February 11, 2015

Senator Ron Johnson
Chair
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510
(Via email)

Senator Johnson,

In response to your February 5, 2015 letter to Secretary of Labor Thomas E. Perez: your letter has it backwards. Small investors and savers are the ones being victimized by current practices of the big Wall Street and insurance companies. And they will continue to be so if the Department of Labor doesn't extend the embrace of the ERISA fiduciary standard for advice to and management of retirement accounts, retirement plans and retirement investors. Your statement that a rule requiring fiduciary advice “could adversely affect middle to low-income Americans’ access to investment advice,” is just not true.

A recent academic study, “The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice,” shows that state law requiring brokers to act as fiduciaries has not reduced investor access to advice, but rather provided advice in the investor’s interest [1].

Small business owners across America offer defined contribution plans to their employees, yet too often these business owners incur liability because they are provided 'advice' by non-fiduciary 'retirement plan consultants' who pose as trusted advisors. Plan sponsors deserve to receive advice from fiduciary advisors, and to receive the protections which flow to business owners from relying upon expert, trusted advisors.

Significant benefits to investors would result from requiring brokers to put their client’s sole interests first, whether advice is at the plan level or the investor level. Studies show that Wall Street firms have overcharged retirement investors by more than $1 billion a month, for many years, according to these academic and economic studies: “Broker Incentives and Mutual Fund Market Segmentation,”[2] and, “It Pays to Set the Menu: Mutual Fund Investment Options in 401(K) Plans.”[3]

The studies’ findings were discussed in an article: “Study: SEC Fiduciary Delay Costing Retirement Investors $1 Billion per Month.” [4] According to the data, in just the five years and 10 months of delay since the Treasury’s blueprint for Financial Services Reform, which recommended the fiduciary standard for advice, investors have been overcharged an estimated $70 billion under the

current system. Over 40 years of ERISA law, 480 months, you can see how the overcharges to retirement investors would add up to a staggering burden.

Fiduciary advice, placing first the sole interest of retirement investors and savers, is even more important as employer retirement plans and IRAs have become the primary retirement vehicle for most Americans. Further, retirement investors don't get a choice of corporate retirement plans – they are captive in their company's plan unless they leave their employer. If they leave their employer and roll over their retirement nest egg to an IRA, brokers too often urge them to put their hard-earned savings into even higher-cost investment products, eroding their assets further and sometimes rendering the investor incapable of retiring. This is the impact of "advice" that is not fiduciary – not in the interest of the investor – but rather in the interest of the sellers, packagers and firms distributing securities products.

Another academic study, "The Pervasive Problem of Excessive Fees and 'Dominated Funds' in 401(k) Plans," says the excessive fees in retirement accounts have been shown to harm retirement investors, eroding the financial security of America's retirement investors and savers [5].

We urge you to stand up to the Wall Street lobbyists and stop supporting business practices based on overcharging American investors and savers for retirement services.

Sincerely,

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cc: via email
HSGA Ranking Member Sen. Thomas R Carper
DOL Hon. Thomas E. Perez
DOL EBSA Hon. Phyllis Borzi

Citations:

1. The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice (Profs. Michael S. Finke, Texas Tech University & Thomas Patrick Langdon)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019090

2. “Broker Incentives and Mutual Fund Market Segmentation,” (Diane Del Guercio, Jonathan Reuter, Paula A. Tkac.)
http://www.nber.org/papers/w16312

3. “It Pays to Set the Menu: Mutual Fund Investment Options in 401(K) Plans,” (Veronika Krepely Pool, Indiana University - Kelley School of Business - Department of Finance & Clemens Sialm, University of Texas at Austin - McCombs School of Business; National Bureau of Economic Research (NBER) & Irina Stefanescu, Federal Reserve Board, Washington D.C.)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2112263

4. “Study: SEC Fiduciary Delay Costing Retirement Investors $1 Billion per Month,” (Christopher Carosa), *FiduciaryNews.*
http://fiduciarynews.com/2013/02/study-sec-fiduciary-delay-costing-retirement-investors-1-billion-per-month/

5. The Pervasive Problem of Excessive Fees and “Dominated Funds” in 401(k) Plans (Profs. Ian Ayres, Yale University – School of Management and School of Law & Quinn Curtis, University of Virginia School of Law.)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2399531