Consumer Federation of America

September 30, 2013

Protect Investors and Workers from Predatory Financial Advisers
Vote NO on H.R. 2374

Dear Representative:

We understand that H.R. 2374, the cynically misnamed "Retail Investor Protection Act," is scheduled to be brought to the House floor for a vote this week. H.R. 2374 would impede the ability of the Securities and Exchange Commission and the Department of Labor to protect vulnerable investors and workers from self-interested and sometimes predatory financial services professionals seeking to profit at their expense. I am writing on behalf of Consumer Federation of America to urge you to vote no when this bill is brought to the floor for a vote.

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' when providing that "advice." The SEC and DOL have launched separate (though coordinated) efforts to address this pressing problem. Having first concluded nearly ten years ago that regulatory action was needed, the SEC is nonetheless still studying the economic impacts a rule to require brokers to act in the best interests of their retail customers when providing personalized investment advice. The DOL, meanwhile, is reportedly nearly done redrafting a proposed rule to tighten the definition of fiduciary under ERISA. The legislation would impede both those efforts by placing a new requirement on the SEC to reach formal findings with regard to the need for a fiduciary rule while prohibiting the DOL from adopting a rule under ERISA until the SEC has finalized a rule.

Having previously commissioned a RAND Corporation study and completed its own staff study of the issue as required under the Dodd-Frank Act, the SEC is currently conducting an economic analysis that is intended to help the Commission determine whether to move forward with rulemaking and, if so, in what form. Requiring the SEC to reach formal findings that investors are being harmed and that its rule would reduce investor confusion would not improve the quality of analysis, it would simply provide a new basis for legal challenge by a fringe elements of the broker-dealer community adamantly opposed to any new rule that would require them to act in their customers' best interests. As such, H.R. 2374's likely effect would be either to prevent the agency from acting altogether or to encourage it to produce a rule too weak and ineffective to rein in even the worst industry abuses.

The DOL rulemaking is intended to improve protections for workers and retirement plan participants by closing loopholes in the current definition of fiduciary under ERISA that make it difficult if not impossible to enforce. Having withdrawn an earlier proposal, DOL is now reportedly nearing completion of a redrafted proposal that includes: changes adopted in response to criticisms that the agency received during the public comment process; an extensive economic analysis; and the prohibited transaction exemptions that are crucial to determining the rule's real world impact. Industry critics, however, are determined to keep the revised rule from being released for public comment where it could be judged on its merits. This bill plays into that strategy by inappropriately tying DOL's ability to deliver much needed protections to workers and retirement investors until the SEC can complete a separate rule under the securities laws that it has not even been drafted and may never be finalized.

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

Barbara Roper
Director of Investor Protection