



March 13, 2019

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 786 - Financial Consumer Protection Act of 2019 – Opposed

Dear Chair Kelley and Members of the Senate Finance Committee,

The Institute for Portfolio Alternatives (“IPA”)¹ appreciates the opportunity to address Senate Bill 786 (“Bill”). We are a member of the Maryland Consumers Best Interest Coalition. The IPA has an immediate interest in applicable standards of conduct for financial professionals in Maryland as our members include both regulated broker-dealer firms and their investment professionals in your state and nationwide. IPA member firms support individual investor access to a wide variety of asset classes with low correlation to the traded markets and historically available only to institutional investors. These investment products have been held in the accounts of more than 3 million individual investors. With over \$135 billion in capital investments, they remain a critical component of an effectively balanced investment portfolio and serve an essential capital formation function for national, state and local economies.²

The IPA is concerned about Section 11-803 (pages 24-25) of the Bill for the reasons detailed below. We appreciate your consideration of our comments.

- **Consumers will be harmed by a patchwork of conflicting state regulations:** Fiduciary or best interest standards adopted on a state-by-state basis likely will materially conflict with each other, as well as with Federal standards, making it impossible for financial professionals to properly serve their clients across state lines.
- **Federal regulations are around the corner:** The Federal Securities and Exchange Commission (SEC), after a lengthy process of agency review and public comment, is about to adopt a uniform, countrywide regulation on this subject, known as the “Best Interest” standard.
- **Small and mid-sized investors will lose out:** Small investors currently utilize financial products that are sold on commission. This law will eliminate many commission-based products from the marketplace, and require the consumer to pay a fee for services. Most fee-based business models have minimum assets-to—

¹ On Monday, April 9, 2018, the Investment Program Association became the Institute for Portfolio Alternatives. The change reflects our organization’s continued commitment to champion the portfolio diversifying investment industry.

² For over 30 years the IPA has raised awareness of portfolio diversifying investment (PDI) products among stakeholders and market participants, including investment professionals, policymakers and the investing public. We support increased access to investment strategies with low correlation to the equity markets: lifecycle real estate investment trusts (Lifecycle REITs), net asset value REITs (NAV REITs), business development companies (BDCs), interval funds and direct participation programs (DPPs). Through advocacy and industry-leading education, the IPA is committed to ensuring that all investors have access to real assets and the opportunity to effectively diversify their investment portfolios.

invest requirements, often \$250,000, \$500,000 or larger. Small investors cannot afford these significant thresholds.

- **A fiduciary duty may be inconsistent with an investor’s wishes:** As part of industry research into client needs, industry members have found that there are notable segments of the population that strongly prefer a commission-based relationship. Clients nearing retirement, who have already settled on their financial plan, are one of these segments. These clients do not wish to hire a fee-based planner. Instead, they prefer to maintain their accounts in a less expensive, commission-based account in which they have greater control.
- **A standard by any other name:** The term “fiduciary,” in and of itself, has little meaning. A “fiduciary duty” under the Investment Advisers Act is very different from a “fiduciary duty” under ERISA or the “fiduciary duty” owed to clients by their lawyer. This legislation would potentially impose a single, legal Maryland-only standard for different types of conduct by different financial professionals.
- **Insurance companies are different, and will have their own regulation:** The insurance industry is working on another uniform standard at the National Association of Insurance Commissioners (NAIC). Life insurance companies and the financial professionals who distribute their products are committed to a uniform, harmonized best interest standard of care for annuity and securities transactions across all state and federal regulatory platforms for financial services firms and financial professionals. This standard would benefit retirement savers and, indeed, all consumers planning and saving for the future.
- **This proposal was rejected in Maryland last year:** The fiduciary duty provision included in SB 786/HB 1127 was considered by the 2018 Maryland General Assembly in SB 1068/HB 1634. It was removed in Committee and not considered by either the full House or Senate.
- **States will have to navigate a host of legal issues:** States seeking to impose a state-specific fiduciary duty on broker-dealers and investment advisers will have to navigate many potential conflicts with federal law, including the Securities Exchange Act, the Investment Advisers Act, the Federal Arbitration Act, the Employee Retirement Income Security Act and the Commerce Clause of the U.S. Constitution.

If the IPA may be of any assistance, please do not hesitate to contact me or Anya Coverman, IPA’s Senior Vice President, Government Affairs and General Counsel, at (202) 548-7190.

Sincerely,



Anthony Chereso
President & CEO, Institute for Portfolio Alternatives