

July 25, 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

2019 JUL 26 AM 10:54

SECURITIES DIVISION

Dear Secretary Galvin,

Morgan Stanley Smith Barney LLC appreciates the opportunity to comment on the Massachusetts Securities Division's (the "Division") Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives (the "Proposal"). We support strong conduct standards for Broker Dealers ("BDs") and Investment Advisers ("IAs") that will protect investors, while at the same time preserve investor access to a variety of advice and service models. In addition, we support the recent efforts of the U.S. Securities and Exchange Commission ("SEC") to finalize comprehensive federal regulations that will meaningfully increase the conduct standards for BDs when providing personalized investment advice about securities to retail clients.

As described below, Morgan Stanley believes the SEC's recently finalized Regulation Best Interest ("Reg BI") and the clear and concise disclosures required by the Form CRS Relationship Summary ("Form CRS") align with the Division's important goal of protecting Massachusetts investors with a heightened standard of care. A uniform national best interest standard that includes many of the hallmarks of a fiduciary standard will reduce the complexity and administrative burdens for firms, and reduce the potential for investor confusion, in the event standards vary by state. In addition, a uniform best interest standard will minimize costs for Massachusetts investors while preserving their access to a variety of advice and service models. As a result, in order to recognize the value and efficiency to both investors and financial service providers of a uniform nationwide standard, we respectfully request that the Division not finalize its Proposal or in the alternative, deem compliance with Reg BI and Form CRS as compliance with any final version of the Proposal. In the event the Division moves forward to a final regulation, we respectfully submit a number of suggestions below of changes we believe would improve the Proposal.

I. MORGAN STANLEY BACKGROUND INFORMATION

Morgan Stanley is a leading full-service global financial services firm.¹ Since our founding in 1935, Morgan Stanley has been a client-focused organization providing a range of financial services and advice to individuals, corporations and institutions. Our employee code of conduct stresses the primacy of client

¹ Morgan Stanley (NYSE: MS) is a global financial services firm that, through its subsidiaries and affiliates, provides products and services to a large and diversified group of clients, including corporations, governments, financial institutions and individuals. Morgan Stanley Smith Barney LLC (doing business as "Morgan Stanley Wealth Management") is registered as a broker-dealer and investment adviser with the SEC and a member of FINRA, the NYSE, NYSE MKT LLC, and NASDAQ Stock Market.

interests over those of the company or individual employees, and four “Core Values” guide our business approach, the first of which is “Putting Clients First.”²

Morgan Stanley’s wealth management division, Morgan Stanley Wealth Management (“Morgan Stanley”), has approximately 15,700 financial advisors throughout the United States, servicing approximately 3.2 million wealth management relationships with approximately \$2.5 trillion in client assets. As of June 2019, Morgan Stanley had approximately 184,000 clients in the Commonwealth of Massachusetts representing over \$68 billion in client household assets. Morgan Stanley provides services through both brokerage accounts with transaction-based pricing (e.g., commissions, selling concessions), and investment advisory accounts where clients pay an annual fee based on the value of the assets in the account. In the Commonwealth of Massachusetts, clients hold approximately \$31 billion in investment advisory accounts and more than \$37 billion in brokerage accounts.

I. REG BI AND FORM CRS SUBSTANTIALLY RAISE THE STANDARD OF CARE FOR FINANCIAL ADVICE AND REDUCE INVESTOR CONFUSION. THE DIFFERENCES BETWEEN THE PROPOSAL’S DUTY OF CARE AND REG BI’S CARE OBLIGATION ARE NEGLIGIBLE.

Reg BI substantially enhances the standard of care for BDs well beyond the existing FINRA Suitability Rule, adopting numerous well-established fiduciary tenets such as a best interest standard of care and obligations to disclose and, where appropriate, mitigate or eliminate conflicts of interest. It requires BDs to, among other things, “(1) act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the BD ahead of the interests of the retail customer; and (2) address conflicts of interest by establishing, maintaining and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where [the SEC has] determined that disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict. The standard of conduct established by Regulation Best Interest cannot be satisfied through disclosure alone.”

We believe that the standard of conduct required by Reg BI is a high threshold that will meaningfully protect the interests of Massachusetts investors beyond what is required today. At the same time, Reg BI substantially narrows the differences between the standard required of an investment adviser (a fiduciary duty) and a BD to a common and uniform set of principles that differ primarily due to the nature of the two service models, both of which are important to meet the financial needs of Massachusetts investors. The SEC specifically recognized that it was narrowing the gap between brokerage and investment advisory standards of care when it stated in its adopting release that “[t]he standard of conduct [of Reg BI] draws from key principles underlying fiduciary obligations, including those that apply to investment advisers under the Investment Advisers Act of 1940.”

Beyond the enhanced standard of care required by Reg BI, the SEC is also requiring a new Form CRS that will provide key information to retail investors and reduce investor confusion. Form CRS is intended to inform retail investors about “(i) the types of client and customer relationships and services the firm

² The remaining Core Values are “Doing the Right Thing,” “Leading with Exceptional Ideas,” and “Giving Back.”

offers; (ii) the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services; (iii) whether the firm and its financial professionals currently have reportable legal or disciplinary history; and (iv) how to obtain additional information about the firm.” While many firms such as Morgan Stanley already provide retail clients this type of information, we believe the uniformity of Form CRS will go a long way toward reducing perceived investor confusion about the types of services provided by BDs and investment advisers and will better inform Massachusetts investors about the types of financial services they receive.

The duty of care specified in the Proposal is very similar to the care obligation mandated by Reg BI. The Proposal requires that recommendations be made using “the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use taking into consideration all of the facts and circumstances.” The Proposal further requires that the advisor make reasonable inquiry into the risks, costs, and conflicts of interest related to the recommendation or investment advice, the client’s investment objectives, financial situation and needs and any other relevant information. Similarly, Reg BI requires advisors to exercise reasonable diligence, care and skill when making recommendations, to understand the potentials risks, rewards and costs and to have a reasonable basis to believe that the recommended transaction or series of transactions is in the best interests of the customer based on the customer’s investment profile and that the interests of the advisor or the firm not be placed ahead of the clients. We believe the efficiency and clarity of a uniform standard of care far outweigh the minor benefits achieved by adopting a duty of care with only negligible variations from that required by federal law.

In light of the fact that Reg BI and Form CRS substantially increase the standard of care for financial advice providers and reduce investor confusion, we respectfully submit that a separate Massachusetts duty of care is unnecessary. In the event the Division ultimately finalizes its Proposal, we request that the Division consider a firm’s or financial advisor’s compliance with Reg BI and Form CRS to be deemed compliance with any final version of the Proposal.

II. THE PROPOSAL’S DUTY OF LOYALTY DOES NOT CREATE A WORKABLE SOLUTION TO MANAGING CONFLICTS OF INTEREST.

In order to meet the Proposal’s fiduciary duty, recommendations or investment advice must satisfy both a duty of care and a duty of loyalty. While Morgan Stanley supports a heightened standard of care, we believe the Proposal’s duty of loyalty does not create a workable standard. The Proposal’s duty of loyalty requires that BDs, agents and IAs avoid conflicts of interest and make recommendations **without regard to** (emphasis added) the financial or other interests of the advisor and his or her employer and certain related entities and individuals. The “without regard to” language presents risks for financial professionals and their firms as it is too broadly worded. By virtue of being paid in connection with its brokerage services, an advisor or her firm by definition has a “financial ... interest” with respect to a recommendation. But at the same time, the Proposal recognizes that a firm is permitted to receive reasonable remuneration for its services. To harmonize these inconsistencies, the “without regard to” language should require that when making a recommendation or providing investment advice, an advisor or firm may not place its interests ahead of the client. Such a formulation will (i) protect clients, (ii)

conforms with the business reality that a firm and its advisors are being paid for their services and (iii) acknowledges that not all conflicts can be eliminated.

It also unclear how conflicts of interest can be avoided in their entirety as the duty of loyalty appears to also require. When a financial advisor provides a recommendation in a brokerage account, the advisor will generally earn a commission with respect to the transaction. As discussed above, this type of compensation necessarily results in a conflict of interest. Even if the purchase or sale of a security is clearly in the best interests of a client, the advisor has a conflict in that the recommendation will result in he or she earning compensation. It's unclear how a financial advisor can avoid this conflict in a transaction based compensation model other than by not providing financial advice to clients, which surely cannot be the intended result. The transaction based compensation model provided by a brokerage account provides a cost effective solution for many Massachusetts investors, particularly buy and hold investors who engage in infrequent transactions and receive only periodic advice. We strongly urge the Division to remove its conflict avoidance requirement to ensure that the brokerage model remains a viable cost effective option for Massachusetts investors.

The Proposal further provides that there shall not be a presumption that disclosing a conflict of interest alone satisfies the duty of loyalty. This aspect of the Proposal fails to recognize the importance of disclosure in addressing many conflicts. While certain material conflicts should be eliminated altogether and others require mitigation in addition to disclosure, there may be circumstances where clear and effective disclosure alone, followed by informed consent, is sufficient to address a particular material conflict. Conflicts of interest can vary significantly, and the means to effectively address them can and should vary as well. Using a reasonably designed, risk-based approach, firms should be permitted to assess whether disclosure about a specific conflict that is clear and allows the retail customer to provide informed consent would suffice without the need for other mitigation. This approach is supported by both FINRA's 2013 Conflicts of Interest Report, which noted that disclosure can be a potentially effective mitigation practice, and long-standing interpretations of the Advisers Act.³

We suggest that a more appropriate duty of loyalty would require that when an advisor is making securities recommendations he or she do so in the best interest of his or her clients and not put his or her own interests or those of their firm ahead of client interests. To address conflicts of interest we suggest that the Division adopt requirements similar to those prescribed by Reg BI, which generally require a multi-pronged approach of disclosing all material conflicts, mitigating conflicts that might cause an advisor to put their interests ahead of a client and eliminating the conflicts caused by certain sales contests or quotas. Firms should be required to adopt policies and procedures reasonably designed to ensure that recommendations are made in the best interests of clients. Requiring that advisors act in the best interest of clients will meaningfully raise the standard of care under which advisors currently operate, while

³ In interpreting an adviser's fiduciary duty under Section 206(1) and (2) of the Advisers Act, the Supreme Court has not required that an adviser avoid or mitigate conflicts of interest, but rather has required that the adviser provide appropriate disclosure of conflicts of interest so that clients can evaluate those conflicts. "An investor seeking the advice of a registered investment adviser must, if the legislative purpose [of the Advisers Act] is to be served, be permitted to evaluate such overlapping motivations, through appropriate disclosure, in deciding whether an adviser is serving 'two masters' or only one, 'especially . . . if one of the masters happens to be economic self-interest.'" SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 196 (1963) (quoting United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549 (1961)).

avoiding the unintended consequences that go along with a standard that calls into question the ability to offer clients a commission based advice model.

III. THE PRESUMPTION THAT THE DUTY OF LOYALTY HAS BEEN BREACHED CREATES A CONFUSING STANDARD SUBJECT TO SECOND GUESSING.

The Proposal includes a presumption of a breach of the duty of loyalty if a BD, agent or advisor offers or receives “direct or indirect compensation to or from a broker-dealer, agent, or adviser for recommending an investment strategy, the opening of or transferring of assets to a specific type of account, or the purchase, sale or exchange of any security that is not the best of the reasonably available options for the customer or client.” This standard raises significant questions about what is “the best of” and what are “reasonably available” options and lends itself to second guessing with little discernable benefit to Massachusetts investors over a clearer standard which requires that financial firms and their employees not put their interests before those of their clients.

The first question the proposed breach presumption raises is what is “reasonably available”? For example, is a “reasonably available” account option or security one that is available in the market place generally, available at a specific firm or available to a specific advisor? If “reasonably available” is broad enough to include all options available in the marketplace, will firms be required to offer all or virtually all account types and securities? Creating new account types and securities to address what is available in the marketplace or even a large segment would arguably be an impossible task as there are thousands of both available today.

Moreover, even if the standard requires only that account types and securities available at a specific firm or to a specific advisor be considered, how is one to decide which is the “best”? For example, as between two individual equity securities, how would one determine which is the best for a particular client? Is it the rating of the security, its risk, its price, the potential return or some combination of these factors? What if, as is common in the securities industry, there is disagreement among investment professionals about the risks or potential future performance of a security? Could advisors be precluded from recommending a security that did not have a unanimous recommendation among analysts who cover it? Under the Proposal, a violation of the fiduciary duty might occur when a financial advisor makes a recommendation to a client of a security that that is widely viewed as an excellent and cost effective investment designed to meet the goals of the investor, but may not be universally viewed as the subjective “best” reasonably available investment in its category. Absent further clarification, this concept appears unattainable in that it can only be determined in hindsight, if at all.

Indeed, these are merely a few scenarios which illustrate how difficult or impossible complying with a standard of “the best” can be. Even the most well-intentioned and diligent financial advisor who consistently strives to put the interests of his or her client above all else would find it difficult to apply such a subjective standard.

Rather than require that an advisor recommend the “best” of anything, we respectfully submit that a far better application or interpretation of the duty of loyalty is a simple requirement that investment recommendations be made in the best interests of a client, without placing the interest of advisors or their

firms ahead of client and that firms adopt policies and procedures reasonably designed to ensure this occurs.

IV. THE EXCEPTION TO THE PRESUMPTION THAT THE DUTY OF LOYALTY HAS BEEN BREACHED FAILS TO ADDRESS THE SUBJECTIVE PROBLEMS CREATED BY THE DUTY OF LOYALTY ITSELF.

The presumption of a breach of the duty of loyalty described above in section III appears to be rebutted if (i) reasonable remuneration is earned by a BD, agent or advisor, (ii) the remuneration represents the best of the reasonably available remuneration options for the customer or client and (iii) the BD, agent or advisor has otherwise satisfied its duty of care.

As described in more detail above, a standard that mandates recommending the “best” option is subjective at best and an impossible exercise in second guessing at worst. If the remuneration earned by an advisor was reasonable, the recommendation was consistent with the duty of care and also in the best interests of the client, it’s difficult to see what additional protection or benefit Massachusetts investors might receive from an additional subjective requirement of having the “best” remuneration or fee option.

While there are a variety of fee options associated with obtaining investment advice, the two most common are an asset based percentage annual fee, which is common in investment advisory accounts (and generally not permitted in brokerage accounts without triggering application of the Investment Advisers Act of 1940), and transaction based trade-by-trade commissions, which are typical in brokerage accounts. However, fee options are generally tied to levels of service, advice and investment control, and different clients place varying levels of importance on these components. As a result, comparing and selecting fee options is highly individualized, incorporating client preferences and is not simply a mechanical analysis of likely cost. Some clients may decide on an account type and accompanying fee option based solely on total cost, with less regard for level of service. Still others may insist on an asset based percentage annual fee which would only be available in an investment advisory account and that includes additional services that are typically unavailable in a brokerage account. All of this subjective analysis makes determining whether a fee option was “best” a nearly impossible undertaking.

Rather than require that an advisor recommend the “best” available fee option, a standard that is ambiguous and does not adequately preserve client choice, we urge the Division to adopt a requirement that recommendations related to fee options be made in the best interests of the client and that firms adopt policies and procedures reasonably designed to promote this outcome.

V. AN ONGOING FIDUCIARY DUTY WOULD RESULT IN HIGHER COSTS AND LIMIT INVESTOR CHOICE

Under the Proposal, the fiduciary duty for BDs, agents or advisors generally extends only through the execution of a recommendation. However, if a BD, agent or advisor makes ongoing recommendations, provides ongoing investment advice or receives ongoing compensation in connection with the recommendation, the fiduciary duty is deemed an ongoing obligation to that client. While services provided in brokerage accounts can vary, in many cases where a brokerage account is covered by a

financial advisor, that advisor will provide periodic recommendations to the client and may also earn ongoing compensation from the recommendation of certain products such as mutual funds. If the Proposal is adopted as is, this appears to mean that many brokerage accounts will be subject to an ongoing fiduciary duty under Massachusetts Regulation. Unfortunately, the imposition of an ongoing fiduciary duty in a brokerage account under state law may convert the account into an investment advisory account under federal law. As the SEC explained in its recent interpretive guidance, providing continuous monitoring in a brokerage account, which would arguably be required to meet the ongoing fiduciary duty, would not be consistent with the “solely incidental” prong of the BD exclusion from the definition of an IA, and thus would subject the brokerage account to the Investment Advisers Act.⁴ This could result in dually registered BDs being forced to convert brokerage accounts into investment advisory accounts, subjecting Massachusetts investors to additional costs for services they may not want or need. For BDs that are not dually registered as IAs, the choices may be even more limited. They may be forced to simply cease providing investment advice or recommendations to Massachusetts investors in order to avoid violating federal law by acting as an unregistered IA.

For the reasons articulated above, the Proposal’s broadly applicable ongoing fiduciary duty calls into question the ability of BDs to offer traditional brokerage services in many cases and arguably discourages BDs from providing financial advice to Massachusetts investors (to avoid application of the Investment Adviser’s act) even where such advice is in the investor’s best interests. To avoid such an unfortunate result, Morgan Stanley respectfully requests that the Division apply its standard of conduct only through execution of a recommendation.

VI. ANY FINAL RULE SHOULD EXPLICITLY STATE THAT PRINCIPAL TRADING, AFFILIATED PRODUCTS AND LIMITED RANGE OF PRODUCTS DO NOT VIOLATE THE FIDUCIARY DUTY IN AND OF THEMSELVES.

The Proposal makes no reference to recommendations of principal transactions, affiliated or proprietary products, or making a recommendation based on a limited range of products. We respectfully request that the Division address these important issues in its final regulation by explicitly stating that making the above-referenced recommendations are not, in and of themselves, a violation of either the duty of care or the duty of loyalty.

Engaging in principal transactions, the recommendations of affiliated or proprietary products and making recommendations based on a limited range of products are all common examples of transactions that can offer substantial benefits to Massachusetts investors. For example, many BDs maintain inventories of or engage in underwriting of municipal securities, such as those issued by Massachusetts state and local government agencies. These securities, which are valuable in helping to create tax advantaged income streams for investors, would be in many cases sold to clients on a principal basis. Limiting the availability of principal transactions could have a substantial negative impact on the type and number of securities available for purchase. In addition, clients holding less liquid securities such as structured investments often sell such securities to a BD in a principal transaction when there is a limited or no

⁴ SEC Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser, Release No. IA-5249 (June 5, 2019), at p.21, available at <https://www.sec.gov/rules/interp/2019/ia-5249.pdf>.

secondary market. Creating a regulation that does not expressly permit these types of activities could be damaging to Massachusetts investors by limiting their access to investments or limiting their ability to sell investments in order to generate liquidity.

Similarly, many firms recommend proprietary products along with those offered by third party providers, with appropriate disclosure to clients who understand that the product has been issued by the firm or an affiliate. A proprietary or affiliated product may be in the best interests of a client even though the recommendation of the product may result in additional revenue to the firm or its affiliate. While these recommendations may create a potential conflict of interest, we believe the duty of loyalty can be appropriately satisfied through clear disclosure of proprietary or affiliate status and disclosure that the recommendation may generate additional income to the firm or affiliate as compared to a non-proprietary or non-affiliated product.

Finally, because of the size and scope of the securities market which consists of tens of thousands of individual securities and products, we believe it is impractical to consider recommendations based on a limited range of products to be a violation of either the duty of care or the duty of loyalty. Professional advisors cannot possibly consider every available product in the market place and likely would have a difficult time satisfying their duty of care if they attempted to understand all available products. As a result, we respectfully request that the Division's final regulation recognize that as long as the duty of care and duty of loyalty are otherwise satisfied, a recommendation based on a limited range of securities is not a violation of the fiduciary duty.

VII. ANY RULE SHOULD APPLY TO RESIDENTS WITH A LEGAL ADDRESS IN MASSACHUSETTS

As currently drafted, the Proposal is vague regarding its general applicability. This has the potential to create confusion for investors within Massachusetts and for financial services firms that operate in multiple jurisdictions. To help clarify this issue for clients and firms alike, Morgan Stanley respectfully urges that the Proposal be limited to only those residents with a legal address in Massachusetts.

VIII. EFFECTIVE DATE

As noted above, the Proposal raises many unique issues for BDs and IAs, including establishing supervisory systems to address ongoing monitoring for clients with both brokerage and investment advisory accounts. In order to comply, firms will have to develop infrastructure capabilities, implement new trainings and expand internal policies and procedures. Taken in the aggregate, these requirements represent a complex and time consuming undertaking which would be extremely difficult to finalize within a short time frame.

In light of this, we request that the Division provide an implementation period of at least 18 months, followed by an initial effective date thereafter.

IX. INVESTMENT ADVISERS ARE ALREADY SUBJECT TO A FIDUCIARY DUTY UNDER THE INVESTMENT ADVISERS ACT OF 1940

In addition to BDs and their agents, the Proposal also imposes a fiduciary duty on IAs and IA representatives. IAs and their representatives (collectively “IAs”) are already subject to a fiduciary duty as a result of judicial interpretations of the Investment Advisers Act of 1940. Today, IAs are required to put the interests of their clients ahead of their own, to act in the best interests of their clients and to provide investment advice that is in their clients’ best interests. In addition, IAs owe their clients a duty of undivided loyalty and utmost good faith and must eliminate, mitigate or disclose any material conflict of interest that might incline the IA to render advice that is not disinterested. These are substantial investor protections that have worked effectively for decades. IAs have developed substantial compliance and control frameworks to ensure they are meeting their responsibilities. Imposing additional and different interpretations of what a fiduciary duty requires for IAs and their representatives will result in substantial burdens and increased costs, with no discernible benefit to investors.

Many investors choose to have both brokerage and advisory accounts. Rules and regulations should recognize the differences between these two account types and should allow investors to choose what is most appropriate for them based on their needs and not inadvertently favor one over the other by creating a regulatory regime that, unless significantly amended as set forth herein, makes it difficult for brokerage services to be offered.

X. THE FIDUCIARY DUTY REGULATIONS ARE PRE-EMPTED IN PART BY ERISA AND NSMIA

As described in greater detail in the comment letter submitted by the Securities Industry and Financial Markets Association, the Proposal would be substantially preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”) and the National Securities Markets Improvement Act of 1996 (“NSMIA”).

Section 4(d) of the Proposal notes that “[n]othing...shall be construed to apply to a person acting in the capacity of a fiduciary to an employee benefit plan, its participants or beneficiaries, as those terms are defined in the Employee Retirement Income Security Act (ERISA).” However, this carve out would only apply when one is acting as an ERISA fiduciary and arguably would not apply if firms serviced ERISA clients in brokerage accounts where we are not currently acting as a fiduciary under ERISA. We believe ERISA pre-emption would occur whether firms are acting as a fiduciary or otherwise with respect to accounts governed by ERISA.

In addition, NSMIA prohibits state regulations that a) *directly* impose new or different recordkeeping requirements and b) require BDs to create and maintain new or different records than those required by federal law and FINRA rules. While the Proposal states that “[n]othing in this section shall be construed to establish any ... making and keeping of records ... requirements for [BDs] ... that differ from, or are in addition to, the requirements of [NSMIA]”, certain elements of the Proposal such as the ongoing fiduciary duty, “best of” standards and the duty of loyalty would clearly impose new recordkeeping obligations upon BDs as they attempt to document compliance with the Proposal’s requirements.

Finally, with respect to IAs specifically, NSMIA added section 203A(b)(1) to the Advisers Act which states:

No law of any state or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person (A) that is registered under section [203] as an investment adviser, or that is a supervised person of such person, except that a State may license, register or otherwise qualify an investment adviser representative that has a place of business located within that State; or (B) that is not registered under [Section 203] because that person is excepted from the definition of an investment adviser under section [202(a)(11)].⁵

XI. CONCLUSION

We encourage the Division to revise the Proposal so that investors throughout Massachusetts can continue to receive a full array of financial services. The Proposal's current construct would limit investor choice, negate the many benefits available to investors who choose to receive financial services through brokerage accounts and will increase costs to Massachusetts investors. We respectfully urge the Division to consider a pragmatic approach aligned with Reg BI and Form CRS, which we believe best protects investors and preserves investor choice.

⁵ 15 U.S.C. §80b-3a(b)(1).

We thank you for consideration of our comments.

Sincerely,

MORGAN STANLEY SMITH BARNEY LLC

By: Anne Tennant

Anne Tennant

Managing Director and General Counsel