

Massachusetts high court upholds state fiduciary rule covering brokers

Decision strikes blow against online brokerage Robinhood but is hailed as a 'Fenway Park Red Sox grand slam home run' by fiduciary advocate.

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- By Mark Schoeff Jr.

The highest court in Massachusetts upheld the state's investment advice standard that imposes fiduciary duty on brokers, dealing a setback to online brokerage Robinhood's effort to kill the regulation.

The Massachusetts Supreme Judicial Court [ruled Friday](#) that the state's top securities regulator, Secretary of the Commonwealth [William Galvin](#), acted within his authority in September 2020 when he established the state's investment advice rule imposing fiduciary duty on brokers.

The court also held the measure [does not conflict](#) with Regulation Best Interest, the broker-dealer standard promulgated by the Securities and Exchange Commission that [went into force](#) in June 2020.

In March 2022, a Massachusetts Superior Court judge [struck down](#) the Massachusetts fiduciary rule in a suit [brought by Robinhood](#) in April 2021. The online brokerage was responding to [a lawsuit Galvin filed](#) against Robinhood in December 2020 for violating the state's fiduciary rule through features of its online trading app that allegedly targeted inexperienced investors.

Galvin appealed the Superior Court decision to the Massachusetts Supreme Judicial Court, which overturned the lower court's ruling Friday.

The Massachusetts high court held that Galvin acted appropriately in promulgating a fiduciary rule because it does not violate state law nor is it overridden by Reg BI.

“[W]e conclude that the Regulation Best Interest constitutes a regulatory floor that does not foreclose State regulation to more clearly protect investors,” the Massachusetts court wrote in its opinion. The case was remanded to the lower court for further administrative proceedings.

Galvin celebrated his victory.

“This landmark decision affirms the fiduciary duty of brokers to their customers and vindicates the role of my Securities Division to principally, but aggressively, protect investors and police broker-dealer misconduct,” Galvin said in a statement. “The rule that has been upheld by the Supreme Judicial Court today will give the highest protections to Massachusetts investors when brokers provide investment advice.”

Robinhood may not be done battling the state’s investment-advice standard.

“We are disappointed in today’s decision and remain committed to providing access to the markets for our Massachusetts customers,” Lucas Moskowitz, deputy general counsel and head of government affairs at Robinhood Markets Inc., said in a statement. “We are in the process of reviewing the opinion and assessing next steps in this matter.”

In his December 2020 suit, Galvin alleged that Robinhood violated the Massachusetts fiduciary rule because gamification features in its online app enticed investors with little experience to make repeated trades. Galvin said Robinhood acted to promote its own business, contravening the state standard that requires brokers to make recommendations without regard to their own financial interests.

In its April 2021 suit to overturn the rule, Robinhood argued Galvin exceeded his authority under the state’s securities law by imposing a uniform fiduciary standard in Massachusetts that subjects brokers to the same advice standard as investment advisors. Previously, brokers were governed by a separate suitability standard.

The brokerage also argued that the Massachusetts rule was preempted by the SEC’s Reg BI, which prohibits brokers from placing their financial interests ahead of their customers’ interests but is not itself a fiduciary standard.

Fiduciary advocates, who assert it is the highest standard for investment advice, hailed the Massachusetts high court ruling.

“This morning the Massachusetts Supreme Judicial Court made regulatory history,” Knut Rostad, president of the Institute for the Fiduciary Standard, said in a statement. “The decision is an overwhelming victory for investors. It is a Fenway Park Red Sox grand slam home run that will be reviewed by many other state securities administrators in the months and years ahead.”

Galvin has asserted that the state’s fiduciary rule is stronger than Reg BI in protecting the state’s investors, who are confused by the differing standards for brokers and advisors. The state’s high court said he has the leeway to set a higher standard.

“To be sure, the rule imposes an obligation on broker-dealers beyond that attendant to the prior suitability standard ... and is clearer than the standard under Regulation Best Interest, which does not define ‘best interest,’” the court wrote in its opinion. “But the rule is driven by changes in the prior ‘norm’ of the marketplace that have caused investor harm, the Secretary found.”

The court was not convinced by Robinhood’s argument that Reg BI preempted the Massachusetts fiduciary rule. Robinhood asserted that the SEC through Reg BI was trying to preserve lower-cost investment advice from brokers that would become too expensive if brokers had to adhere to fiduciary duty.

“We disagree that this aspiration to preserve investor access to an array of investor services ‘to the extent possible’ hurdles the high bar required to find conflict preemption,” the Massachusetts court wrote.

The court also said the SEC declined explicitly to preempt state investment advice laws within the language of the final Reg BI rule.

“Here, Robinhood’s preemption argument is ‘particularly weak’ because Congress and the SEC were aware of state laws imposing fiduciary obligations on broker-dealers and declined to express an intent to preempt those laws,” the court wrote. The court said the SEC in the Reg BI adopting release concluded “a preemption analysis would be too speculative.”