May 11, 2017

Via Electronic Mail
Nevada Assembly
Committee on Commerce and Labor
Chair Irene Bustamante Adams
Vice Chair Maggie Carlton
401 S. Carson Street
Carson City, Nevada 89701-4747
AsmCL@asm.state.nv.us

Re: Senate Bill 383 – Letter of Support

Dear Chair Bustamante Adams & Members of the Assembly Commerce & Labor Committee:

I write to urge you to pass Senate bill 383. I am a professor at the University of Nevada, Las Vegas William S. Boyd School of Law. I write to you in my personal capacity. The views and opinions expressed in this letter are my own.

For decades, bad financial advice has caused Americans to lose billions of dollars to unnecessary costs and fees. One recent study by the White House Council of Economic Advisers pegged the price of conflicted financial advice at $17 billion in annual losses. Retirement savers pay these high fees because financial advisers often steer clients toward investments that kick money back to financial advisers. Our retirement savers deserve better.

Pending legislation offers a chance for Nevada to set a higher standard and protect its retirees and savers from exploitation. Senator Aaron Ford introduced Senate Bill 383 to require financial advisers to give advice in their clients' best interests. If passed, the bill will require stockbrokers and investment advisers to meet fiduciary standards already applicable to financial planners under Nevada law. Without the legislation, a stockbroker could create a financial plan for a client without having a financial planner's duty to give honest advice in a client's best interest.

The law should require stockbrokers to give advice in a client's best interest. Multiple studies have shown that commission-compensated stockbrokers tend to steer clients toward bad decisions. One audit study found that stockbrokers advised clients with good portfolios to move their money into high-fee investments that would offer lower investment returns while funneling funds to the financial advisers. Today's low standards for financial advice authorize welfare for Wall Street and stick unsuspecting savers with the costs.

Requiring financial advisers to give advice in their clients' best interests simply holds the industry to its word. Financial advisers routinely portray themselves as loyal confidants offering trustworthy guidance for retirement savers in television and radio ads. These ads have worked.

Most Americans now mistakenly believe that financial advisers already have an obligation to provide advice in their best interests. This misplaced trust creates real dangers. When retirement savers lose their nest eggs because of self-serving advice, they recoil from the betrayal and from the cold, callous, and common defense that stockbrokers owe no fiduciary duty.

The worst segments of the financial services industry oppose the bill because their high profits come from convincing savers to buy the wrong shares in the wrong funds. For example, Rydex sells an index fund tracking the S&P 500 with 2.31% annual fees (RYSYX). Vanguard sells a similar fund tracking the S&P 500 with 0.05% annual fees. The lower-cost Vanguard fund will always outperform Rydex because the funds track the same index. These fees add up to significant costs over time. According to the American Institute for Economic Research, a decade-long investment of $100,000 would have accumulated $204,758 in the Vanguard fund and only $163,619 in the Rydex fund. The high fees create a $41,139 difference over time. Despite this, many stockbrokers recommend Rydex because it kicks a significant percentage of its fees back to the financial adviser. While Rydex provides a glaring example, financial advisers often steer clients toward suboptimal decisions in countless other instances.

To be sure the industry has laid out its talking points to defend its right to sell the wrong products. One common argument is that Nevada should not impose a higher standard because Congress granted federal regulators the ability to regulate investment advice. This evergreen argument fails to mention that federal gridlock and industry lobbying has stalled attempts at reform. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 gave the Securities and Exchange Commission authority to create a uniform fiduciary standard for different financial advisers. In 2011 the SEC Staff recommended that the SEC move forward to create a uniform fiduciary standard. Because politically-appointed SEC Commissioners could not reach agreement, the SEC has not acted in the last six years—and it appears highly unlikely that the SEC will act anytime soon. Similarly, although the Department of Labor created a fiduciary standard for retirement accounts, the Trump administration has delayed the rule's implementation and may soon rescind its promised protections. Nevada should not delay action on the vague hope that the federal regulators may eventually improve things. It would be better for Nevada to set a higher bar and allow the federal government to catch up when it can function again.

Senator Ford's legislation will return integrity to a dirty business. Financial firms earn their fees when they give quality advice and help move capital from savers to businesses in the real economy. Unfortunately, far too many financial firms have found it abnormally profitable to pitch high-fee products funding kickbacks for financial advisers. By requiring stockbrokers to give advice in the best interests of their clients, the legislation creates a level playing field for the firms that do things the right way.

Sincerely,

Ben Edwards

Benjamin P. Edwards