

Massachusetts Credit Unions



Creating Cooperative Power

July 26, 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: Cooperative Credit Union Association, Inc. Comments on Preliminary Solicitation:
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") preliminary solicitation on the fiduciary conduct standard for broker-dealers, agents, investment advisers, and investment adviser requirements ("ANPR"). 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 is very pleased that the Secretary has issued an ANPR to obtain public comment on the very important issue of fiduciary standards within the investment adviser arena. The Association submits that this approach, casting the widest net to receive comments, input, concerns, and suggestions from all stakeholders, is most appropriate for such a weighty issue. The Secretary's actions provide stakeholders with insight into the pending regulatory perspective as well as an opportunity to comment and are appreciated.

Background

The Secretary has a strong record on consumer protection and is a leader, in both the Commonwealth and nationally, as a top securities regulator. The Association notes the efforts and current position of the Secretary found in his:

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- comment letter to the U.S. Securities and Exchange Commission (“SEC”) relative to the “regulation best interest” standard;
- statement on the U.S. Department of Labor’s indefinite suspension of the fiduciary rule and survey of its impact in Massachusetts; and
- policy statement on registered investment advisers’ use of third party robo-advisers.

It is without question that the Association supports the goal of this proposed rule to protect investors and encourage all advisers to act in the investor’s best interest. Furthermore, local credit unions agree with the Secretary’s intent that members, and all consumers, deserve the best possible service when seeking information about financial or retirement plans.

Credit Union Marketplace

Credit unions exist to serve their members, and inherent in the credit union movement and member-ownership structure is the motivation to act in a member’s best interest. Massachusetts credit unions offering investment services to their members seek to help working families of all means receive information about saving for retirement and planning for their future. While many large investment firms seek high net-worth clients, credit unions reach out to provide services to their members in all financial situations and to make it easier for these individuals to map out financial plans. Working with their local credit union to achieve long-term financial goals, or to save for education or unplanned health emergencies is an important option for members.

Massachusetts credit unions use 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.

Fiduciary/Best Interest Standard

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 “best interest standard”, however, must also preserve access to affordable investment education and advice for those who need it most.

In supporting a best interest fiduciary standard, the Association is reminded of its industry experience with fiduciary standards and credit unions. Following the local mortgage crisis, the Massachusetts Division of Banks and Loan Agencies promulgated regulations, found at 209 C.M.R. 53.00 et seq., entitled, *Determination and Documentation of Borrower's Interest*. The rule requires a flexible, reasonableness within the circumstances standard, that provides in part: “in making a home loan in which a determination is required that the home loan is in the borrower's interest, a lender shall use sound underwriting practices which are reasonable in relation to the home loan requested.” 209 C.M.R. 53.05 (underwriting standards). The Association submits that this standard is not absolute, not an express fiduciary standard, and is more aligned with the “best interest standard” adopted at the federal level.

Uniform Standard

In his comment letter on this issue to the Department of Labor, the Secretary notes 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, differing standards will result for Massachusetts credit unions, especially for those with members residing across state lines. A clear lack of uniformity and regulation will exist. For Massachusetts credit unions and their members, the inconsistency will add additional complexity without clarity. The Association urges the Secretary to reconsider his stated value of uniform rules. At a minimum, the Secretary is urged to provide sufficient time to evaluate the SEC standard and its impact on consumers and financial professionals, however they touch the local retirement marketplace.

Transition Period

As with any complex issue, its potential impact must be considered. In the event that the Secretary adopts a heightened fiduciary standard, thereby rejecting a “suitable recommendation” standard, the Association strongly urges the Secretary to consider an extended transition period with voluntary compliance so that monitoring, staff education, and compliance training, perhaps initiated by your office, can occur. As credit unions utilize third party registered providers in this product area, piercing an additional layer of awareness and vendor due diligence will be required.

As an overarching matter, the Association strongly urges the Secretary to consider whether the compliance burdens and current confusion in the market associated with implementing a final rule as proposed could harm credit union members if the rule goes into effect within a shortened timeframe.

Conclusion

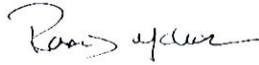
The Secretary has taken a bold step forward with the target of protecting Massachusetts consumers. A significant concern of the Association remains in this endeavor in that the Secretary’s efforts and heightened fiduciary standard may have the effect of limiting opportunities for education about retirement and savings plans or preclude credit unions from offering investment services through a third party. Finally, as credit unions are already supervised by the National Credit Union Administration and the Consumer Financial Protection Bureau, concern is compounded in the area of regulatory overlap, confusion, and unintended consequences stemming from oversight by federal agencies. As proposed, credit unions remain concerned that the rule could inadvertently harm the same individuals and small businesses that it seeks to protect.

The Association appreciates such efforts and encourages the development of a balanced state rule that will provide important clarity in this area without limiting the ability of well-managed credit unions to serve high quality, low cost retirement products to members. Given the enormous implications for Massachusetts and beyond, the Association remains confident that a centered position can be reached that would uphold a best interest standard while at the same time retaining essential consumer protections. As a result, the Association respectfully asks the Secretary to reconsider this proposal as presented at this time.

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Thank you for the opportunity to offer these comments. If you or your staff seek additional information or clarity, then I remain available to assist by email at rmclean@ccua.org or by telephone at 800.842.1242 x. 323.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron McLean", with a stylized flourish at the end.

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

RM/mac/kb