

Insights: Alerts

Massachusetts Revises, Moves Forward on its Fiduciary Rule

December 4, 2019

Written by **Jeffrey T. Skinner** and **Alexandra M. Fenno**

On December 3, 2019, the Massachusetts Securities Division posted the [December 2019 Fiduciary Conduct Standard Proposal](#), which supersedes the [June 14, 2019 preliminary proposal](#). We expect the formal rule proposal will be published later in December. We anticipate that the proposal will generate a lively comment period and public hearing sometime in January.

Notable changes from the June proposal include:

- The addition of “commodity or insurance product” alongside “security” when describing the product categories covered by the rule. 950 CMR 12.207(1)(a).
- Applying a fiduciary standard “during any period” when the customer or client has “a reasonable expectation that the broker-dealer, agent, investment adviser, or investment adviser representative will monitor the customer's or client's account(s) or portfolio on a regular or periodic basis.” 950 CMR 12.207(1)(b)5.
- Prescribing that the use of certain titles creates a reasonable expectation: “The use of a title, purported credential, or professional designation containing any variant of the terms “adviser,” “manager,” “consultant,” or “planner,” in conjunction with any of the terms “financial,” “investment,” “wealth,” “portfolio,” or “retirement,” or any terms of similar meaning or import, constitutes ... a customer or client having a reasonable expectation that the broker-dealer, agent, investment adviser, or investment adviser representative will monitor the customer's or client's account(s) or portfolio on a regular or periodic basis within the meaning of 950 CMR 12.207(1)(b)5.” 950 CMR 12.207(1)(c).
- Explicitly stating that a recommendation relative to a transaction in any “security, commodity or insurance product” that is made “in connection with any sales contest, implied or express quota requirement, or other special incentive program” is “presumed to constitute a breach of the duty of loyalty.” 950 CMR 12.207(2)(d).
- Adding that the duty of loyalty requires a broker-dealer, agent, investment adviser, or investment adviser representative to: (1) disclose all material conflicts of interest; (2) “make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot be avoided, and mitigate conflicts that cannot be avoided or eliminated”; and (3) “make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer or client.” 950 CMR 12.207(2)(b).

- Explicitly stating that: “Disclosing or mitigating conflicts alone does not meet or demonstrate the duty of loyalty.” 950 CMR 12.207(2)(c). This, of course, is an express contradiction of the U.S. Securities and Exchange Commission’s Interpretation Regarding Standard of Conduct for Investment Advisors. [17 CFR Part 276, Release No. IA-5248 \(June 5, 2019\)](#).

If you have any questions about the Massachusetts rule proposal, the regulation of broker-dealers, or state or federally registered investment advisers, please feel to contact us.

*By the **Investment Management and Broker-Dealer Team at Kilpatrick Townsend & Stockton***

Related People



Jeffrey T. Skinner

t 336.607.7512

jskinner@ktslaw.com



Alexandra M. Fenno

t 336.607.7426

afenno@ktslaw.com