

September 30, 2013

The Honorable John Boehner
Speaker
United States House of Representatives
H-232, the Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
H-204, the Capitol
Washington, DC 20515

Re: H.R. 2374, the Retail Investor Protection Act

Dear Speaker Boehner and Leader Pelosi:

As organizations dedicated to the protection of retail investors and the delivery of investment advice under a fiduciary standard of conduct, we write to express our opposition to H.R. 2374, the Retail Investor Protection Act, which is scheduled to be considered by the House this week.

The Retail Investor Protection Act would do nothing to increase protection for investors. It would, however, delay, and possibly prevent, the Securities and Exchange Commission (SEC) and Department of Labor (DOL) from modernizing their fiduciary duty standards. Collectively, our organizations are committed to protecting investors and the delivery of investment advice under a fiduciary standard of conduct. We oppose H.R. 2374 and, as you take up this bill, urge you to consider two important points.

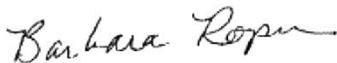
Despite its name, H.R. 2374 is not an investor protection bill. To the contrary, it would leave American investors with significantly less protection. H.R. 2374 imposes unnecessary rulemaking requirements that the SEC must meet before it can adopt a fiduciary rule. We certainly believe that all of the SEC's proposed rules should undergo appropriate economic analysis before adoption, but this legislation imposes costly, dilatory, and redundant cost benefit analysis requirements that would delay (or even prevent) the rulemaking and increase the likelihood of it being struck down by the courts upon legal challenge.

Secondly, it would prevent DOL, which plays an important role in ensuring that Americans' retirement savings are protected by fiduciaries under ERISA, from acting until two months after the SEC issues a final rule related to broker-dealer conduct standards. This not only unnecessarily slows DOL's rulemaking, but it potentially halts DOL's rulemaking altogether if the SEC does not act on a fiduciary rule. In acknowledging public comments and concerns, DOL is expected to re-propose rules to revise its definition of fiduciary under ERISA. It should, as the expert agency in this area, be afforded an opportunity to exercise its rulemaking authority through its normal public process that is not tied to the completion of a rulemaking by a completely separate agency under a separate statute.

Together, these provisions in H.R. 2374 would prevent two agencies from moving forward with appropriate notice and comment rulemaking related to the fiduciary standard of conduct under their respective statutes to the detriment – not protection – of investors. In this regard, we commend to your attention the views of the Investor as Purchaser Subcommittee of the SEC’s Investor Advisory Committee. The subcommittee is proposing that the full committee on October 10 adopt a recommendation stating, in part, that “[t]he Investor Advisory Committee believes that personalized investment advice to retail customers should be governed by a fiduciary duty, regardless of whether that advice is provided by an investment adviser or a broker-dealer [footnote omitted].” The full 10-page recommendation is available at <http://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation.pdf>.

We opposed this legislation when it came before the Financial Services Committee and nothing meaningful has changed. We, therefore, urge you to oppose H.R. 2374, the Retail Investor Protection Act.

Respectfully,



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Director of Investor Protection
CFA



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Chief Executive Officer
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