



October 28, 2013

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

To Members of the House of Representatives:

The Financial Planning Coalition (Coalition)<sup>1</sup> is committed to protecting retail investors and delivering investment advice under a fiduciary standard of conduct. In support of these goals, we write to urge you to oppose H.R. 2374, the Retail Investor Protection Act.

The U.S. Securities and Exchange Commission (SEC) and the Department of Labor (DOL) are considering separate fiduciary rules for the provision of services under the Investment Advisers Act of 1940 (Advisers Act) and the Employee Retirement Income Security Act of 1974 (ERISA), respectively. H.R. 2374, which is an investor protection bill in name only, would prevent these agencies from engaging in rulemaking crucial to investor protection and would leave American investors more vulnerable to potential abuses.

### **H.R. 2374 is Bad for Investors**

Federal securities regulation currently permits two groups of financial advisers, broker-dealers and investment advisers, to provide personalized investment advice to consumers. Each group, however, does so under its own standard of conduct. Broker-dealers are only required to deliver advice that is merely “suitable” to meet their customers’ investment objectives. Investment advisers, by contrast, provide services under a “fiduciary” standard that requires them to make investment recommendations based on the “best interests of the customer.”

Congress recognized the shortcomings of this two-track regulatory scheme in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). Dodd-Frank directed the SEC to study the effectiveness of existing regulatory standards and authorized the SEC to promulgate rules to establish a single uniform fiduciary standard of conduct that would be applicable to both broker-dealers and investment advisers. The SEC study mandated by Dodd-Frank (i) concluded that additional rulemaking is needed in this area to protect investors and (ii) recommended that the SEC adopt a uniform fiduciary standard. Consequently, the SEC earlier this year issued a request for information (RFI) that will allow them to consider feedback from a variety of stakeholders as they determine whether or not to move forward with a proposed rulemaking.

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<sup>1</sup> The Financial Planning Coalition collectively have nearly 75,000 stakeholders and is a collaboration of Certified Financial Planner Board of Standards, Inc. (CFP Board), the Financial Planning Association® (FPA®), and the National Association of Personal Financial Advisers (NAPFA). The Coalition formed in 2009 to advise legislators and regulators on how best to protect consumers by ensuring that financial planning services are delivered with fiduciary accountability and transparency. To learn more, please visit [www.FinancialPlanningCoalition.com](http://www.FinancialPlanningCoalition.com).

H.R. 2374, however, would impose unnecessary, duplicative and onerous cost-benefit analysis requirements on the SEC before it can proceed with promulgating a new uniform fiduciary rule. The Coalition recognizes the value that cost-benefit analysis can provide in assessing the potential impact of proposed regulations; the SEC will conduct such an analysis with the data it collects from its RFI. We do not believe, however, that H.R. 2374 promotes the application of a fair and appropriate cost-benefit analysis. Rather, the proposed legislation would set so high a bar – requiring a showing that investors are “systematically harmed or disadvantaged” – that it would substantially impede or completely prevent the SEC from proceeding with a Congressionally authorized and long-needed rulemaking that would allow all investors to receive investment advice that is based on their best interests. Moreover, this provision would increase the likelihood that courts would strike down an SEC uniform fiduciary rule upon legal challenge.

In addition, H.R. 2374 would prevent DOL from proceeding with its rulemaking under ERISA, the Federal employment law, until two months *after* the SEC issues a final rule related to broker-dealer conduct standards. This would unnecessarily slow DOL’s rulemaking and it would prevent DOL from implementing its own regulations should the SEC decide not to proceed with a uniform fiduciary standard rulemaking. DOL is currently engaged in rulemaking to evaluate and to potentially revise its fiduciary definition under ERISA, which Congress enacted specifically to protect workers’ retirement savings from fraudulent, deceptive and misleading practices. DOL’s rulemaking process is progressing appropriately:

- DOL has announced that it will, based on industry concerns, release a revised proposal for public comment.
- DOL has engaged in an extensive cost-benefit analysis and is coordinating its efforts with the SEC to avoid potential conflicts between a revised ERISA fiduciary definition and any uniform fiduciary standard.
- DOL should be afforded every opportunity to exercise its rulemaking authority under ERISA, independently from another agency’s – the SEC – rulemaking process.

### **Middle Income American Households Will Continue to Have Access to Financial Advice**

Opponents of a uniform fiduciary rule often state, inaccurately, that broker-dealers will abandon middle income American households if they are required to provide services under a on a fiduciary standard. *This is simply not the case.*

Reliable empirical data demonstrate convincingly that a uniform fiduciary rule will not negatively affect middle income American households. In addition to SEC-conducted studies prior to Dodd-Frank, recent independent research dispels the false argument that a uniform fiduciary standard would reduce access to financial advice for middle income American households. A pivotal study found that applying a uniform fiduciary duty standard on broker-dealers will have little, if any, effect on the availability of advice to customers and would not reduce the availability of financial advice to customers with moderate levels of income or

assets.<sup>2</sup> Additionally, a study conducted by Aité Group demonstrates that there is no statistically significant difference in the number of middle class consumers served by broker-dealers who do business under a suitability standard when compared to broker-dealers and investment advisers who do business under a fiduciary standard.<sup>3</sup>

**Amendment to H.R. 2374 Does Not Make it Better**

The House Financial Services Committee, during its consideration of H.R. 2374, amended the proposal by striking several provisions that would have micromanaged the SEC's rulemaking process by mandating that the SEC perform specific economic analyses prior to adopting a uniform fiduciary rule. Removing these troublesome provisions did not, however, improve the bill; objectionable provisions remain. H.R. 2374 still requires the SEC to make overly burdensome, unnecessary and largely unquantifiable findings concerning potential harm to investors.

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The Coalition views H.R. 2374 as a “back door” attempt to undermine investor protection provisions in Dodd-Frank and to prevent the SEC and DOL from proceeding with investor protection rulemakings consistent with appropriate cost-benefit analyses and routine inter-agency coordination. *H.R. 2374 would impose an inappropriately high threshold for the cost-benefit analysis to be applied by the SEC in its uniform fiduciary rulemaking, and would prevent DOL from proceeding with its rulemaking to implement ERISA.*

A broad array of consumer groups, state regulators, and industry groups oppose H.R. 2374. We ask you to join us by **rejecting H.R. 2374, the Retail Investor Protection Act when it is brought to the floor for a vote.**

Thank you for your consideration and please feel free to contact Todd Cranford, CFP Board Director of Government Relations, at (202) 379-2237 or tcranford@cfpboard.org, if you have any questions regarding our position.

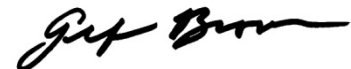


Kevin R. Keller, CAE  
Chief Executive Officer  
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Respectfully,



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Geoffrey Brown, CAE  
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<sup>2</sup> See, <http://www.fpanet.org/journal/TheImpactoftheBrokerDealerFiduciaryStandard/>.

<sup>3</sup> See, <http://cfp.net/docs/public-policy/aite-fiduciary-study-june-2013.pdf>.