

## RETAIL INVESTOR PROTECTION ACT

SEPTEMBER 25, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,  
submitted the following

### R E P O R T

together with

### MINORITY VIEWS

[To accompany H.R. 2374]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2374) to amend the Securities Exchange Act of 1934 to provide protections for retail customers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Retail Investor Protection Act”.

#### SEC. 2. STAY ON RULES DEFINING CERTAIN FIDUCIARIES.

After the date of enactment of this Act, the Secretary of Labor shall not prescribe any regulation under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) defining the circumstances under which an individual is considered a fiduciary until the date that is 60 days after the Securities and Exchange Commission issues a final rule relating to standards of conduct for brokers and dealers pursuant to the second subsection (k) of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(k)).

#### SEC. 3. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

The second subsection (k) of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(k)), as added by section 913(g)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.), is amended by adding at the end the following:

“(3) REQUIREMENTS PRIOR TO RULEMAKING.—The Commission shall not promulgate a rule pursuant to paragraph (1) before—

“(A) identifying if retail customers (and such other customers as the Commission may by rule provide) are being systematically harmed or disadvantaged due to brokers or dealers operating under different standards of conduct than those standards that apply to investment advisors under section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11); and

“(B) identifying whether the adoption of a uniform fiduciary standard of care for brokers or dealers and investment advisors would adversely impact retail investor access to personalized investment advice, recommendations about securities, or the availability of such advice and recommendations.

“(4) REQUIREMENTS FOR PROMULGATING A RULE.—The Commission shall publish in the Federal Register alongside the rule promulgated pursuant to paragraph (1) formal findings that such rule would reduce the confusion of a retail customer (and such other customers as the Commission may by rule provide) about standards of conduct applicable to brokers, dealers, and investment advisors.

“(5) REQUIREMENTS UNDER INVESTMENT ADVISERS ACT OF 1940.—In proposing rules under paragraph (1) for brokers or dealers, the Commission shall consider the differences in the registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisors.”

#### PURPOSE AND SUMMARY

The Securities and Exchange Commission (“SEC”) regulates the conduct of broker-dealers and investment advisors under the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. 78a et seq.) and the Investment Advisers Act of 1940 (the “Advisers Act”) (15 U.S.C. 80b-1 et seq.), respectively. Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) (Pub. L. No. 111-203) required the SEC to conduct a study of the different legal standards of care broker-dealers and investment advisors owe their retail customers, and authorizes but does not mandate that the SEC, in its discretion, issue rules to harmonize these standards of care.

Pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) (29 U.S.C. 1001 et seq.), the Department of Labor (“DOL”) is authorized to define when a person, including an investment adviser registered with the SEC, becomes a “fiduciary” under ERISA by reason of providing “investment advice” for a fee or other compensation with respect to ERISA benefit plans or plan participants.

To promote coordination between the DOL and the SEC, and to reduce the potential for conflict among any related regulations, H.R. 2374, the “Retail Investor Protection Act,” would prevent the DOL from exercising its authority under ERISA to issue a final rule defining the circumstances under which an individual is considered a fiduciary until 60 days after the SEC issues a final rule relating to standards of conduct governing broker-dealers under Section 15(k) of the Exchange Act. In addition, to ensure that any SEC rulemaking regarding changes to the standards of care governing broker-dealers and/or investment advisors is necessary, H.R. 2374 would amend Section 15(k) of the Exchange Act to prevent the SEC from issuing any rule without first finding that retail customers are being systematically harmed or disadvantaged due to broker-dealers operating under different standards of care than those applicable to investment advisors.

#### BACKGROUND AND NEED FOR LEGISLATION

Broker-dealers trade securities for their own account or on behalf of their customers. Broker-dealers typically charge commissions on

the trades they execute for their customers. Investment advisers provide advice to clients about the value of securities and the advisability of investing in, purchasing, or selling securities. Investment advisers typically charge an annual fee from their clients calculated as a percentage of the total assets that they manage.

Historically, broker-dealers and investment advisers have been held to different standards of conduct in their dealings with customers. Broker-dealers are regulated by the SEC and the Financial Industry Regulatory Authority (“FINRA”) under a “suitability” standard. FINRA rules require that a broker-dealer, when recommending the purchase, sale, or exchange of any security, must have reasonable grounds to believe that the recommendation is suitable for the customer given the customer’s financial status and investment objectives. By contrast, investment advisers are regulated directly by the SEC under a heightened “fiduciary duty” standard of conduct pursuant to the Advisers Act. Under this fiduciary duty standard, investment advisers owe to their clients the affirmative duty of “utmost good faith, and full and fair disclosure of all material facts,” as well as an obligation “to employ reasonable care to avoid misleading” their clients.

Although broker-dealers and investment advisers are generally subject to different standards of care, they both provide a wide variety of often similar services to their customers. In 2008, the SEC released a study finding that broker-dealer and investment adviser firms take “many different forms and [offer] a multitude of services and products,” and that, partly as a result of this “diversity of business models and services, investors typically fail to distinguish broker-dealers and investment advisers along the lines that federal regulations define.” Based on this blurred distinction regarding the differences between broker-dealers and investment advisers, Title IX of the Dodd-Frank Act sought to rationalize the regulation of broker-dealers and investment advisers and harmonize the regulatory schemes for each. Section 913 of the Dodd-Frank Act required the SEC to report to the House Financial Services and Senate Banking Committees on the standards of care applicable to broker-dealers and investment advisers. Section 913 permits—but does not require—the SEC to issue rules that address these standards of care.

The SEC released the staff study mandated by Section 913 on January 21, 2011 (“Study”). In the Study, the SEC staff recommended that both broker-dealers and investment advisers be held to a fiduciary standard “no less stringent than currently applied to investment advisers.” The SEC staff made this recommendation because it “believes that the uniform fiduciary standard and related disclosure requirements may offer several benefits,” including heightened investor protection and heightened investor awareness. Notwithstanding its belief that a uniform fiduciary standard would provide benefits, the SEC staff acknowledged that “investors generally were satisfied with their financial professionals,” and changing the standards of care “could lead to increased costs for investors, investment advisers, broker-dealers, and their associated persons,” although the costs were difficult to quantify. The SEC has not yet issued any rules in response to the recommendations contained in the Study.

In connection with the release of the Study, on January 21, 2011, SEC Commissioners Kathleen L. Casey and Troy A. Paredes released a separate statement expressing their view that the SEC staff had failed to justify its recommendations. Commissioners Casey and Paredes stated that “the Study does not identify whether retail investors are systematically being harmed or disadvantaged under one regulatory regime as compared to the other and, therefore, the Study lacks a basis to reasonably conclude that a uniform standard or harmonization would enhance investor protection.” In addition, Commissioners Casey and Paredes stated that the Study “does not appropriately account for the potential overall cost of the recommended regulatory actions for broker-dealers, investment advisers, and retail investors.” On October 23, 2012, SEC Commissioner Daniel M. Gallagher echoed the concerns of Commissioners Casey and Paredes, stating that any SEC rulemaking pursuant to Section 913 of the Dodd-Frank Act must “be supported by [SEC] findings that such rules are necessary, as well as a detailed understanding and analysis of the economic consequences of such rules.”

Imposing a uniform fiduciary standard of conduct on broker-dealers and investment advisers has the potential to disproportionately harm the ability of less affluent retail investors to access personalized investment advice from their financial advisers. On September 13, 2011, Terry Headley, President of the National Association of Insurance and Financial Advisers, testified before the Subcommittee on Capital Markets and Government Sponsored Enterprises that “a wholesale application of the current Advisers Act [fiduciary] duty to broker-dealers would negatively impact product access, product choice, and affordability of customer services for those consumers who are most in need of these services.”

It is also unclear at this time whether a fiduciary standard of conduct offers a superior level of investor protection compared to the standards of conduct applicable to broker-dealers. On May 23, 2013, Kenneth R. Ehinger testified on behalf of the Association for Advanced Life Underwriting before the Subcommittee on Capital Markets and Government Sponsored Enterprises:

While under certain circumstances (such as when a broker has discretionary authority over a customer’s account) a broker may be held to the legal standard of a “fiduciary,” we believe Advisers Act regulation or a broad fiduciary duty standard has not provided superior investor protection for customers of investment advisers and would not provide a measurable increase in investor protection for retail customers of broker-dealers.

Mr. Ehinger further testified that a discussion draft of the bill that was later introduced as H.R. 2374 would “require the SEC to identify a real need . . . before upending the current standards that apply to broker-dealers.”

Furthermore, separate from the SEC’s authority to regulate broker-dealers and investment advisers under the federal securities laws, the DOL is authorized to define when a person, including an investment adviser registered with the SEC, becomes a “fiduciary” under ERISA by reason of providing “investment advice” for a fee or other compensation with respect to ERISA benefit plans or plan participants. These benefit plans include employee pension plans and Individual Retirement Accounts (“IRAs”) which typically invest

in securities registered with the SEC. In October 2010, the DOL released for comment proposed regulations broadly defining those who would qualify as a “fiduciary” under ERISA. Although the DOL withdrew its original proposal, according to its 6 to 12 month regulatory agenda released in December 2012, the DOL plans to issue a revised proposal in 2013.

Inconsistent standards promulgated by the DOL and the SEC governing retirement plan fiduciaries would likely be confusing and costly for investors, and difficult for service providers to follow. On May 23, 2013, Thomas Quaadman, Vice President of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness, testified before the Subcommittee on Capital Markets and Government Sponsored Enterprises:

Different sets of rules and requirements applicable to the same assets will lead to additional costs and complexities for the underlying participants and account holders. This issue is further complicated to the extent that an individual may have several accounts at the same financial institution, some of which may be only subject to the SEC rules, and others of which may be subject to the new ERISA requirements as well as the SEC rules. Inconsistent rules will be confusing to investors and problematic for service providers to implement. Without coordination between the agencies, plan sponsors and plan professionals will spend significant resources unnecessarily trying to comply with two different sets of rules that are trying to reach the same goal. This situation could result in retail customers, plan participants, and beneficiaries not receiving the necessary tools and assistance necessary to achieve a financially sound retirement at a time when this is critically important, or only receiving such investment support at an additional cost.

Mr. Quaadman further testified that the legislative proposal that became H.R. 2374 “calls for the SEC to coordinate its rulemaking on retail customer standards of conduct with other federal agencies, including the DOL, to minimize any conflicts among related regulations.”

In a June 18, 2013 letter to the Committee, the U.S. Chamber of Commerce wrote in support of H.R. 2374, stating, “[t]he Chamber believes that this legislation will help ensure that retail investors maintain the ability to choose the type of financial professional who best meets their investment needs. Moreover, due to the related nature of the SEC and DOL fiduciary rules, we believe that the two agencies should work on a similar timeframe, allowing the SEC to finish first, to avoid regulatory conflict or one rule being usurped by the other.”

#### HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on the legislative text that became H.R. 2374 on May 23, 2013.

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 19, 2013, and ordered H.R. 2374, as amended, to be reported favorably to the House by a recorded vote of 44 yeas to 13 nays (Record vote no. FC–25), a quorum being present.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

1. An amendment by Rep. Maloney to strike section 3 of the bill was not agreed to by a record vote of 26 yeas to 31 nays (Record vote no. FC–24).

## RECORD VOTE NO. FC–24

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....		X		Ms. Waters .....	X		
Mr. Gary G. Miller (CA) .....				Mrs. Maloney (NY) .....	X		
Mr. Bachus .....		X		Ms. Velázquez .....	X		
Mr. King (NY) .....		X		Mr. Watt .....	X		
Mr. Royce .....		X		Mr. Sherman .....	X		
Mr. Lucas .....				Mr. Meeks .....	X		
Mrs. Capito .....		X		Mr. Capuano .....	X		
Mr. Garrett .....		X		Mr. Hinojosa .....	X		
Mr. Neugebauer .....		X		Mr. Clay .....	X		
Mr. McHenry .....		X		Mrs. McCarthy (NY) .....			
Mr. Campbell .....		X		Mr. Lynch .....	X		
Mrs. Bachmann .....		X		Mr. David Scott (GA) .....	X		
Mr. McCarthy (CA) .....		X		Mr. Al Green (TX) .....	X		
Mr. Pearce .....		X		Mr. Cleaver .....			
Mr. Posey .....		X		Ms. Moore .....	X		
Mr. Fitzpatrick .....		X		Mr. Ellison .....	X		
Mr. Westmoreland .....		X		Mr. Perlmutter .....	X		
Mr. Luetkemeyer .....		X		Mr. Himes .....	X		
Mr. Huizenga (MI) .....		X		Mr. Peters (MI) .....	X		
Mr. Duffy .....		X		Mr. Carney .....	X		
Mr. Hurt .....		X		Ms. Sewell (AL) .....	X		
Mr. Grimm .....		X		Mr. Foster .....	X		
Mr. Stivers .....		X		Mr. Kildee .....	X		
Mr. Fincher .....		X		Mr. Murphy (FL) .....	X		
Mr. Stutzman .....		X		Mr. Delaney .....	X		
Mr. Mulvaney .....		X		Ms. Sinema .....	X		
Mr. Hultgren .....		X		Mrs. Beatty .....	X		
Mr. Ross .....		X		Mr. Heck (WA) .....	X		
Mr. Pittenger .....		X					
Mrs. Wagner .....		X					
Mr. Barr .....		X					
Mr. Cotton .....		X					
Mr. Rothfus .....		X					

2. A motion by Chairman Hensarling to report the bill (H.R. 2374), as amended, to the House with a favorable recommendation was agreed to by a record vote of 53 yeas and 6 nays (Record vote no. FC–14).

## RECORD VOTE NO. FC–25

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Waters .....		X	
Mr. Gary G. Miller (CA) .....				Mrs. Maloney (NY) .....		X	
Mr. Bachus .....	X			Ms. Velázquez .....		X	

## RECORD VOTE NO. FC-25—Continued

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. King (NY)	X			Mr. Watt		X	
Mr. Royce	X			Mr. Sherman	X		
Mr. Lucas				Mr. Meeks		X	
Mrs. Capito	X			Mr. Capuano		X	
Mr. Garrett	X			Mr. Hinojosa		X	
Mr. Neugebauer	X			Mr. Clay		X	
Mr. McHenry	X			Mrs. McCarthy (NY)			
Mr. Campbell	X			Mr. Lynch		X	
Mrs. Bachmann	X			Mr. David Scott (GA)		X	
Mr. McCarthy (CA)	X			Mr. Al Green (TX)		X	
Mr. Pearce	X			Mr. Cleaver			
Mr. Posey	X			Ms. Moore	X		
Mr. Fitzpatrick	X			Mr. Ellison		X	
Mr. Westmoreland	X			Mr. Perlmutter	X		
Mr. Luetkemeyer	X			Mr. Himes	X		
Mr. Huizenga (MI)	X			Mr. Peters (MI)		X	
Mr. Duffy	X			Mr. Carney	X		
Mr. Hurt	X			Ms. Sewell (AL)	X		
Mr. Grimm	X			Mr. Foster		X	
Mr. Stivers	X			Mr. Kildee	X		
Mr. Fincher	X			Mr. Murphy (FL)	X		
Mr. Stutzman	X			Mr. Delaney	X		
Mr. Mulvaney	X			Ms. Sinema	X		
Mr. Hultgren	X			Mrs. Beatty		X	
Mr. Ross	X			Mr. Heck (WA)	X		
Mr. Pittenger	X						
Mrs. Wagner	X						
Mr. Barr	X						
Mr. Cotton	X						
Mr. Rothfus	X						

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2374, among other things, prohibits the Secretary of Labor from prescribing any regulation under the Employee Retirement Income Security Act of 1974 defining the circumstances under which an individual is considered a fiduciary until 60 days after the Securities and Exchange Commission issues a final rule governing standards of conduct for brokers and dealers under specified law.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 9, 2013.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2374, the Retail Investor Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

ROBERT A. SUNSHINE  
(For Douglas W. Elmendorf, Director).

Enclosure.

*H.R. 2374—Retail Investor Protection Act*

H.R. 2374 would prohibit the Secretary of Labor from finalizing a regulation related to certain investment advisors until the Securities and Exchange Commission (SEC) issues a final rule setting standards of conduct for brokers and dealers of securities. The regulation that would be delayed by the bill will define the circumstances under which an individual is considered to be a fiduciary when providing investment advice to retirement and other employee benefit plans and their participants. Under current law, the SEC has been authorized to develop regulations that establish the same standards of conduct for brokers and dealers that are already in place for investment advisors when providing advice to persons who use the information for personal reasons.

Based on information from the SEC and the Employee Benefits Security Administration (EBSA), CBO estimates that implementing H.R. 2374 would not have a significant effect on federal spending. The EBSA plans to propose a new rule related to fiduciary standards for advisors of retirement and employee benefit plans but has not published a schedule for implementation. Therefore, adding a contingency—that the SEC act first—may delay the timing of a final rule from the EBSA, but at no additional cost to the agency. The SEC staff has recommended that the commission develop a rule to harmonize standards of conduct for brokers, dealers, and investment advisors; to that end, the commission has issued a request for additional data and other information on the topic. CBO expects that implementing the provisions of H.R. 2374 would not significantly change the SEC's workload. Enacting H.R. 2374 would



not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2374 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Susan Willie and Sheila Dacey. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 2374 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 2374 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 2374 requires no directed rulemaking.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This Section cites H.R. 2374 as the “Retail Investor Protection Act.”

##### *Section 2. Stay on rules defining certain fiduciaries*

This section prevents the DOL from exercising its authority under ERISA to issue a final rule defining the circumstances under which an individual is considered a fiduciary until 60 days after

the SEC issues a final rule relating to standards of conduct governing broker and dealers under Section 15(k) of the Exchange Act.

*Section 3. Amendments to the Securities Exchange Act of 1934*

This section amends Section 15(k) of the Exchange Act, as added by section 913(g)(1) of the Dodd-Frank Act, to prevent the SEC from issuing any rule related to the standards of conduct governing brokers and dealers without first identifying (i) if retail customers are being systematically harmed or disadvantaged due to brokers or dealers operating under different standards of conduct than those standards applicable to investment advisers; and (ii) whether the adoption of a uniform fiduciary standard of care for brokers or dealers and investment advisers would adversely impact retail investor access to personalized investment advice, recommendations about securities, or the availability of such advice and recommendations.

This section requires the SEC, in connection with promulgating any rule governing the standards of conduct applicable to brokers and dealers, to publish in the Federal Register alongside the rule formal findings that such rule would reduce the confusion of a retail customer about standards of conduct applicable to brokers, dealers, and investment advisers.

This section requires the SEC, in connection with proposing rules governing the standards of conduct applicable to brokers and dealers, to consider the differences in the registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**SECURITIES EXCHANGE ACT OF 1934**

**TITLE I—REGULATION OF SECURITIES EXCHANGES**

\* \* \* \* \*

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) \* \* \*

\* \* \* \* \*

(k) STANDARD OF CONDUCT.—

(1) \* \* \*

\* \* \* \* \*

(3) *REQUIREMENTS PRIOR TO RULEMAKING.—The Commission shall not promulgate a rule pursuant to paragraph (1) before—*

*(A) identifying if retail customers (and such other customers as the Commission may by rule provide) are being systematically harmed or disadvantaged due to brokers or dealers operating under different standards of conduct than those standards that apply to investment advisers*

*under section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11); and*

*(B) identifying whether the adoption of a uniform fiduciary standard of care for brokers or dealers and investment advisors would adversely impact retail investor access to personalized investment advice, recommendations about securities, or the availability of such advice and recommendations.*

*(4) REQUIREMENTS FOR PROMULGATING A RULE.—The Commission shall publish in the Federal Register alongside the rule promulgated pursuant to paragraph (1) formal findings that such rule would reduce the confusion of a retail customer (and such other customers as the Commission may by rule provide) about standards of conduct applicable to brokers, dealers, and investment advisors.*

*(5) REQUIREMENTS UNDER INVESTMENT ADVISERS ACT OF 1940.—In proposing rules under paragraph (1) for brokers or dealers, the Commission shall consider the differences in the registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisors.*

\* \* \* \* \*

## MINORITY VIEWS

We are concerned that H.R. 2374 is yet another attempt by some on this Committee to prevent our regulators from protecting the average, retail investor when they try to save for retirement. Even though some of the roadblocks set up by the bill have been removed, the bill still creates obstacles that the Securities and Exchange Commission (SEC) must navigate to harmonize the standards for broker-dealers and investment advisors.

While not as restrictive as those in the dangerous cost/benefit bill this Committee just considered, the restrictions would still put additional work in the way of establishing rules to stop brokers from self-dealing when selling investment products to Main Street. For example, the bill will likely require the SEC to do a new study on the impact of adopting fiduciary standards on investors—while the previous study showed investor confusion, these findings may not be sufficient to meet the standards of investor harm and impact on choice required in the bill.

At the same time, the bill would slow the Department of Labor (Department) as it seeks to re-issue rules imposing fiduciary responsibilities on advisers serving workplace retirement plans and individual retirement accounts (IRAs). The bill would make the Department's independent authority to protect retirement savers conditional on the SEC issuing their rules. We agree that the Department went much too far when it issued its proposed rule in 2011, with potentially serious, unintended consequences. As many of us have mentioned in several letters sent to the Department, an overbroad fiduciary rule threatens to reduce the availability of advice to individual investors and retirees, particularly for individual holders of IRA accounts who have control of their own accounts. This bill, however, may go too far, making Department rulemaking hostage to rulemaking by the SEC.

For these reasons, we continue to oppose H.R. 2374 in its amended form.

MAXINE WATERS.  
MICHAEL E. CAPUANO.  
JOYCE BEATTY.  
RUBÉN HINOJOSA.  
GREGORY W. MEEKS.  
AL GREEN.  
KEITH ELLISON.  
MELVIN L. WATT.  
WM. LACY CLAY.  
CAROLYN B. MALONEY.  
STEPHEN F. LYNCH.

WAIVER OF CONSIDERATION

H.R. 2374 was also referred to the Committee on Education and the Workforce. The chairman of that committee and the chairman of the Committee on Financial Services exchanged letters on June 28 and July 2, 2013, respectively, memorializing a waiver of consideration of H.R. 2374 by the Committee on Education and the Workforce.



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JOHN A. YARMUTH, KENTUCKY  
FREDERICA S. WILSON, FLORIDA  
SUZANNE BONAMICI, OREGON

June 28, 2013

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to confirm our mutual understanding with respect to the consideration of H.R. 2374, the Retail Investor Protection Act. Thank you for consulting with the Committee on Education and the Workforce with regard to H.R. 2374. The committee remains watchful of policy changes to programs within its jurisdiction.

In the interest of expediting the House's consideration of H.R. 2374, the Committee on Education and the Workforce will forgo further consideration on this bill. However, I do so only with the understanding that this procedural route will not be construed to prejudice the committee's jurisdictional interest and prerogatives on this bill or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my committee in the future.

I respectfully request your support for the appointment of outside conferees from the Committee on Education and the Workforce should this bill or a similar bill be considered in a conference with the Senate. I also request that you include our exchange of letters on this matter in the Committee Report on H.R. 2374 and in the *Congressional Record* during consideration of this bill on the House floor. Thank you for your attention to these matters.

Sincerely,

John Kline  
Chairman

CC: The Honorable John Boehner  
The Honorable George Miller  
The Honorable Maxine Waters  
Mr. Thomas J. Wickham, Jr., Parliamentarian

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

July 2, 2013

**HAND-DELIVERED**

The Honorable John Kline  
Chairman, Committee on Education and the Workforce  
2181 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Kline:

Thank you for your June 28 letter regarding H.R. 2374, the Retail Investor Protection Act.

I am most appreciative of your decision to forego consideration of H.R. 2374 so that it may move expeditiously to the House floor. I acknowledge that although you are waiving formal consideration of the bill, the Committee on Education and the Workforce is in no way waiving its jurisdiction over any subject matter contained in the bill that falls within its jurisdiction. In addition, if a conference is necessary on this legislation, I will support any request that your committee be represented therein.

Finally, I shall be pleased to include your letter and this letter in our committee's report on H.R. 2374 and in the *Congressional Record* during floor consideration of the same.

Sincerely,



JEB HENSARLING  
Chairman

cc: The Honorable John A. Boehner (via e-mail)  
The Honorable Maxine Waters (via e-mail)  
The Honorable George Miller (via e-mail)  
Mr. Thomas J. Wickham, Jr. (via e-mail)

