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Hon. Margaret Ryan
Director, Enforcement Division
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Via email

Re: *SEC v. Cutter Financial Group, LLC*, No. 1:23-cv-10589 (D. Mass.)

Dear Director Ryan:

I write on behalf of amicus curiae Investor Choice Advocates Network (“ICAN”) to urge the Commission to dismiss the remaining negligence claim in *SEC v. Cutter Financial Group, LLC* and bring this matter to a close.

The *Cutter* case has already been fully adjudicated by a jury, which rejected the SEC’s claims of intentional fraud and compliance failure. What remains is a narrow negligence finding under Section 206(2) of the Investment Advisers Act—a claim predicated on an alleged omission that no SEC rule, guidance, or precedent has ever required: disclosure of the amount of insurance commissions received on fixed indexed annuity (“FIA”) sales. Continuing to litigate this matter now risks harming investors by perpetuating a form of “regulation by enforcement” that undermines the Commission’s own stated commitment to clarity, fairness, and transparency.

The SEC Should Never Have Brought This Case

From the outset, this case reflected a troubling attempt to expand SEC jurisdiction beyond what Congress authorized. As ICAN explained in its 2023 amicus brief, the SEC’s theory would effectively import investment adviser fiduciary



standards into the sale of insurance products—an area Congress and the courts have long reserved to state regulation. Both the McCarran–Ferguson Act and Section 989J of the Dodd-Frank Act make clear that fixed indexed annuities are not securities subject to SEC regulation. By attempting to impose through litigation what it could not achieve through rulemaking, the SEC has damaged small firms, confused regulated entities, and restricted investor choice—the very outcome Congress sought to prevent. The Enforcement Division should never have sought to use this small advisory firm as a test case for a new disclosure standard. The fact that the jury rejected the Division’s central theory of intentional fraud—and the Commission did not allege or prove any investor losses—underscores how far this action strayed from legitimate enforcement priorities.

A Change in Course Would Be Consistent With the SEC’s Own Recent Actions

There is precedent for the Commission itself recognizing when continued litigation no longer serves the public interest. Earlier this year, in *SEC v. Carebourn Capital, LP*, the Commission—after prevailing in the district court—moved to remand its opponents’ appeal in light of a change in Commission leadership and policy. The SEC explained that, as a matter of discretion and sound enforcement judgment, it had dismissed several similar “unregistered dealer” cases nationwide and sought to revisit the *Carebourn* judgment to align with the agency’s current understanding of the law and the limits of its jurisdiction.

The *Cutter* case stands in the same posture. It rests on an expansion of the Advisers Act, pressed through litigation rather than rulemaking, and inconsistent with Congress’s clear delineation of state and federal authority. If the Commission could appropriately step back in *Carebourn*—a case in which it had prevailed—it should do the same here, where the agency’s theory was largely rejected by a jury and where continued litigation would only deepen the perception that the SEC is making policy through enforcement, eroding public trust.

The Right Outcome Now

The Division of Enforcement should recommend that the Commission dismiss the remaining claim against CFG and Jeff Cutter. Doing so would not only

correct an overreach that should never have occurred but also demonstrate the Commission's commitment to aligning its enforcement actions with law, policy, and investor welfare—especially given Cutter's post-trial implementation of enhanced disclosures.

Investors benefit from clear rules, not from the unpredictability of after-the-fact enforcement theories. The SEC's mission is best served by ensuring fair notice and maintaining public trust—not by persisting in litigation that has already failed to vindicate any investor harm, revealed no fraud, and created confusion among regulated firms nationwide.

ICAN urges the Commission to follow the example it set in *Carebourn* and dismiss the remaining claim in Cutter Financial Group.

I would welcome the opportunity to meet with you or your staff—in person or virtually—to discuss this matter further.

Thank you.

A handwritten signature in blue ink, appearing to read "Nicolas Morgan", with a stylized flourish at the end.

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cc: Hon. Paul S. Atkins, Chairman, via email Chairman@sec.gov