

Michele N. Siekerka, Esq.
President and CEO

To: Christopher W. Gerold, Bureau Chief, New Jersey Bureau of Securities

Chrissy Buteas
Chief Government
Affairs Officer

From: Andrew Musick, Vice President, Government Affairs

Frank Robinson
Vice President
Government Affairs

Date: July 17, 2019

Andrew Musick
Vice President
Government Affairs

Re: Fiduciary Duty of Broker-Dealers and Investment Advisers (Proposal Number: PRN 2019-044); Proposed New Rule N.J.A.C. 13:47A-6.4

Michael Wallace
Vice President
Government Affairs

On behalf of our member companies that provide more than 1 million jobs in the state and make us the largest statewide business association in the country, the New Jersey Business and Industry Association (NJBIA) appreciates the opportunity to provide testimony regarding the Bureau of Securities proposal establishing the common law fiduciary duty, applying it to broker-dealers and agents, and codifying it for investment advisers and investment adviser representatives.

Tony Bawidamann
Vice President
Government Affairs

Raymond Cantor
Vice President
Government Affairs

This proposal makes significant changes in the way the securities sector operates in New Jersey, as well as the relationship it has with investors throughout the state. The changes would significantly impact nearly 250,000 employees in the state that work in the financial industry, who account for well over 5% of all employment in New Jersey.

Nicole Sandelier
Director Economic Policy
Research

We are concerned that this proposal would limit the choice in both products and services for consumers, not allow for time to measure the impact of recent federal activity on this issue, and create a patchwork of state laws that would be difficult to comply with.

As currently structured, the proposal creates a situation where firms may reduce their brokerage services in New Jersey, causing many New Jersey investors and residents to lose access to these brokerage services and valuable advice. It is the brokerage advice that is often most valuable, and appropriate, for those individuals with a modest balance that are not able to afford the cost of ongoing advice and monitoring associated with a fee-based advisory account. We are concerned that the regulations outlined in this proposal would severely impact middle-class New Jerseyans, who rely on these services and advice.

Additionally, the Securities and Exchange Commission (SEC) recently adopted a package of rulemakings and interpretations designed to enhance the quality and transparency of retail investors' relationships with broker-dealers, and hold financial advisers to a higher standard of care. Included in this package is the final Regulation Best Interest (Reg. BI), and the Form CRS Relationship Summary, both of which address many of the issues New Jersey has expressed concern with. As these new laws represent a drastic change for the financial advice industry, we would strongly urge the Bureau of Securities to first evaluate the impact of these new laws, to determine if any state-level action is even necessary.

As we have highlighted in our previous comments, the New Jersey Administrative Procedure Act (APA) clearly states that wherever practicable, the State should reduce confusion and costs involved in complying with state regulations, which can occur when multiple governmental entities impose differing standards in the same area of regulated activity. We feel that the proposal, and a state-by-state approach in general, would create an uneven patchwork of laws that would lead to investor confusion, and create additional compliance that is both costly and burdensome.

These impacts will be especially felt by the smaller, mid-size broker-dealer market in New Jersey, which represents the state's small business sector. The increased regulatory requirements and additional liability will result in higher costs and many will be forced to move away from the broker-dealer business. Many of these smaller shops do not have the human resources needed to effectively comply with a patchwork of varying state laws.

Ultimately, we feel that it is vital for the state to align its policies with federal rules and regulations so that New Jersey employers can operate in a state with a business friendly environment, and one that is competitive with nearby states. A patchwork approach of different protections and standards is not good for the businesses or residents of New Jersey. As outlined above, we would ask for the current rulemaking process to be paused, until the impact of changes made at the federal level can be evaluated.

Thank you and we appreciate your consideration of our concerns. Should you have any questions or need further information, please feel free to contact me directly at 609-858-9512.