

Bill to Curb 'Frivolous' Fee Suits Makes Gains in House

By Beagan Wilcox Volz, *Ignites*, January 19, 2018 [subscription required]

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A bill devoted to derailing certain '40 Act excessive-fee lawsuits passed the House of Representatives on Thursday in a 31-25 vote.

Rep. Tom Emmer (R-Minn.) introduced the Mutual Fund Litigation Reform Act earlier this month. The bill would require plaintiffs in such suits to state their claims “with particularity.” As a result, cases without much evidence to support their allegations would be thrown out early in the litigation, before major costs pile up.

In a press release about the bill, Emmer stated that mutual funds are “essential tools” for investors of all ages with very different financial goals. “By cutting down the number of frivolous lawsuits targeted at mutual funds, we can allow Americans to continue to make the investments they need for their future,” Emmer said in the release.

The bill has not yet been scheduled for a vote by the full House. Its text was drawn from a provision of the Financial Choice Act, which would replace key parts of the sweeping 2010 Dodd-Frank Act. The House approved the Financial Choice Act in June.

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The new bill, like the provision in the Financial Choice Act, would also shift the current standard for proving excessive fees from a preponderance of evidence to “clear and convincing evidence.” The latter is a tougher standard for plaintiffs to meet.

More than two dozen excessive-fee lawsuits have been brought against fund shops since 2010, according to an **ICI Mutual** newsletter from early 2017. Most of those cases focus on differences between advisory and subadvisory fees and related services.

Many of these cases have survived the defendants’ motions to dismiss, progressing to the expensive discovery stage, during which asset managers must provide reams of information to the plaintiffs.

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Amending the '40 Act as proposed in the Financial Choice Act would “eliminate the possibility that a shareholder could bring a successful excessive-fee lawsuit,” said Niels Holch, executive director of the Coalition of Mutual Fund Investors, in an April statement to *Ignites*.