

## RETAIL INVESTOR PROTECTION ACT

OCTOBER 22, 2015.—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. 1090]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1090) 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 without amendment and recommend that the bill do pass.

#### PURPOSE AND SUMMARY

Introduced by Representative Wagner on February 25, 2015, H.R. 1090, the Retail Investor Protection Act, stays the Department of Labor's (DoL's) rulemaking authority under the Employee Retirement Income Security Act of 1974 (ERISA) to define the circumstances under which an individual is considered a fiduciary until 60 days after the Securities and Exchange Commission (SEC) issues a final rule to implement Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203). Section 913 authorizes, but does not require, the SEC to promulgate rules to extend the fiduciary standard of conduct applicable to investment advisors to broker-dealers when providing advice about securities to retail customers.

Additionally, H.R. 1090 requires the SEC, before promulgating a rule under Section 913, to submit a report to the Financial Services Committee and the Senate Committee on Banking, Housing, and

Urban Affairs describing (i) whether retail customers are being harmed because broker-dealers are held to a different standard of conduct from that of investment advisers; (ii) whether alternative remedies will reduce any confusion and harm to retail investors due to the different standard of conduct; (iii) whether the adoption of a uniform fiduciary standard would adversely impact the commission of broker-dealers or the availability of certain financial products and transactions; and (iv) whether the adoption of a uniform fiduciary standard would adversely impact retail investors' access to personalized and cost-effective investment advice, recommendations about securities, or the availability of such advice and recommendations. Finally, the bill directs the SEC to support any conclusions in the report with economic analysis.

#### 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 Investment Advisers Act of 1940. 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.

Section 913 of the Dodd-Frank Act required the SEC to report on the standards of care applicable to broker-dealers and investment advisers. It also permits—but does not require—the SEC to issue rules that address these differing standards of care.

The SEC released the staff study mandated by Section 913 in 2011 and recommended that both broker-dealers and investment advisers be held to a fiduciary standard "no less stringent than currently applied to investment advisers." Then-SEC Commissioners Kathy Casey and Troy Paredes released a separate statement expressing their view that the SEC staff had failed to justify its recommendations, pointing out that the SEC staff had failed to identify whether investors were being harmed or disadvantaged under one standard of care compared to the other, and therefore lacked a basis for concluding that a uniform standard would improve investor protection. Commissioners Casey and Paredes also questioned the costs that new standards of care would impose on market participants and investors, and noted that the SEC staff study did not account for the potential overall cost of the recommended

changes to broker-dealers, investment advisers, and retail investors. Since the study's release in 2011, the SEC has yet to use its authority under Section 913 to promulgate a uniform fiduciary standard of care.

On February 23, 2015, President Obama announced his support for rules to be issued by the DoL to amend the definition of "investment advice" to expand the class of financial professionals subject to fiduciary duties covered by ERISA in an effort to curb the effects of perceived conflicts of interest in the marketing and development of retirement investments.

In support of the DoL's fiduciary duty proposal, President Obama, the DoL and investor advocates claim that (i) current consumer protections for investment advice in the retail and small plan markets are inadequate, and (ii) the current regulatory environment creates perverse incentives that ultimately cost retirement savers billions of dollars a year. The DoL's proposal seeks "to crack down on irresponsible behavior in today's market for financial advice by better aligning the rules between employer-based retirement savings plans and IRAs." The DoL and the Obama Administration estimate that conflicted advice by broker-dealers costs retirees some \$17 billion in lost returns annually. However, there is no study that directly supports this estimate, and it appears to be based upon generalizations and extrapolations that are not fully supported by empirical data.

Following the President's February 23rd roll-out, the DoL issued a Notice of Proposed Rulemaking on April 20, 2015, seeking public comment on its proposed amendments to the definition of fiduciary, the proposed Best Interest Contract Exemption, ("BICE") and other proposed Prohibited Transaction Exemptions. In the Financial Services Committee's view, the DoL's proposal suffers from a host of deficiencies. For example, the proposal is not business-model neutral and incorrectly assumes that charging fees based on the amount of assets under management is superior in every respect and for every investor to charging commission-based fees. The DoL proposal dismisses both suitability as a proper standard of care for broker-dealers and the arbitration system administered by the FINRA as a mechanism to resolve disputes involving financial professionals. In fact, the proposal does not acknowledge the existing regulatory regime for broker-dealers or seek to accommodate the business models of those firms. As a consequence, the draft proposal is confusing and actually conflicts with existing FINRA rules and securities market trading practices and could disrupt the carefully considered regulatory regime applicable to broker-dealers and investment advisers administered by the SEC and FINRA.

#### *Impact on retail investors*

DoL's proposed changes to ERISA rules regarding financial advice will likely limit access to professional retirement planning and guidance for retail investors who need it most, and would likely reduce American workers' overall level of retirement savings. Because of the unworkable rule and BICE, retail investors will either be moved from a commission-based account into a wrap-fee (flat fee) advisory account or be dropped by their financial advisors altogether if their accounts are too small. Despite some claims that wrap-fee models are superior to commission-based advisory serv-

ices, the former can cost some investors, particularly buy-and-hold investors, more over the course of their lifetimes, eroding their retirement savings.

In testimony before a joint hearing of the Financial Services Committee's Subcommittees on Capital Markets and Government-Sponsored Enterprises and Oversight and Investigations, Paul Schott Stevens, President and CEO of the Investment Company Institute, stated that

[t]here are hundreds of thousands of retirement savers like my son in your home states and across our country—young men and women just starting out, people with less financial sophistication for whom help and information are critically important, [and] workers trying to make the most of small accounts. It is essential to ask: how will the Department's proposal impact them? The answer: the wide net cast by the Department's proposal threatens to eliminate or severely reduce . . . exchanges of information—provided at no cost to millions of retirement savers through call centers, walk-in centers, and websites. Particularly troubling, the proposal would require firms that offer primarily proprietary investment products to forego the ability simply to explain to a retirement saver—like my son—how their products and services may meet the retirement saver's needs.

Scott Stolz, Senior Vice President for Private Client Group Investment Products at Raymond James & Associates, added in his testimony that

[t]he complexity, ambiguity and legal requirements of the rule will insure that well-meaning advisors that work hard to put their client's best interests first will be subject to Monday morning quarterbacking. Faced with this potential, advisors will make investment recommendations based in part on how they can best limit their future liability. It is inevitable therefore that they will move to a one size fits all pricing model so that they can avoid any possibility of being accused of making a recommendation based on how they are compensated. Under such a model, many will either pay more than they do today or will receive no advice at all. This will be particularly true for the smaller investors—the very investors the DoL is trying to protect.

These negative effects appear to be occurring in the United Kingdom two years after it implemented a similar rule for “conflicted” financial advice in 2013. The rule has created an advice gap in which 60,000 investors are unable to receive financial advice because their accounts are too small. As a result, the UK's government recently initiated a review of the extent to which financial advice for smaller investors is being diminished by the rule. The UK review will ensure the regulatory and legislative environment allows and encourages firms to innovate and grow their business models to include affordable and accessible financial advice, and consider ways to encourage people to seek financial advice, addressing unnecessary barriers that currently deter them from doing so. A June 2013 report from Cass Consulting on the impact of the

UK's initiative noted that the initiative has left aside those "who have too few assets to merit attention from professional advisers, though they may well be in need of financial advice. This cannot be a desirable outcome." The Cass report also found that the UK rule is likely to have its greatest impact on smaller financial advisors who do not have the necessary infrastructure to support the new requirements, and who may be more affected by the elimination of initial commissions and the eventual reduction in recurring income.

Furthermore, the basis of the DoL's proposal—that investors are losing \$17 billion a year due to conflicts of interest—does not withstand analytical scrutiny. At the Capital Markets and Oversight and Investigations Subcommittee joint hearing, Mr. Stevens of the ICI testified that:

Regardless of the number used—\$17 billion or \$18 billion per year—the claims have no basis. The calculations underlying these numbers misinterpret and incorrectly apply the findings of the very same academic research cited as the foundation of the claims, and do not consider the significant harm to retirement savers that is sure to result if the Department adopts the rules as currently drafted. In fact, these assertions do not stand up when tested against actual experience and data. Correcting for the Department's many errors and omissions, we find that the Department's proposal, if adopted, will result in net losses to investors of \$109 billion over 10 years.

The DoL's Regulatory Impact Analysis also appears to have omitted the costs of the loss of financial advice to investors. Notwithstanding this, a 2011 report by the DoL estimated that consumers who invest without professional advice make investment errors that collectively cost them \$114 billion per year—far exceeding the purported benefit of the proposal. By the DoL's own logic, implementing a rule that could limit access to financial advice, as has occurred in the UK, would create costs that far exceed the DoL's presumed benefits.

*Best Interest Contract Exemption (BICE)*

There are also numerous concerns surrounding the BICE. The BICE would require that a financial institution and adviser affirmatively agree to provide investment advice that is in the best interest of the retirement investor "without regard to the financial or other interests" of the financial institution, adviser, or other party. This principle is borrowed from Section 913 of the Dodd-Frank Act and has not previously been developed under ERISA or the federal securities laws. As a consequence, financial institutions, their advisers and their compliance officers and counsel will be forced to guess the intended meaning of this standard. One could read the principle as prohibiting any investment advice that takes into account the compensation that the financial institution or adviser will earn for providing that advice even though the rule purportedly allows a variety of compensation mechanisms:

The "best interest contract exemption" will allow firms to continue to set their own compensation practices so long as they, among other things, commit to putting their client's

best interest first and disclose any conflicts that may prevent them from doing so. Common forms of compensation in use today in the financial services industry, such as commissions and revenue sharing, will be permitted under this exemption, whether paid by the client or a third party such as a mutual fund. To qualify for the new “best interest contract exemption,” the company and individual adviser providing retirement investment advice must enter into a contract with its clients that includes a number of warranties and [a] disclosure.

As proposed by the DoL, the BICE gives rise to several concerns. The BICE will impose excessive compliance costs and significantly increase firms’ potential liability. Specifically, the BICE requires an advisor to enter into a written contract with the client prior to providing investment advice. However, this requirement makes both the advisor and broker-dealer potentially liable for breach of contract, thereby exposing both parties to potentially needless and burdensome litigation. While advisers and broker-dealers seek to maximize their clients’ returns and avoid losses, during market downturns and at other times clients can and will experience losses. It is not uncommon for clients to resort to lawsuits in an attempt to recover some, if not all, of their losses. Under current standards, the first option explored by plaintiffs’ attorneys is almost always an inquiry into whether the investment recommended by the client’s financial advisor was suitable given that investor’s risk profile. A well-documented and reasoned recommendation can often be defended before a FINRA arbitration panel (a substantially more cost-effective solution for resolving customer complaints). The BICE requires clients to be given the right to file class action lawsuits. The numerous and onerous warranties included in the BICE, some of which may be impossible to satisfy, will undoubtedly result in a dramatic escalation in class action lawsuits against financial services firms. Additionally, the DoL’s proposed requirement that current IRA clients must have the ability to bring class action lawsuits will potentially create perverse incentives for plaintiff’s attorneys.

A suitability standard acknowledges that there can be a multitude of possible product solutions for a particular financial need. However, one could interpret a “best interest” standard as meaning that the product recommendation itself has to be the “best” solution. Should a recommended investment under-perform, the BICE opens the door for plaintiffs’ attorneys to claim that any product that performed better would have been in the client’s best interest and that the product he or she was sold was not.

*The SEC, not DoL, is the expert financial advice regulator*

As the SEC is the agency that Congress designated to oversee and regulate the conduct of persons providing investment advice and effecting securities transactions in the United States, the DoL should not act in a vacuum to define how an investor receives financial advice. Secretary of Labor Thomas Perez testified before the Committee on Education and the Workforce on June 17, 2015, that the DoL coordinated with the SEC regarding the development of the proposed DoL rule, and that the staffs of the two agencies worked closely throughout the drafting process. However, there ap-

pears to be disagreement about the level of actual coordination. For example, former SEC Commissioner Daniel Gallagher stated in his comment letter to the DoL proposal that he was not included in any conversations. Former Commissioner Gallagher further commented that, “[f]rom a distance—a place where a presidentially-appointed SEC Commissioner should not be in this context—it appears that any interaction between staffs at DoL and the SEC and all of these discussions with Chair White have borne no fruit.” As noted above, the DoL proposed rule does not contemplate or even mention potential SEC rules or the SEC’s existing regime for regulating broker-dealers and investment advisers.

Furthermore, Congress has mandated that any registered broker or dealer must be a member of a registered securities association (FINRA). FINRA, which also filed a comment letter with the DoL and over the course of 21 pages noted issues and provided suggested changes to the DoL proposed rule, urged the DoL to base its proposal on existing federal securities law. The federal securities laws and FINRA rules comprehensively regulate all aspects of a broker-dealer’s business. Among the many requirements enforced by FINRA are that broker-dealers deal fairly with customers, adhere to just and equitable principles of trade, and ensure that recommendations are suitable for customers. Broker-dealers must also establish rigorous systems for compliance and supervision which are regularly examined by FINRA and the SEC. As previously stated, the DoL ignored these facts in connection with its rulemaking. Ultimately, as one brokerage firm noted in its comment letter, “it should be up to clients to choose who they work with and how they pay that advisor.”

If changes are necessary to the delivery of financial advice, the capital markets regulatory authorities should undertake the action necessary to address any perceived inadequacies to protect investors with smaller account balances, including workers saving for retirement—something that SEC Chair White has stated is her intention. When challenged by members of the Financial Services Committee at a hearing earlier this year, Chair White was unable to point to any study or analysis to rebut the concerns previously expressed by former SEC Commissioners Casey and Paredes that the SEC has failed to identify market failures that are resulting in harm or disadvantages to investors under the current standards of conduct for broker-dealers.

*H.R. 1090, the Retail Investor Protection Act*

During a joint hearing of the Subcommittees on Oversight and Investigations and Capital Markets and Government-Sponsored Enterprises in September 2015, several witnesses testified that H.R. 1090 would eliminate the substantive and procedural shortfalls of the DoL proposal. Caleb Callahan, Senior Vice President and Chief Marketing Officer of ValMark Securities, appearing on behalf of the Association for Advanced Life Underwriting (AALU), stated that

[g]iven the Department of Labor’s failure to work within the current regulatory framework, Representative Wagner’s Retail Investor Protection Act is an important bill that will lead to better rulemaking on standard of care issues. . . . [The bill] is a thoughtful piece of legislation

that will protect average retirement savers from losing choice and access to professional financial advice, and AALU supports its passage.

Julie McNeely, President of the National Association of Insurance and Financial Advisors, noted that

the one issue the Department of Labor cannot rectify unilaterally is the disharmony that its proposal will create between investments sold through Individual Retirement Accounts and those sold outside of the retirement context; only the SEC can issue rules that would impose a uniform standard in both contexts. To the extent any SEC action in this space does not (or cannot, by statute) mirror the Department's rule-making, advisors will be faced with multiple complex and potentially contradictory compliance regimes, none of which would advance any legitimate public policy objectives. Any SEC rules that are issued necessarily will cover the sale of all securities-based products while the DoL rules jurisdictionally are limited to those sold only through employer retirement plans or Individual Retirement Account vehicles.

Finally, Paul Schott Stevens, President and CEO of the Investment Company Institute, testified that

H.R. 1090 reflects a commonsense goal of ensuring that federal agencies work to adopt a harmonized fiduciary duty for all investors and that they do so in a manner that does not jeopardize investor access to personalized and cost-effective investment advice. Simply put, H.R. 1090 reflects a strong purpose—one shared by the Institute—to get the fiduciary rules right.

#### HEARINGS

The Committee on Financial Services' Subcommittees on Capital Markets and Government Sponsored Enterprises and Oversight and Investigations held a hearing examining matters relating to H.R. 1090 on September 10, 2015.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 30, 2015 and ordered H.R. 1090 to be reported favorably to the House without amendment by a recorded vote of 34 yeas to 25 nays (recorded vote no. FC-62), a quorum being present. An amendment offered by Mr. Foster was withdrawn and an amendment offered by Mr. Lynch was not agreed to by voice vote.

#### 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. The sole record vote in the Committee was a motion by Chairman Hensarling to report the bill favorably to the House. The motion was agreed to by a recorded vote of 34 yeas to 25 nays (Record vote no. FC-62), a quorum being present.

## Record vote no. FC-62

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Waters (CA) .....		X	
Mr. King (NY) .....	X			Mrs. Maloney (NY) .....		X	
Mr. Royce .....	X			Ms. Velázquez .....		X	
Mr. Lucas .....	X			Mr. Sherman .....		X	
Mr. Garrett .....	X			Mr. Meeks .....		X	
Mr. Neugebauer .....	X			Mr. Capuano .....		X	
Mr. McHenry .....	X			Mr. Hinojosa .....		X	
Mr. Pearce .....	X			Mr. Clay .....		X	
Mr. Posey .....	X			Mr. Lynch .....		X	
Mr. Fitzpatrick .....	X			Mr. David Scott (GA) .....	X		
Mr. Westmoreland .....				Mr. Al Green (TX) .....		X	
Mr. Luetkemeyer .....	X			Mr. Cleaver .....		X	
Mr. Huizenga (MI) .....	X			Ms. Moore .....		X	
Mr. Duffy .....	X			Mr. Ellison .....		X	
Mr. Hurt (VA) .....	X			Mr. Perlmutter .....		X	
Mr. Stivers .....	X			Mr. Himes .....		X	
Mr. Fincher .....	X			Mr. Carney .....		X	
Mr. Stutzman .....	X			Ms. Sewell (AL) .....		X	
Mr. Mulvaney .....	X			Mr. Foster .....		X	
Mr. Hultgren .....	X			Mr. Kildee .....		X	
Mr. Ross .....	X			Mr. Murphy (FL) .....		X	
Mr. Pittenger .....	X			Mr. Delaney .....		X	
Mrs. Wagner .....	X			Ms. Sinema .....		X	
Mr. Barr .....	X			Mrs. Beatty .....		X	
Mr. Rothfus .....	X			Mr. Heck (WA) .....		X	
Mr. Messer .....	X			Mr. Vargas .....		X	
Mr. Schweikert .....	X						
Mr. Guinta .....	X						
Mr. Tipton .....	X						
Mr. Williams .....	X						
Mr. Poliquin .....	X						
Mrs. Love .....	X						
Mr. Hill .....	X						
Mr. Emmer .....	X						

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives are incorporated in the descriptive portions of 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. 1090 will promote investor protection while ensuring such individuals' access to professional investment advice by, among other things, prohibiting 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 as permitted by the Dodd-Frank Act.

## 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, October 21, 2015.*

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. 1090, the Retail Investor Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie and Noah Meyerson.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 1090—Retail Investor Protection Act*

H.R. 1090 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 employee retirement and other benefit plans and their participants. Under current law, the SEC is 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) within the Department of Labor, CBO estimates that implementing H.R. 1090 would not affect federal spending. The EBSA has proposed 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.

In a 2011 report,<sup>1</sup> the staff of the SEC recommended that the commission develop a rule to harmonize standards of conduct for brokers, dealers, and investment advisors; to that end, in 2013 the commission issued a request for additional data and information on the topic. The SEC has not, however, proposed such a rule. Because the bill would not direct the SEC to issue a rule on standards of conduct, CBO expects that implementing H.R. 1090 would not affect the SEC's workload or its costs. Enacting H.R. 1090 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1090 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 1090 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 Noah Meyerson. The estimate was approved by H. Samuel Papenfuss, 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.

<sup>1</sup>Securities and Exchange Commission, *Study on Investment Advisors and Broker Dealers* (January 2011), page 101, [www.sec.gov/news/studies/2011/913studyfinal.pdf](http://www.sec.gov/news/studies/2011/913studyfinal.pdf).

#### 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. 1090 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### DUPPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 1090 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, 114th Cong. (2015), the Committee states that H.R. 1090 contains no directed rulemaking.

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

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

This Section cites H.R. 1090 as the “Retail Investor Protection Act.”

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

This section prevents the Department of Labor from exercising its authority under ERISA to define 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 pursuant to section 913 of the Dodd-Frank Act.

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

This section amends Section 15(k) of the Securities Exchange Act, as added by section 913(g)(1) of the Dodd-Frank Act, to require the SEC to complete a study supported by economic analysis before promulgating a rule under Section 913 to prescribe standards of conduct for broker-dealers. In proposing such a rule, the SEC must also consider differences in the registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisors.

#### 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)(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b)(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such

broker or dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on the date of enactment of the Securities Acts Amendments of 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this title.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this title and the rules and regulations thereunder: *Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or

revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer municipal advisor,, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code, or a violation of a substantially equivalent foreign statute.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor,, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or

entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker, dealer, security-based swap dealer, or a major security-based swap participant;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of

any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of this subsection;

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;

(ii) for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or

(iii) for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

(C) For purposes of this paragraph, the term “person participating in an offering of penny stock” includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from such term.

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A) shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission’s rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating

to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(11) **BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—**

(A) **NOTICE REGISTRATION.—**

(i) **CONTENTS OF NOTICE.—**Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

(ii) **IMMEDIATE EFFECTIVENESS.—**Such registration shall be effective contemporaneously with the submis-

sion of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) **SUSPENSION.**—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

(iv) **TERMINATION.**—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) **EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.**—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security futures products:

(i) Section 8.

(ii) Section 11.

(iii) Subsections (c)(3) and (c)(5) of this section.

(iv) Section 15B.

(v) Section 15C.

(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(12) **EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.**—

(A) **REGISTRATION EXEMPTION.**—A natural person shall be exempt from the registration requirements of this section if such person—

(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);

(ii) effects transactions only in securities on the exchange of which such person is a member; and

(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

(B) **OTHER EXEMPTIONS.**—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

(i) Section 8.

(ii) Section 11.

(iii) Subsections (c)(3), (c)(5), and (e) of this section.

(iv) Section 15B.

(v) Section 15C.

(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), or any security-based swap agreement

by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security or any security-based swap agreement involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(2)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such broker, dealer, or municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not

necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(3)(A) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(B) Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 8, section 15(c)(3), and section 17 of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act and rules and regulations thereunder involving security futures products.

(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions

and accounts are subject to comparable requirements to the extent practicable for similar products.

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, di-

rectly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.

(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

(1) IN GENERAL.—Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons. For the purposes of this subsection, the term “class” shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(2) ASSET-BACKED SECURITIES.—

(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses

a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.

(f) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under section 15 of this title and any person associated with any such member to comply with any provision of this title (other than section 15(a)) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

(g) Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

(h) REQUIREMENTS FOR TRANSACTIONS IN PENNY STOCKS.—

(1) IN GENERAL.—No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

(2) RISK DISCLOSURE WITH RESPECT TO PENNY STOCKS.—Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer a risk disclosure document that—

(A) contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;

(B) contains a description of the broker's or dealer's duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;

(C) contains a brief, clear, narrative description of a dealer market, including "bid" and "ask" prices for penny stocks and the significance of the spread between the bid and ask prices;

(D) contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 15A(i) of this title;

(E) defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and

(F) contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

(3) COMMISSION RULES RELATING TO DISCLOSURE.—The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules—

(A) shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors—

(i) the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

(ii) the number of shares to which such bid and ask prices apply, or other comparable information relating to the depth and liquidity of the market for such stock; and

(iii) the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;

(B) shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and

(C) may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

(4) EXEMPTIONS.—The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

(5) REGULATIONS.—It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets—

(A) as necessary or appropriate to carry out this subsection; or

(B) as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

(i) LIMITATIONS ON STATE LAW.—

(1) CAPITAL, MARGIN, BOOKS AND RECORDS, BONDING, AND REPORTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this title. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this title.

(2) FUNDING PORTALS.—

(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

(C) DEFINITION.—For purposes of this paragraph, the term “State” includes the District of Columbia and the territories of the United States.

(3) DE MINIMIS TRANSACTIONS BY ASSOCIATED PERSONS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) for a customer in such State if—

(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

(B) such associated person is registered with a registered securities association and at least one State; and

(C) the broker or dealer with which such person is associated is registered with such State.

(4) DESCRIBED TRANSACTIONS.—

(A) IN GENERAL.—A transaction is described in this paragraph if—

(i) such transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) by an associated person of the broker or dealer—

(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or

(ii) the transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of—

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

(B) RULES OF CONSTRUCTION.—For purposes of subparagraph (A)(i)(II)—

(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and

(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

(j) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

(1) CONSULTATION.—Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

(2) LIMITATION.—The Commission shall not—

- (A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or
- (B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A), unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.
- (3) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—
- (A) the new hybrid product is a security; and
- (B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.
- (4) CONSIDERATIONS.—In making a determination under paragraph (3), the Commission shall consider—
- (A) the nature of the new hybrid product; and
- (B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.
- (5) OBJECTION TO COMMISSION REGULATION.—
- (A) FILING OF PETITION FOR REVIEW.—The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.
- (B) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.
- (C) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.
- (D) STANDARD OF REVIEW.—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—
- (i) the subject product is a new hybrid product, as defined in this subsection;
- (ii) the subject product is a security; and
- (iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving def-

erence neither to the views of the Commission nor the Board.

(E) JUDICIAL STAY.—The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

(F) OTHER AUTHORITY TO CHALLENGE.—Any aggrieved party may seek judicial review of the Commission’s rule-making under this subsection pursuant to section 25 of this title.

(6) DEFINITIONS.—For purposes of this subsection:

(A) NEW HYBRID PRODUCT.—The term “new hybrid product” means a product that—

(i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act;

(ii) is not an identified banking product as such term is defined in section 206 of such Act; and

(iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

(B) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(j) The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 3A(b) of this title.

(k) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(l) TERMINATION OF A UNITED STATES BROKER OR DEALER.—For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(k) STANDARD OF CONDUCT.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on

commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

(2) **DISCLOSURE OF RANGE OF PRODUCTS OFFERED.**—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

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

*(A) providing a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing whether—*

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

*(ii) alternative remedies will reduce any confusion or harm to retail investors 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), including—*

*(I) simplifying the titles used by brokers, dealers, and investment advisors; and*

*(II) enhancing disclosure surrounding the different standards of conduct currently applicable to brokers, dealers, and investment advisors;*

*(iii) the adoption of a uniform fiduciary standard of conduct for brokers, dealers, and investment advisors would adversely impact the commissions of brokers and dealers, the availability of proprietary products offered by brokers and dealers, and the ability of brokers and dealers to engage in principal transactions with customers; and*

*(iv) the adoption of a uniform fiduciary standard of conduct for brokers or dealers and investment advisors would adversely impact retail investor access to personalized and cost-effective investment advice, recommendations about securities, or the availability of such advice and recommendations.*

(4) **ECONOMIC ANALYSIS.**—*The Commission's conclusions contained in the report described in paragraph (3) shall be supported by economic analysis.*

(5) *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 confusion or harm to retail customers (and such other customers as the Commission may by rule provide) due to different standards of conduct applicable to brokers, dealers, and investment advisors.

(6) *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.

(l) *OTHER MATTERS.*—The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisors, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisors that the Commission deems contrary to the public interest and the protection of investors.

(m) *HARMONIZATION OF ENFORCEMENT.*—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.

(n) *DISCLOSURES TO RETAIL INVESTORS.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

(2) *CONSIDERATIONS.*—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

(3) *FORM AND CONTENTS OF DOCUMENTS AND INFORMATION.*—Any documents or information designated under a rule promulgated under paragraph (1) shall—

(A) be in a summary format; and

(B) contain clear and concise information about—

(i) investment objectives, strategies, costs, and risks;  
and

(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.

(o) **AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.**—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

\* \* \* \* \*



COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES  
2176 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

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October 21, 2015

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 H.R. 1090, the *Retail Investor Protection Act*. Thank you for consulting with the Committee on Education and the Workforce with regard to H.R. 1090 on those matters within the committee's jurisdiction.

In the interest of expediting the House's consideration of H.R. 1090, the Committee on Education and the Workforce will forgo further consideration of this bill. However, I do so only with the understanding this procedural route will not be construed to prejudice my 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 you include our exchange of letters on this matter 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 Bobby Scott  
The Honorable Maxine Waters  
Mr. Tom Wickham, Parliamentarian

JEB HENSARLING, TX, CHAIRMAN

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

MAXINE WATERS, CA, RANKING MEMBER

October 21, 2015

The Honorable John Kline  
Chairman, Committee on Education and the Workforce  
2176 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Kline:

Thank you for your October 21<sup>st</sup> letter regarding H.R. 1090, the "Retail Investor Protection Act."

I am most appreciative of your decision to forego action on H.R. 1090 so that it may move expeditiously to the House floor. I acknowledge that although you are waiving action on the bill, the Committee on Education and the Workforce is in no way waiving its jurisdictional interest in this or similar legislation. 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. 1090 and in the *Congressional Record* during floor consideration of the same.

Sincerely,



JEB HENSARLING  
Chairman

cc: The Honorable John A. Boehner  
The Honorable Maxine Waters  
The Honorable Robert C. Scott  
Mr. Thomas J. Wickham, Jr.

Congress of the United States  
U.S. House of Representatives  
COMMITTEE ON WAYS AND MEANS  
1102 LONGWORTH HOUSE OFFICE BUILDING  
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JANICE MAVS,  
MAJORITY CHIEF COUNSEL

October 21, 2015

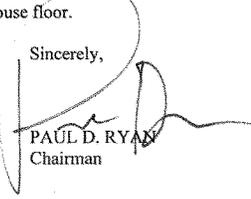
The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
2129 Rayburn House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Hensarling:

I am writing with respect to H.R. 1090, the "Retail Investor Protection Act." I wanted to notify you that the Committee on Ways and Means will forgo action on H.R. 1090 so that it may proceed expeditiously to the House floor for consideration.

This is done with the understanding that the jurisdictional interests of the Committee on Ways and Means over this and similar legislation are in no way diminished or altered. In addition, the Committee reserves the right to seek conferees on H.R. 1090 and requests your support when such a request is made.

I would appreciate your response confirming this understanding with respect to H.R. 1090 and ask that a copy of our exchange of letters on this matter be included in the Congressional Record during consideration of the bill on the House floor.

Sincerely,  
  
PAUL D. RYAN  
Chairman

- cc: The Honorable John Boehner, Speaker of the House
- The Honorable Sander Levin, Ranking Minority Member
- Committee on Ways and Means
- The Honorable Maxine Waters, Ranking Minority Member
- Committee on Financial Services
- Mr. Tom Wickham, Parliamentarian

JEB HENSARLING, TX, CHAIRMAN

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

MAXINE WATERS, CA, RANKING MEMBER

October 21, 2015

The Honorable Paul Ryan  
Chairman, Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Ryan:

Thank you for your October 21<sup>st</sup> letter regarding H.R. 1090, the "Retail Investor Protection Act."

I am most appreciative of your decision to forego action on H.R. 1090 so that it may move expeditiously to the House floor. I acknowledge that although you are waiving action on the bill, the Committee on Ways and Means is in no way waiving its jurisdictional interest in this or similar legislation. 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. 1090 and in the *Congressional Record* during floor consideration of the same.

Sincerely,



JEB HENSARLING  
Chairman

cc: The Honorable John A. Boehner  
The Honorable Maxine Waters  
The Honorable Sander Levin  
Mr. Thomas J. Wickham, Jr.

## MINORITY VIEWS

H.R. 1090 stops the Department of Labor's (DOL) current rule-making effort to ensure that the advice Americans saving for retirement receive is in their best interests and subject to a fiduciary duty. The bill prohibits the DOL from promulgating a rule until 60 days after the Securities and Exchange Commission (SEC) finalizes its own fiduciary rule for investment advisers and broker dealers under Section 913(g) of the Dodd-Frank Act. In addition, the bill delays the SEC's fiduciary rulemaking by requiring the agency to first undertake a separate economic analysis that, among other things, considers whether a new standard would adversely affect broker compensation. Hardworking Americans should not have to wait any longer to know that the advice they receive will be in their best interests.

Unlike in past Congresses when the House considered similar legislation, we now have a serious proposal by the Department of Labor to update its fiduciary rules. This proposal, issued five years after the Department's initial proposal in 2010, reflects the Administration's effort to protect our nation's workers and retirees from conflicted investment advice that the White House Council of Economic Advisers estimates costs \$17 billion per year. In addition, the Department has endeavored to engage interested stakeholders and provide for ample opportunity for public comment as it works to operationalize the rule. Indeed, in response to requests from Members of Congress and other interested stakeholders, the DOL extended the original 75-day comment period by 15-days and convened a 4-day multi-panel public hearing on the proposal, after which interested stakeholders had an additional 30-day comment period.

While the SEC should similarly update its rules governing investment advice related to securities, we should not hinge the DOL's efforts on the SEC's ability to do so.

H.R. 1090 is opposed by investment adviser groups like the Financial Planning Coalition, whose members are willing to provide advice to savers under a fiduciary standard. The bill is likewise opposed by scores of advocates working to protect the best interests of consumers—groups like the AARP, the Consumer Federation of America, Consumer Union, Public Citizen and Americans for Financial Reform.

For these reasons we oppose H.R. 1090.

MAXINE WATERS.  
DANIEL T. KILDEE.  
STEPHEN F. LYNCH.  
CAROLYN B. MALONEY.  
EMANUEL CLEAVER.  
KEITH ELLISON.  
MICHAEL E. CAPUANO.  
AL GREEN.  
GWEN MOORE.  
RUBÉN HINOJOSA.  
NYDIA M. VELÁQUEZ.

