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September 27, 2013

Dear Representatives:

Next week the House is expected to vote on H.R. 2374, known as the “Retail Investor Protection Act.” We are writing to express our opposition to this deceptively named bill, which will in no way protect retail investors; in reality, H.R. 2374 will serve to protect financial services professionals who seek to profit at vulnerable investors’ expense. The bill will do so by delaying, and possibly preventing, the Securities and Exchange Commission (SEC) and Department of Labor (DOL) from modernizing their fiduciary duty standards.

As background, the SEC and DOL are considering updating their fiduciary duty standards for the provision of financial advice under the Investment Advisers Act of 1940 and the Employee Retirement Income Security Act (ERISA) of 1974, respectively. But H.R. 2374 will hamstring both agencies from moving ahead with updated rules. It will do so in two ways.

First, the bill imposes additional requirements on the SEC to reach specific findings, which could slow down or even stymie SEC action. The SEC must first reach findings with regard to the existence of harm to investors under the existing standard, which merely requires advice that broker-dealers provide to be generally suitable. The SEC must also reach findings on the impact that an updated rule, which would require broker-dealers to provide advice that is in their clients’ best interest, would have on access to services. These additional requirements are unnecessary and duplicative, as the Commission is already held to a rigorous standard to consider the economic impact of the rules it passes.

There is already substantial evidence from an SEC staff study and a RAND Corporation report that provide the basis for an updated rule, and the agency is currently collecting data to support further economic analysis. It therefore seems that the purpose of imposing these heightened burdens on the agency is not to improve the quality of analysis underlying the SEC’s rulemaking, but rather to create barriers to making a fiduciary duty standard uniformly applicable to all financial advisors. Additionally, these heightened requirements will likely serve as the basis for legal challenges to the rule once it is finalized. Many unscrupulous financial advisors who are currently allowed to reap enormous profits at their clients’ expense will vociferously oppose a new standard that requires them to put their clients’ best interests ahead of their own. Those individuals will



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undoubtedly contest anything the SEC does that impacts their business model, and these requirements give them additional tools to do so.

Second, the bill prevents the DOL from updating its fiduciary standard under ERISA until sixty days after the SEC finalizes its own fiduciary standard. Thus, any delay by the SEC will necessarily halt DOL action. This delay will invariably leave investors and workers with inadequate protections. Indeed, one reason the DOL has undertaken its fiduciary rulemaking is that the existing standard is difficult to enforce and has not been updated to reflect the dramatic changes that have occurred in the retirement arena over the last several decades. Like the SEC, the DOL is currently engaged in the comprehensive rulemaking process that includes opportunities for input by all interested parties, a re-proposal of the rule in response to criticisms of its original approach, and extensive economic analysis. It deserves to have its efforts judged on the basis of a re-proposed rule, not halted before it has a chance to act.

The rules relating to the duties of care and loyalty owed by financial advisors to investors need to be updated to reflect our current financial markets. However, H.R. 2374 erects roadblocks that will frustrate those endeavors. As a result, investors and workers will continue to be vulnerable to those in the financial services industry who seek to profit at their expense.

For these reasons, we urge you to oppose H.R. 2374.

Thank you for your consideration,

Micah Hauptman
Financial Policy Counsel

Lisa Gilbert
Director

Public Citizen's Congress Watch