CFA **Consumer Federation of America**

December 14, 2018

Christopher W. Gerold
Bureau Chief
Bureau of Securities
PO Box 47029
Newark, New Jersey 07101

Re: Fiduciary Duty Pre-Proposal; Pre-Proposed Amendment: N.J.A.C. 13:47A-6.3

Dear Mr. Gerold:

On behalf of the Consumer Federation of America (CFA)[1], we write in support of the Bureau's consideration of a pre-proposal to adopt a state-based uniform fiduciary standard for broker-dealers and investment advisers' advice. In an ideal world, we would not be having this conversation. The Department of Labor (DOL) rule would still be in effect, providing strong protections to retirement savers, and the Securities and Exchange Commission (SEC) and state insurance regulators would be putting the finishing touches on rules to match those protections for non-retirement accounts.

But that is not where we find ourselves today. The DOL rule was struck down by the 5th Circuit and the Trump Administration refused to continue to defend the rule. Instead of stepping in to fill the void after the DOL rule was struck down, the SEC has proposed a rule that presents a host of problems.[2] It fails to create a uniform fiduciary standard for investment advice offered by brokers and investment advisers. Instead, it relies on disclosures to enable investors to distinguish between the two standards, which past experience tells us they will not be able to do and which recent testing confirms is ineffective.[3] In addition, the "best interest" standard is vague and undefined and, depending on how it is interpreted, could do little more than rebrand the existing FINRA suitability standard as a best interest standard. At worst, it could actually weaken the protections investors currently receive. The National Association of Insurance Commissioners (NAIC) model suitability for annuity transactions proposal is weaker still, failing

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[1] CFA is a non-profit association of nearly 300 national, state, and local pro-consumer organizations. It was formed in 1968 to represent the consumer interest through research, advocacy and education.

[2] *See* Letter from Barbara Roper and Micah Hauptman, CFA, to the SEC, Regulation Best Interest, August 7, 2018, https://bit.ly/2CS6DQ1.

[3] See Press Release, CFA, "Independent Testing Shows SEC's Proposed Customer Relationship Summary Form May Add to Investor Confusion," (September 12, 2018), https://bit.ly/2Mv4efu. See also Letter from Barbara Roper and Micah Hauptman, CFA, to the SEC, Form CRS Relationship Summary, December 7, 2018, https://bit.ly/2BhQlh2.

to impose even a weak best interest standard or to rein in conflicts of interest prohibited for securities recommendations under FINRA rules.[4]

We, therefore, greatly appreciate states, such as New Jersey, that have been willing to look at ways they can step in to fill the void by providing investors with the protections they need, deserve, and expect.

1. **As background, you should be aware that the broker-dealer industry[5] has become accustomed to presenting inconsistent arguments on this issue, depending on what will be most expedient for them before their particular audience.**

- According to their ***legal*** **position** — which the 5th Circuit panel endorsed in the DOL fiduciary litigation — SIFMA, FSI, and their allies claimed that brokers are mere salespeople, with no relationship of trust and confidence with their customers, no different from other commercial sales relationships, in which both parties understand that they are acting at arms-length. They even likened themselves to car dealers.[6]
- According to their ***public relations*** **position,** however —shared by virtually every broker-dealer in their marketing materials — they are "trusted advisors" who provide investors with a "pay as you go" advice model. In other words, they say they are just different types of advice providers who get paid in a different way from investment advisers.[7]

This inconsistency has been on display in industry lobbying against your proposal. For example, the same week that SIFMA won its challenge before the 5th Circuit, SIFMA's CEO Kenneth Bentsen stated that, "there is no evidence that the advice an investor would receive [from a broker versus adviser] would differ either in kind or quality."[8] Then, at your November 2nd hearing, SIFMA's Associate General Counsel, whose name appears on SIFMA's briefs in that challenge, referred to the brokerage business as a "pay as you go" advice model."[9] SIFMA's rhetoric claiming that brokers are advisers too and brokers' advice is no different from fiduciary advisers' advice is plainly inconsistent with SIFMA's legal argument, that brokers are mere salespeople pushing products. But which interpretation you adopt has clear implications for your regulatory approach.

Similarly, FSI states that it advocates "on behalf of independent financial advisors…so they can provide affordable, objective financial advice to hard-working Main Street

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[4] NAIC, Annuity Suitability (A) Working Group, https://bit.ly/2zZDnEF.
[5] The insurance industry makes the same arguments.
[6] *See* Brief for Chamber of Commerce, SIFMA, FSI, *et al*., *Chamber v. DOL*, In the United States Court of Appeals for the Fifth Circuit, On Appeal from the United States District Court for the Northern District of Texas, Case Number 17- 10238, at 1, http://bit.ly/2f4wVBW ("The DOL seeks to…erase universally recognized distinctions between salespeople and fiduciary advisers…"); *Id*. at 41 ("A broker, insurance agent, or other financial-sales professional may make 'individualized solicitations much the same way a car dealer solicits particularized interest in its inventory.'") (internal cites omitted).
[7] *See* Micah Hauptman and Barbara Roper, *Financial Advisor or Investment Salesperson? Brokers and Insurers Want to Have it Both Ways,* CONSUMER FEDERATION OF AMERICA, January 18, 2017, http://bit.ly/2jKUbFD.
[8] Kenneth Bentsen, SIFMA CEO, *Is it Time to Adopt a Uniform Fee-Only Standard for Financial Advice?*, WALL STREET JOURNAL, March 18, 2018, https://on.wsj.com/2CSQObK.
[9] Statement of Kevin Carroll, On Behalf of the Securities and Financial Markets Association, To the New Jersey Bureau of Securities, November 2, 2018.

Americans."[10] And in her November 2nd written testimony, FSI's Vice President of State Affairs stated that, "FSI's mission is to ensure Main Street investors have access to affordable and competent financial advice and guidance."[11] She continued, stating that "the vast majority of retirement investors choose to pay for advice via commission…"[12] She also stated that a state-based fiduciary standard in New Jersey would "lead some firms to stop offering commission-based financial planning services."[13] Nowhere did she state that FSI's members are salespeople who are in arms-length commercial sales relationships, no different from car dealers. Based on how FSI's practices were described, it sounds like their members provide the same services that advisers provide, just through a different payment method.

The industry's multiple positions are plainly inconsistent. By presenting different arguments to different audiences, broker-dealer and insurance firms have been able to achieve their regulatory and business objectives, reaping all the benefits of being advice providers who are in positions of trust and confidence with their clients, without any of the responsibilities that are appropriate to their advisory role.

2. Despite their legal arguments to the contrary, broker-dealer and insurance firms hold themselves out as trusted investment advice providers and seek to foster relationships of trust and confidence, which is the hallmark of a fiduciary relationship at common law. Applying a fiduciary duty to these relationships is entirely appropriate given their advisory role.

There are myriad ways in which brokers and insurers seek to persuade the investing public that they are providing trusted investment advice. For example, they routinely market themselves as "financial advisors," "financial consultants," or "wealth managers," giving the impression of specialized advisory expertise. They commonly describe their services as "investment advice" or "retirement planning" and market those services as designed to serve customers' best interests. In holding out as impartial experts, they seek to occupy positions of trust and confidence with their customers.

Here are just a few examples of firms' marketing materials supporting the conclusion they function as "trusted advisors."[14]

- D.A. Davidson states: "**Trust** is the cornerstone of the relationship between you, as an investor, and the D.A. Davidson & Co. financial professionals working for you. Your needs should **always come first**."[15]
- Mass Mutual states: "Join millions of people who place their **confidence and trust** in us."[16]

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[10] Letter from David T. Bellaire, FSI, to the DOL, Regulatory Definition of the Term "Fiduciary" as it Relates to Investment Advice, July 21, 2015, https://bit.ly/2qmmf74.
[11] Testimony of Michelle Carroll Foster, On Behalf of the Financial Services Institute, Before the New Jersey Bureau of Securities, November 2, 2018.
[12] *Id*.
[13] *Id*.
[14] Many insurers engage in the same type of marketing.
[15] D.A. DAVIDSON, Your Rights, https://bit.ly/2ADEM4B (last visited August 21, 2016) (emphasis added).
[16] MASS MUTUAL, https://bit.ly/1LKF5YF (last visited August 21, 2016) (emphasis added).

- Raymond James states: "[I]t's developing a long-term relationship built on understanding and **trust**. Your **advisor** is there for you throughout the **planning** and investing process, giving you **objective and unbiased advice** along the way."[17]
- Schwab states: "A relationship you can **trust**, close to home."[18]
- UBS states: "The UBS Wealth Management Americas approach is based on the **trusted relationship** of our Financial **Advisors** and their clients. Our experienced **Advisors** are committed to understanding clients' needs and delivering insightful, informed **advice** to help them realize their dreams."[19]

These and other firms' marketing materials are devoid of any prominent reference that indicates they are mere salespeople engaged in arms-length commercial transactions.

The industry's marketing campaign to blur the line between product sales and investment advice has unquestionably "succeeded." After decades of being told they should trust their "financial advisor" to put their interests first, the majority of investors are unable to determine whether their own financial professional is a salesperson or a true advisor or whether the service being offered constitutes mere investment sales or fiduciary investment advice. Survey after survey has shown that investors do not distinguish between the sales recommendations they receive from broker-dealers and insurance agents and the advice they receive from fiduciary advisers.[20]

And recent research shows that, when asked if their financial professional is a broker-dealer or investment adviser, the majority of investors state that they believe their financial professional is an investment adviser, with only a small minority stating that they are a broker-dealer.[21] The odds that this is actually the case are extremely remote given basic industry demographics. Instead, these findings are consistent with the views that investors have shared with us. They seek out financial professionals because they know their own limitations, they depend on their financial professional's expertise and rely on it, and they trust that the advice they receive will be in their best interest, untainted by conflicts of interest. In short, investors reasonably expect and believe that they are in advisory relationships of trust and confidence, regardless of whether they work with a broker-dealer or an investment adviser.

This isn't the result of merely being confused about a complex marketplace. It's the result of actively being misled by the industry. The industry's desire to market themselves as trusted advisors is understandable. Clearly, if they portrayed themselves as mere salespeople engaged in

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[17] Raymond James, Why a Raymond James Advisor, https://bit.ly/2qheDme (last visited April 4, 2018) (emphasis added).
[18] SCHWAB, Find a Branch, https://bit.ly/2yIk81Y (last visited August 21, 2016) (emphasis added).
[19] UBS, About Us, https://bit.ly/2caSp1Q (last visited August 21, 2016) (emphasis added).
[20] *See, e.g.*, Angela A. Hung, et al., Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, Rand Corporation, Sponsored by the United States Securities and Exchange Commission (January 2008) https://bit.ly/2LSDOsr; Siegel & Gale, LLC and Gelb Consulting Group, Inc., Results of Investor Focus Group Interviews About Proposed Brokerage Account Disclosures, Report to the Securities and Exchange Commission (March 10, 2005) https://bit.ly/1MkdujW; Infogroup/ORC, U.S. Investors & The Fiduciary Standard: A National Opinion Survey (September 15, 2010) https://bit.ly/2PzpF4g.
[21] *See* Brian Scholl, Office of the Investor Advocate and Angela A. Hung, RAND Corporation, The Retail Market for Investment Advice, submitted to the SEC, October 12, 2018, https://bit.ly/2PwCPz8.

arms-length sales transactions, they wouldn't be nearly as effective at attracting clients, and their profits would decline.

The harm to investors is immense when they reasonably, but mistakenly believe they are getting advice that's in their best interest based on a trusted relationship with their advisor. In addition to paying higher costs, investors who rely on biased sales recommendations as if they constituted unbiased advice can end up facing unnecessary risks or receiving substandard returns as a result of incentives that pervade the compensation system for sales-based financial professionals. Cumulatively, these industry practices drain tens of billions of dollars every year out of investors' pockets and into the pockets of firms and their financial professionals. According to one study, New Jersey IRA investors alone lose approximately $610 million a year as a result of conflicted advice.[22] The results are even larger when considering all accounts and the full range of products sold within accounts.

3. The Securities Bureau should crack down on firms' and financial professionals' dishonest and unethical business practices.

To the extent broker-dealers misrepresent their sales representatives as advisers and their arms-length sales recommendations as advice that should be trusted and relied upon, it is incumbent upon the Securities Bureau to hold firms and individuals accountable for engaging in these dishonest or unethical business practices. Thus, we suggest a framework that requires firms or financial professionals who consider themselves to be in an arms-length sales relationship to hold out in a way that makes it abundantly clear to current and potential customers that that's the service they are providing. They should not to be able to hold out in any way that would suggest to a reasonable person that they are an advice provider who would occupy a position of trust and confidence. This includes using misleading titles (such as financial advisor, financial consultant, or wealth manager) or describing their services in ways, as described above, which convey to a reasonable person that the firm or financial professional is in a position of trust and confidence. If they do hold out in any way that suggests they are an advice provider who occupies a position of trust and confidence without complying with the fiduciary duty appropriate to their role, their activity should be deemed a dishonest and unethical business practice.

A fiduciary relationship arises at common law where there is a special relationship of trust and confidence between the parties.[23] As discussed above, brokers hold themselves out and function as "trusted advisors" whose only concern is their clients' best interest. Some may indeed offer services that are primarily advisory in nature. Therefore, to the extent brokers continue to hold out and function as advice providers who occupy positions of trust and confidence with their clients, they should be subject to a fiduciary duty appropriate to their role.

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[22] Heidi Shierholz and Ben Zipperer, *Here is what's at stake with the conflict of interest ('fiduciary') rule,* ECONOMIC POLICY INSTITUTE, May 30, 2017, https://bit.ly/2EQJ9gE.

[23] The SEC recognizes in its Regulation Best Interest proposal that states have authority to apply a common law fiduciary duty to brokers, stating, "a broker-dealer may have a fiduciary duty under certain circumstances. This duty may arise under state common law, which varies by state." Proposed Regulation Best Interest, SEC, 83 Fed. Reg. 21640, 21641 (May 9, 2018), https://bit.ly/2qkPFSQ.

Under this framework, using titles, such as advisor, consultant, wealth manager, and other similar titles would *per se* convey to a reasonable person that the firm or financial professional is in a position of trust and confidence. Similarly, referring prominently to one's services as advice or planning or otherwise suggesting that advice is the primary service being provided would *per se* convey to a reasonable person that a firm or financial professional is in a position of trust and confidence. The same would hold true for firms that describe the relationship as one of trust or use other terms to convey the same concept.

4. The specific formulation of the fiduciary standard of conduct is critical.

At common law, a fiduciary duty includes both a duty of care to act with prudence and a duty of loyalty to refrain from engaging in self-dealing. How you define these obligations is critical to ensuring they provide meaningful enhancements to investor protection.

In our view, the duty of care should be defined as "advice that reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the client." This formulation is the same standard that the DOL used in its Best Interest definition, and it is consistent with the common law application of the duty of care.

The duty of loyalty should be defined as advice that is made "in the best interest of the investor, without regard to the financial or other interests of the broker-dealer, agent, investment adviser, or their affiliated entities." This is also the same formulation that the DOL used in its Best Interest definition, which in turn came directly from the standard Congress identified in section 913(g) of the Dodd-Frank Act as the appropriate standard for a uniform fiduciary rulemaking. Unfortunately, in proposing its Regulation Best Interest, the Securities and Exchange Commission has adopted a standard modeled on FINRA suitability.[24] Thus, this approach to raising the standard would be more faithful to the framework that Congress intended than the one the SEC has proposed. In order to ensure the standard strengthens existing obligations under FINRA suitability, it is critical that the fiduciary duty be interpreted as requiring the person making the recommendation to recommend, from among those they have reasonably available, the product or products that are best for the investor, recognizing that more than one product may meet that standard.

In addition to getting the standard of conduct right and giving it real meaning, it is critical to reinforce that standard with strong anti-conflict requirements. In other words, firms must be required to rein in the use of harmful incentives that encourage and reward bad advice. This includes cracking down on the use of sales contests, trips, bonuses, and quotas for meeting certain production requirements, for example, or to favor the sale of products and services that are most profitable for the firm, rather than those that are best for the customer. Such practices are clearly designed to encourage recommendations based on the financial interests of the firm, rather than the best interests of the customer. To be meaningful, the standard must not allow

[24] *See* Letter from Barbara Roper and Micah Hauptman, CFA, to the SEC, Regulation Best Interest, August 7, 2018, https://bit.ly/2CS6DQ1.

firms and financial professionals merely to disclose conflicts of interest in order to satisfy the duty of loyalty. There is simply no evidence that disclosure is effective in protecting investors from the harmful impact of conflicts.

5. The Securities Bureau should work with the Banking and Insurance Department to strengthen protections for investors when they receive recommendations to purchase annuities and other insurance products with an investment component.

One area where even the best of SEC rules would have no impact is on the insurance market. This is because the SEC has no authority to regulate non-securities and exempt-securities, despite the fact that insurance products are often sold as investments. Moreover, these products can have very harmful features and be sold subject to particularly acute conflicts of interest.[25] Unfortunately, but predictably, following the *vacatur* of the DOL fiduciary rule, there's been a recent surge in annuity sales,[26] sales that likely would not pass muster under a rigorous best interest standard. We would therefore urge the Securities Bureau to work with the Banking and Insurance Department to apply the same strong fiduciary standard to recommendations of annuities and other insurance products that include an investment component. It would be particularly important in the insurance context to require firms to eliminate harmful practices — such as product specific sales contests — that encourage recommendations that are not in the consumer's best interest. While these practices are already largely restricted under FINRA rules,[27] they are all-too-common in the insurance markets. Absent application of a uniform standard across product lines, harmful sales practices are likely to migrate into this less regulated arena.

6. Arguments that any state action in this space would be preempted, either under NSMIA or ERISA, have no merit.

First, so long as the rule is carefully crafted, it is unlikely that the National Securities Markets Improvement Act (NSMIA) would preempt a state-based fiduciary rule for brokers-dealers and investment advisers. With regard to broker-dealers, NSMIA preempts states only in specifically enumerated areas – when they impose additional or different capital, custody, margin, or books and records requirements, for example.[28] Outside of those clearly delineated areas, states are free to impose additional obligations on broker-dealers so long as they don't conflict with federal law. In fact, Congress made explicitly clear in NSMIA's savings clause that states retained their authority to regulate broker-dealers outside of those specifically enumerated areas.[29] In addition, the Congressional Committee Reports emphasized the fact that Congress did

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[25] *See* Letter from Barbara Roper and Micah Hauptman, CFA, to the DOL, Fiduciary Rule Examination, April 17, 2017, https://bit.ly/2mZITzQ (Section IV summarizing existing and new research regarding harmful practices in the annuity market).
[26] Ben Eisen and Lisa Beilfuss, *Steak Dinner and Annuities: Retirement Product Surges After Fiduciary Rule's Demise*, WALL STREET JOURNAL, October 27, 2018, https://on.wsj.com/2OYAOMy.
[27] *See, e.g.*, FINRA Rule 2320(g)(4) (Variable Contracts of an Insurance Company); FINRA Rule 2341 (Investment Company Securities); FINRA Rule 2310(c) (Direct Participation Programs).
[28] *National Securities Markets Improvement Act of 1996(NSMIA)* § 103.
[29] NSMIA § 102. NSMIA's savings clause states: "Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to

not intend to limit states' ability to investigate and enforce violations of state laws governing broker-dealer sales practices.[30]

Moreover, states can and often do impose duties on broker-dealers that are different from and in addition to federal law. In fact, several states impose fiduciary duties on brokers in specific circumstances, despite the fact that there is no federal fiduciary duty for brokers.[31] In addition, several states have recently imposed reporting requirements on broker-dealers when they suspect certain customers may be the victims of financial exploitation, despite the fact that there is no federal duty to report such occurrences.[32]

SIFMA, FSI, and other industry groups have incorrectly argued that the reference to recordkeeping in NSMIA precludes states from promulgating a fiduciary duty for brokers' advice. They erroneously claim that any requirement that might cause a firm to *voluntarily* keep a record relating to a state law that isn't also required under federal law would be preempted. But that is clearly not the case, as evidenced by existing state rules relating to broker-dealer conduct. Merely because a firm may *voluntarily* choose to adopt more rigorous recordkeeping practices for their own business purposes does not mean that the firm is *legally required* to do so. The simple fact is that existing recordkeeping requirements under federal law should provide more than an adequate basis to determine whether a firm complied with or violated a fiduciary rule. As a result, firms could comply with a heightened standard of conduct without also having to maintain new or different records. The fact that some firms may choose to do more for their own compliance purposes doesn't change that. So long as New Jersey does not impose an affirmative obligation on broker-dealers to keep new or additional records to demonstrate compliance with New Jersey's fiduciary rule, there is no reason to assume that NSMIA would preempt this rulemaking.

Just as NSMIA preempts states law regarding broker-dealers only in specifically enumerated areas, NSMIA preempts state laws regarding federally registered investment advisers only in specifically enumerated areas – when they impose new or different registration, licensing, or qualification requirements.[33] Outside of those clearly delineated areas, states are free to impose additional obligations on federally registered investment advisers, so long as they don't conflict with federal law. Because compliance with a state-based fiduciary duty wouldn't require registration, licensing, or qualification by a federally registered investment adviser, there is no reason to conclude that NSMIA's narrow preemption provision would apply to this proposal. In any event, NSMIA's savings clause makes clear that states retain authority to investigate and bring enforcement actions with respect to fraud or deceit, which is the basis for this rulemaking.

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investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions."

[30] *See* H.R. Rep. No. 104-622, 1996 WL 354335, at *30 (1996).

[31] The SEC acknowledges this in its proposed Regulation Best Interest, stating, "[A] broker-dealer may have a fiduciary duty under certain circumstances. This duty may arise under state common law, which varies by state." Reg. BI proposal footnote 15 at 14.

[32] *See, e.g.,* SB 220, Alabama Regular Session 2016*;* SEA 221, Indiana Second Regular Session 2016; Vt. Sec. Reg. § 8-5, Protection of Vulnerable Adults from Financial Exploitation.

[33] NSMIA § 303(b).

Because a carefully crafted state-based fiduciary rule would not impose additional or different requirements on broker-dealers or federally registered investment advisers in the specifically enumerated areas of NSMIA, it is unlikely that NSMIA would preempt the kind of regulation that New Jersey is contemplating.

Second, so long as it is carefully crafted, it is unlikely that the Employee Retirement Income Security Act (ERISA) would preempt the kind of regulation that New Jersey is contemplating. While it is true that ERISA contains a provision that generally preempts a state law that "relates to" any employee benefit plan,[34] it is unlikely that a state law generally regulating securities and insurance sales recommendations and investment advice would be found to "relate to" an employee benefit plan. The case law makes clear that this provision in ERISA was intended to ensure that plan and plan sponsors would be subject to a uniform body of benefits law.[35] It had nothing to do, however, with ensuring that third parties who are not plans or plan sponsors -- and are therefore not subject to ERISA fiduciary mandates, but who may interact with plans in the course of their business activities -- escape state-based regulation of general applicability. Because the rule being contemplated by New Jersey would be targeted at securities and insurance professionals and their firms who are not plans or plan sponsors, and are therefore not ERISA fiduciaries, it would not mandate employee benefit structures or their administration, bind employers or plan administrators to particular choices or preclude uniform administrative practice, or provide alternate enforcement mechanisms for employees to obtain ERISA plan benefits in any way. As a result, it's unlikely that ERISA's general preemption provision would even apply to the regulatory action that New Jersey is contemplating.

Moreover, even if a state law were found to "relate to" an employee benefit plan, ERISA's broad savings clause allows states to regulate insurance, banking, or securities, just as New Jersey is proposing to do here. [36] Thus, ERISA's savings clause would ensure that a state law regulating securities and insurance sales recommendations and investment advice, such as the one New Jersey is considering, would not be preempted.

Conclusion

We greatly appreciate your willingness to consider an expanded role for New Jersey on an issue that is, in our view, the single most important gap in investor protection facing retail investors today. If properly implemented, this rulemaking would greatly enhance protections for vulnerable New Jersey investors and could serve as a model for other states to follow.

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[34] ERISA § 514(a).

[35] *See New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co*., 514 U.S. 645 (1995); *Gerosa v. Savasta Co., Inc.*, 329 F.3d 317 (2d Cir. 2003); *Pascack Valley Hospital, Inc. v. Local 464A UFCW Welfare Reimbursement Plan*, 388 F.3d 393 (3d Cir. 2004); *Le-Blanc v. Cahill*, 153 F.3d 134 (4th Cir.1998); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457 (4th Cir. 1996); *Perkins v. Time Ins. Co.*, 898 F.2d 470 (5th Cir.1990); *Trustees of the AFTRA Health Fund v. Biondi,* 303 F.3d 765 (7th Cir.2002); *Trustees of the AFTRA Health Fund v. Biondi,* 303 F.3d 765 (7th Cir.2002); *Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715 (9th Cir.1995); *Morstein v. Nat'l Ins. Servs., Inc.,* 93 F.3d 715 (11th Cir. 1996).

[36] ERISA § 514(b)(2)(A). ERISA's savings clause states in relevant part: "nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities."

Respectfully submitted,

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