate the opportunity to comment on the Proposal and look forward to continuing to engage on this significant rulemaking.

Respectfully submitted,



Merri Jo Gillette  
Deputy General Counsel