AMENDMENT TO H.R. 5485, AS REPORTED
OFFERED BY MRS. WAGNER OF MISSOURI

At the end of title VI insert the following:

1 SECTION ___. RETAIL INVESTOR PROTECTION.

2 (a) REPEAL OF EXISTING RULE.—The final rule of
3 the Department of Labor titled “Definition of the Term
4 ‘Fiduciary’; Conflict of Interest Rule—Retirement Invest-
5 ment Advice”, published April 8, 2016 (81 Fed. Reg.
6 20945) shall have no force or effect.

7 (b) STAY ON RULES DEFINING CERTAIN FIDU-
8 CIARIES.—After the date of enactment of this Act, the
9 Secretary of Labor shall not prescribe any regulation
10 under the Employee Retirement Income Security Act of
11 1974 (29 U.S.C. 1001 et seq.) defining the circumstances
12 under which an individual is considered a fiduciary until
13 the date that is 60 days after the Securities and Exchange
14 Commission issues a final rule relating to standards of
15 conduct for brokers and dealers pursuant to the second
16 subsection (k) of section 15 of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78o(k)).

18 (c) AMENDMENTS TO THE SECURITIES EXCHANGE
19 ACT OF 1934.—The second subsection (k) of section 15
as added by section 913(g)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.), is amended by adding at the end the following:

“(3) REQUIREMENTS PRIOR TO RULEMAKING.—

The Commission shall not promulgate a rule pursuant to paragraph (1) before—

“(A) 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 advi-
sors 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 advisers; and

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

“(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.”.