



Consumer Federation of America

July 16, 2013

Oppose H.R. 2374: Allow Regulators to Protect Vulnerable Workers and Investors from Predatory Financial Services Providers

Dear Representative:

I am writing on behalf of the Consumer Federation of America to urge you to oppose legislation (H.R. 2374) that would impede the ability of the Securities and Exchange Commission and Department of Labor to protect vulnerable investors, workers and retirees from self-interested and sometimes predatory financial services professionals seeking to profit at their expense. We do not know when the bill is likely to come up for a vote, but we have been led to understand that Republican leaders of the House Financial Services Committee hope to bring it to a vote before the August recess. When it does come to a vote, we urge you to vote no.

Each year, middle income Americans who need to make every penny count pay millions of dollars in excess costs because the brokers they rely on for advice are legally permitted to put their own financial interests ahead of their customers' as long as their recommendations are generally suitable. In other words, they are free to recommend the "worst" of the generally suitable investments – those with the highest costs, that expose the investor to unnecessary risks, or that are loaded up with features that the investor doesn't need. Both the SEC and DOL have undertaken separate efforts to address this pressing problem by imposing a fiduciary duty on financial services providers, the SEC exercising its jurisdiction under the federal securities laws and DOL exercising its jurisdiction under ERISA.

H.R. 2374, cynically titled the "Retail Investor Protection Act," seeks to prevent both efforts from moving forward. The legislation inappropriately prohibits DOL from finalizing a rule under ERISA until the SEC completes its own separate rulemaking, a rulemaking it has not yet begun and may never undertake. In addition, the legislation would further delay SEC action, and perhaps derail rulemaking entirely. It would do so by imposing yet another set of requirements on the agency to study the issue and reach formal findings that investors are being harmed under the existing standard and that a fiduciary rule would eliminate investor confusion. This latter requirement misses the point of a fiduciary rule, which is not to eliminate investor confusion but to eliminate the source of confusion by closing the regulatory loophole that allows brokers to call themselves advisers and offer extensive advisory services without having to meet the same fiduciary best interest standard that applies to all other advisers.

The legislation's study requirements are completely redundant. The SEC is currently gathering data to support an economic analysis. That analysis will be the third comprehensive study of the issue in the nearly 10 years since the Commission first concluded that regulation was

needed to close this regulatory loophole. Requiring the Commission to reach formal findings with regard to investor harm and investor confusion won't improve the quality of the rules, it will simply provide further basis for legal challenge from a fringe element of broker-dealers adamantly opposed to any requirement to act in the best interests of their customers. It is extremely disappointing that some members of Congress continue to impede rulemaking even after SIFMA, the main broker-dealer trade association, has joined state and federal securities regulators, investor advocates, senior groups, and investment advisor groups in calling on the SEC to adopt of a fiduciary standard for brokers when they provide personalized investment advice to retail investors.

While the DOL rule has not enjoyed this same industry support, continued opposition since the agency withdrew its original rule proposal appears to be based on industry fears about the form the rule may take rather than any evidence about the actual content of the rule. In fact, since concerns were first raised regarding the DOL proposed rule, the agency has done everything that has been asked of it. It has withdrawn the rule to re-propose it taking into account the concerns that had been raised. It has conducted an economic analysis of the rule proposal. It has promised to issue the prohibited transaction exemptions simultaneously with its re-proposal of the rule so the real-world impact of the rule can be fairly assessed. And it has pledged that its rule will not conflict with any rule the SEC may eventually adopt. Surely the agency has earned the right to have its rule judged on its own merits, particularly when the need for enhanced worker and retiree protections are so great.

Strengthening protections for investors who rely on self-interested securities salespeople for advice is, in our view, the single most important thing federal regulators can do to improve the retirement security of middle income workers, investors and retirees. Because this bill would impede the ability of the SEC and DOL to protect those vulnerable Americans from financial services providers who would profit at their expense, we urge you to vote no when it is brought to the House floor for a vote.

Thank you for your attention to our concerns. Please feel free to contact me directly (719-543-9468, bnroper@comcast.net) if you have any questions about CFA's position on this issue.

Respectfully submitted,



Barbara Roper
Director of Investor Protection