JACKSON®

Andrew J. Bowden
Senior Vice President
General Counsel

1 Corporate Way
Lansing, MI 48951
Phone: [redacted]
Fax: [redacted]

November 1, 2017

Chairman Jay Clayton
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Comments on Standard of Conduct for Investment Advisers and Broker-Dealers

Dear Chairman Clayton:

Thank you for your request for information and ideas about standards of conduct for investment advisers and broker-dealers. The current bramble bush of federal, state, and self-regulation that governs businesses that advise retail investors is overly complex to consumers and the industry. It unfairly tilts the playing field in favor of certain products and business models, increases costs, and discourages innovation and new market entrants. There is substantial room for improvement through the thoughtful and coordinated review you propose. Jackson[1] offers the following to assist with your effort to revise the currently disjointed regulatory regime in a way that better balances our shared interest in protecting consumers, maintaining fair, orderly, and efficient markets, and promoting capital formation.

The first part of this letter consists of eleven principles that should guide reform of the current set of federal, state, and self-regulatory rules and regulations. The second part responds directly to some of the questions posed in your June 1, 2017, public comments ("Comments").

I. Jackson's Eleven Reform Principles

Reform of current regulations should follow these principles:

[1] Jackson National Life Insurance Company ("Jackson") and its U.S. affiliates employ more than 5,000 workers, who manage more than $199 billion in fixed and variable annuities for over 1.5 million investors, including approximately $106 billion in annuities held in accounts that qualify as Section 408 Individual Retirement Annuities. In 2016, Jackson was the largest provider of annuities in the United States, according to the LIMRA 2017 Secure Retirement Institute U.S. Individual Annuities Sales Surveyhttp://www.limra.com/Posts/PR/Data_Bank/_PDF/2016-Q4-Annuity-Company-Rankings.aspx. Jackson's insurance products are offered by more than 150,000 financial advisers affiliated with more than 600 independent broker-dealers, wirehouses, financial institutions and independent insurance agents. Thus, Jackson has a unique perspective as a leading manufacturer of annuity products. Jackson National Life Distributors LLC ("JNLD") is an affiliate of Jackson. JNLD, the wholesale distributor of Jackson's variable annuity products, is registered as a broker-dealer with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, and is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA").

1. **Do no harm. Do not enact regulatory "reform" that exacerbates the retirement crisis**. America is in the midst of a slow-rolling retirement crisis that risks the future of our middle class. A large percentage of U.S. working households have no retirement savings, including those households closest to retirement - between the ages of 55 and 64.[2] A large majority of "baby boomers" do not believe their savings will last them through retirement, and most experts believe this "adequacy" crisis may be worse than these near-term retirees understand. The Center for Retirement Research at Boston College has concluded "that, as of 2013, more than half of today's households will not have enough retirement income to maintain their pre-retirement standard of living, even if they work to age 65 – which is above the current retirement age – and annuitize all their financial assets, including the receipts from a reverse mortgage on their homes."[3]

While the goal of the Fiduciary Rules[4] recently enacted by the U.S. Department of Labor ("DOL") may have been to alleviate the retirement crisis, the many concerns voiced at the time they were proposed, and the evidence that has accumulated since their adoption, indicates they are harming retirement savers by reducing access to advice for small and mid-size consumers, increasing costs for those who can afford advice, limiting product options, and creating an unfair and tilted playing field that is significantly reducing utilization of guaranteed income products, which address investors' biggest concern: running out of money in retirement.

Future reforms should address these harms and improve the market for investment advice for investors in a manner that helps to solve the retirement crisis.

2. **Preserve choice and diversity**.[5] Individual investors seeking advice, as well as advisers and financial institutions offering such advice, should have the option of establishing either a fiduciary or a non-fiduciary relationship. Jackson believes consumers should have their choice

---

[2] U.S. Government Accountability Office, *RETIREMENT SECURITY: Most Households Approaching Retirement Have Low Savings*, GAO-15-419 (Washington, D.C.: May 12, 2015)., http://www.gao.gov/assets/680/670153.pdf. *See also*, Elyssa Kirkham, *1 in 3 Americans Have $0 Saved for Retirement*, GOBankingRates, (Mar. 14, 2016), https://www.gobankingrates.com/investing/1-3-americans-0-saved-retirement/.

[3] Alicia H. Munnell et al.,, *NRRI Update Shows Half Still Falling Short*, Center for Retirement Research at Boston College, No. 14-20, 6 (Dec. 2014), http://crr.bc.edu/wp-content/uploads/2014/12/IB_14-20-508.pdf.

[4] When referenced, the "Fiduciary Rules (or "DOL Rules" or "Rules") consist of the Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128, 82 Fed. Reg. 16,902 (Apr. 7, 2017) (to be codified at 29 C.F.R. pt. 2510), https://www.gpo.gov/fdsys/pkg/FR-2017-04-07/pdf/2017-06914.pdf.

[5] This principle addresses the eighth set of questions in your Comments regarding whether the Commission should pursue a "standards-of-conduct-based approach to potential regulatory action." Jackson answers this question affirmatively and recommends different standards of conduct for broker-dealers and investment advisers to promote consumer choice, access to advice at different price points, and a regulatory environment that encourages new market entrants and accommodates a variety of business models for the provision of advice to retail investors.

among three options (which will presumably offer three different price points and corresponding levels of service and protection):

- Unsolicited business – where no "recommendation" is made to the "do-it-yourself" consumer, the current standards for the execution of unsolicited orders should apply.
- Dealer and agents – where recommendations are made by a representative of a broker or dealer (operating in a non-fiduciary capacity) or a captive agent of an insurance company or other manufacturer, the existing suitability standards should apply.
- Fiduciaries – where an adviser offers fiduciary services, the adviser should be subject to the highest standard, which should apply uniformly to sales of securities and insurance, regardless of whether the source of funds is qualified or non-qualified.

One of the principal flaws with the Fiduciary Rules is that they make virtually anyone offering a "suggestion" about investments a fiduciary. The increased costs and risks of providing a fiduciary level of service are resulting in many low and middle income investors losing access to financial advice – either because industry participants will not offer services to them, or the costs of the fiduciary service will exceed the perceived value to many investors. Many consumers are, and will be, best served with a lower-cost, non-fiduciary level of service.

3. Enhance, but do not eliminate, the suitability standard of care. Jackson disagrees with those who argue that the "suitability" standard of care, as it has evolved, offers such paltry protection that it should be scrapped.[6] The suitability standard of care is highly evolved and rigorously enforced through federal, state, and self-regulatory entities, as well as through private claims brought by consumers. It requires, among other things, (i) the collection and consideration of substantial information about an investor, (ii) recommendations that meet the investor's needs based on such information, and (iii) a supervisory structure that reviews recommendations and oversees the activities of representatives. FINRA has taken the position that the suitability standard requires "a broker's recommendations [to] be consistent with his customers' best interests."[7]

This squares with Jackson's experience in the real world. Anyone in the business of advising retail investors had best be able to prove that the recommendation was in the best interest of the investor. Put another way, Jackson is unaware of any evidence indicating that broker-dealers are successfully defending themselves against claims brought by the SEC, FINRA, states, or private litigants by arguing that their recommendations may not have been in their customers' best interest but were nonetheless suitable.

[6] The DOL has taken the position that everyone offering advice to retail investors should be subject to a fiduciary standard of care. Many commentators and industry groups urge that the suitability standard of care be replaced with a "best interest" standard of care.

[7] *Dane S. Faber*, Securities Exchange Act Release No. 49216, 2004 SEC LEXIS 277, at 23-24 (Feb. 10, 2004). *See also*, Dep't of Enforcement v. Bendetsen, No. C01020025, 2004 NASD Discip. LEXIS 13, at 12 (NAC Aug. 9, 2004). *See also*, FINRA Regulatory Notice 12-25, at 3 (May 2012), http://www.finra.org/sites/default/files/NoticeDocument/p126431.pdf.

As suggested in Principles 4 and 5 below, the broker-dealer regulatory regime can be enhanced ... but eliminating the suitability standard of care is not the problem that needs to be solved. For, by doing so, and by following the path set by the DOL in making everyone a fiduciary, investor choice, access to advice, and the cost of advice will all be adversely affected.

4. <u>Clarify labels</u>.[8] Advisers and financial institutions offering investment advice, products, and/or services should be required to clearly and plainly declare the capacity in which they are acting (i.e., fiduciary or non-fiduciary) before any interaction takes place. Thereafter, the adviser's conduct must be consistent with the standards associated with the chosen capacity. There should be no confusion among investors about the nature of the service or relationship offered.[9]

Accordingly, when a representative or financial institution is acting as a non-fiduciary, it should be required to clearly and prominently disclose its non-fiduciary status and be prohibited from using other labels and terms that may suggest that fiduciary services are being offered (e.g., "investment adviser," "financial advisor"). Further, investors should be provided with education and disclosures about the distinctions between the two standards.

5. <u>Prohibit Differential Compensation at the Point of Sale</u>.[10] A beneficial and practical evolution that has resulted from the new DOL Rules is a movement towards levelized compensation at the point of sale for comparable products (i.e., a non-fiduciary offering a menu of mutual funds can earn no more for selling one mutual fund than another). The benefits to investors of this concept, which substantially mitigates conflicts of interest at the point of sale,

---

[8] This principle addresses the first set of questions in your Comments regarding investor confusion.

[9] In its January 2011 staff study of investment advisers and broker-dealers, the SEC found significant evidence of investor confusion about their advisers' obligations and the applicable standards of care in comments submitted by the public and its own surveys. U.S. SEC, *Study on Investment Advisers and Broker-Dealers*, 93-101 (Washington, D.C.: Jan. 2011), https://www.sec.gov/news/studies/2011/913studyfinal.pdf.

This problem of investor confusion is significantly exacerbated by the existence of different standards imposed by different regulators or statutes. Registered investment advisers are subject to a fiduciary standard. Anyone providing a recommendation relating to an investor's retirement savings (i.e., "qualified accounts") in return for compensation is subject to ERISA's fiduciary standard articulated in the DOL's Fiduciary Rules. Broker-dealers advising investors with non-qualified accounts are subject to a suitability standard. Forty states' insurance regulators also impose a suitability standard, but others impose different standards. Some products, like Jackson's variable annuities, may be subject to several of these standards at the same time depending upon how they are distributed. For this reason, one important step toward reducing or eliminating investor confusion would be to harmonize standards of care across different products, different categories of advisers, qualified and non-qualified accounts, and regulators at the state and federal level to the extent permissible under the applicable laws.

[10] This principle addresses the second set of questions in your Comments regarding conflicts of interest. In short, Jackson believes that most conflicts of interest can be effectively mitigated through full and fair disclosure by the conflicted party and informed consent by the consumer; however, there are certain conflicts that arise at the point of sale (e.g., receiving a greater amount of compensation for selling product A than substantially similar product B) that should be prohibited.

outweighs the costs of implementation and should be incorporated into the federal and state regulatory frameworks applicable to the suitability (and fiduciary) standard.

6. Harmonize standards applicable to advice regarding securities and insurance (i.e., non-securities). A non-fiduciary offering advice to a retail investor regarding securities (e.g., mutual funds, ETFs, variable annuities) is presently subject to different standards than a non-fiduciary offering advice regarding non-securities (e.g., fixed annuities, fixed index annuities). The former is subject to rules and regulations adopted and enforced by the SEC and FINRA. The latter by the states. Often, these different standards apply to the same individual offering advice to the same consumer. Thus, parts of the same conversation between the same two people about the same subject (how to grow and protect savings) are subject to different standards. This makes no sense and is unintelligible to consumers. Jackson urges the SEC to work with state insurance commissioners to ensure that standards governing advice regarding securities are extended to, and harmonized with, the standards that govern advice regarding insurance (i.e., non-securities) so that, for example, an insurance agent selling a fixed annuity is subject to the same standards as a broker-dealer representative selling a mutual fund or a variable annuity.

7. Enhance oversight of the distribution of non-securities (including insurance products) by non-fiduciaries. To the extent that there are gaps in the regulatory framework governing non-fiduciary advice to retail investors, it exists outside the securities context (i.e., oversight of the distribution of non-securities products, such as fixed and fixed index annuities, by certain states). Although states actively regulate the design of, and disclosures regarding, insurance and other non-securities products, the states do not as actively regulate distribution-related activities, including the use of non-cash compensation.[11] Jackson therefore urges the SEC to work with the states to enhance state oversight of the distribution of non-securities so that it is uniform with FINRA's oversight of the distribution of securities.

8. Harmonious standard for fiduciaries. Consistent with the different purposes and frameworks in securities, retirement, and insurance law, Jackson proposes that either a unified standard or consistent standards should be adopted to apply in all circumstances where fiduciary advice is offered or provided to individuals.[12] Another one of the principal flaws with the new DOL Rules is that they apply an ERISA-developed fiduciary standard to a select, but broad, range of interactions that commonly take place between retail investors and advisers (i.e., the provision of advice about securities and some - but not all - insurance products where qualified assets are

[11] U.S. Senator Elizabeth Warren issued related studies in 2015 and 2017 that focused on certain sales practices and incentives used by a minority of organizations selling non-securities insurance products, which are not subject to the FINRA rules that apply to sales of insurance products that are deemed securities. *See* Elizabeth Warren, *Villas, Castles, and Vacations: How Perks and Giveaways Create Conflicts of Interest in the Annuity Industry*, 2 (Washington, D.C.: Oct. 2015), https://www.warren.senate.gov/files/documents/2015-10-27_Senator_Warren_Report_on_Annuity_Industry.pdf; *see also*, Elizabeth Warren, *Villas, Castles, and Vacations 2017 Edition: Americans' New Protections from Financial Adviser Kickbacks, High Fees, & Commissions are at Risk*, (Washington, D.C.: Feb. 2017), https://www.warren.senate.gov/files/documents/2017-2-3_Warren_DOL_Rule_Report.pdf.

[12] No changes are proposed to the existing regime that applies to fiduciary advice offered to institutions or qualified plans (as opposed to retail investors).

involved). The ERISA fiduciary standard differs in material ways from the fiduciary standard that has developed over the last seven decades under the Investment Advisers Act of 1940, which permits a fiduciary to engage in many of the activities prohibited by the ERISA standard, so long as certain disclosures are made and client consent is obtained. The result is complex, confusing, and inconsistent fiduciary standards that are incomprehensible to investors and difficult and costly for businesses to follow.

Jackson believes that the elements of the uniform standard that apply to fiduciaries should include many of the elements of the ERISA fiduciary standard and require that the investment advice provided to individual investors should:

- Reflect the care, skill, prudence, and diligence under the circumstances then existing that a prudent person acting in a like capacity and familiar with such matters would use based on the collection, analysis, and presentation of information (including the potential impact of market risk, longevity risk, morbidity risk, possible liquidity needs, and the effect of guaranteed income) sufficient to ensure that the recommendation is consistent with the investment objectives, risk tolerance, financial circumstances, and needs of the client;
- Not result in the financial adviser receiving (a) differential compensation for selling like products that creates a material conflict between the adviser's and investor's interests, or (b) compensation in excess of reasonable compensation; and
- Include reasonable disclosures regarding the compensation received by the adviser (and the adviser's financial institution and affiliates) and any potential or actual material conflicts between the adviser's and investor's interests.

9. <u>Provide a safe harbor for illustrations of life time income</u>. Investors' biggest concern is running out of money in their retirement. It is therefore essential to provide investors with robust financial projections that estimate a reasonable range of outcomes that their retirement investments may produce given the combination of certain inherent risks and the related assumptions around those risks. Yet, Jackson has observed that many retail advice businesses do not provide these types of illustrations and projections because they are unsure of what is permitted by regulators, and they fear the risk of private litigation if reasonable assumptions later turn out to have been inaccurate. Jackson therefore urges the creation of a safe harbor from litigation for fiduciaries and non-fiduciaries who provide retirement income illustrations during initial meetings or subsequently, so long as they meet certain prescribed and minimum requirements designed to ensure robust assumptions and sound market and actuarial assumptions.

10. <u>Adopt clear grandfathering that offers consumers the option to "opt in" to a fiduciary relationship if they are not already in one</u>. Assuming a multi-tiered framework, where firms and individuals can offer non-fiduciary or fiduciary advice, then consumers should have a choice about how they want to engage with their agent or adviser. If a consumer is currently engaged in a non-fiduciary (e.g., brokerage) relationship she wants to maintain, she can. If the consumer prefers to switch to a fiduciary relationship that covers advice delivered in the future, she can.

This is another one of the principal flaws with the DOL Rules. A consumer who is satisfied with a longstanding non-fiduciary relationship is, in most instances, thrust into a fiduciary relationship when advice is first given after the applicability date of the Rules. This creates a perverse incentive for representatives to refrain from communication with their clients after the applicability date. Jackson therefore proposes a framework that preserves consumer choice and gives consumers the ability to "opt in" to a fiduciary relationship if the consumer chooses.

11. Allow enforcement by regulators and investors, but permit pre-dispute agreements to arbitrate all claims, including those claims that might be brought in a class action.[13] The fiduciary and non-fiduciary standards should be enforced by investors and regulators pursuant to their existing authorities. To the extent that private claims relating to alleged violations of applicable standards are allowed, these claims should be eligible for arbitration by mutual agreement, including claims that might be brought in class action.[14]

II. Responses to Specific Questions

In addition to sharing our principles for regulatory reform, Jackson also offers responses to the following questions posed in your Comments:

Is there a trend in the provision of retail investment advice toward a fee-based advisory model and away from a commission-based brokerage model? To what extent has any observed trend been driven by retail investor demand, dependability of fee-based income streams, regulations, or other factors? To what extent is any observed trend expected to continue, and what factors are expected to drive the trend in the future? How has any observed trend impacted the availability, quality, or cost of investment advice, as well as the availability, quality, or cost of other investment products and services, for retail investors? Does any such trend raise new risks for retail investors? If so, how should these risks affect the Commission's consideration of potential future action?

For many years, there has been an industry-wide migration from commission-based compensation models to fee-based compensation models. The new Fiduciary Rules are transforming this migration into a stampede. Many financial institutions have taken, or are in the process of taking, action to avoid the extensive requirements of the Best Interest Contract Exemption ("BICE"), which are exceedingly complex. Virtually every aspect of a financial institution must be reviewed

---

[13] This principle addresses the eleventh set of questions in your Comments. Consumers should have private remedies for violations of the standards proposed in this letter, but contracting parties should be free to agree how disputes will be resolved, including agreements to arbitrate all disputes, even those that might otherwise be pursued in class action litigation.

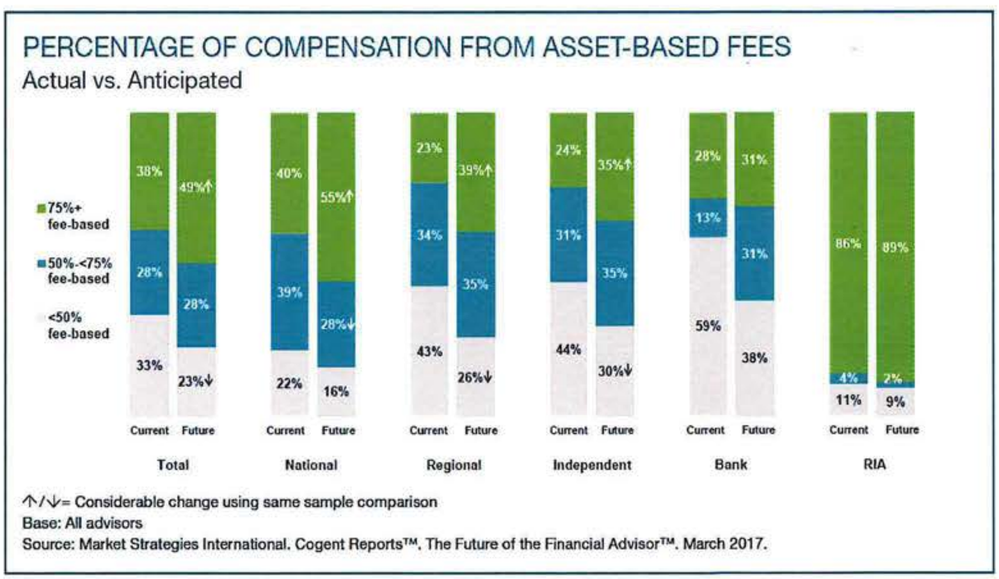
[14] The Fiduciary Rules, FINRA rules, and some states prohibit mutual agreements to arbitrate claims that might otherwise be brought in a class action. Although the DOL has indicated that the Fiduciary Rules should be amended to allow such mutual agreements, the FINRA and state prohibitions remain, resulting in inconsistency for no good reason.

and altered to comply with the BICE, including training, forms, disclosures, technology, compensation, operations, marketing, legal, compliance, and governance. The onerous requirements of the BICE have resulted in a sharp move away from commission-based compensation arrangements and towards fee-based compensation arrangements to fit within the "level-fee fiduciary" exemption in the BICE. Many of Jackson's distribution partners, and others in the industry, have aggressively expanded the availability and usage of fee-based advisory services.

This trend has produced mixed consequences. As noted in Principle 5 and in the next section, levelized compensation at the point of sale for comparable products benefits investors by substantially mitigating conflicts of interest at the point of sale. By their very nature, fee-based advisory arrangements levelize compensation not only within categories of comparable products, but across all products. As a result, the advice provided and the investor's decision-making can be driven entirely by the investor's needs and products' costs and benefits rather than other incentives that have the potential to lead to conflicted advice.

On the other hand, the stampede to fee-based arrangements, exacerbated by the Fiduciary Rules, is having the harmful effect of reducing access to advice for small and mid-size retirement savers and, in some instances, increasing the cost of advice for those retirement savers with sufficiently large assets to access advice.

A third-party industry report by Cogent Reports™ illustrates that in 2017 a greater percentage of advisors (49 percent up from 38 percent in 2016) will receive at least 75 percent of their total compensation from asset-based fees.[15]



[15] Meredith Lloyd Rice, *Ranks of Fee-Based Advisors Expected to Swell*, FreshMR (Mar. 13, 2017), https://www.marketstrategies.com/blog/2017/03/ranks-of-fee-based-advisors-expected-to-swell/.

On average, advisors are expected to see a growth of asset-based fee compensation of nearly 7 percent with a drop in commission compensation of 9 percent.[16] In recent surveys, only 30 to 40 percent of advisors said that they expect commission-based products will still exist in 10 years.[17] Some financial institutions have already started the journey towards a fee-only industry by indicating that they will no longer allow new brokerage IRA accounts and will shut down all commission-based sales.[18]

In many instances, this shift to fee-based services has increased costs for individual retirement savers. In other words, it has exacerbated the "leakage" problem -- the use of retirement savings for non-retirement purposes -- the Fiduciary Rules were supposed to help solve. A 2017 American Action Forum analysis concluded that the Fiduciary Rules will result in additional annual charges to retirement investors of approximately $800 per account or over $46 billion in aggregate as advisers try to cover the new costs and risks.[19]

Although the applicability date of the Department of Labor's Fiduciary Rule has not yet passed, efforts to comply with the rule are reportedly underway. What has been the experience of retail investors and market participants thus far in connection with the implementation of the Fiduciary Rule? How should these experiences inform the Commission's analysis? Are there other ways in which the Commission should take into account the Department of Labor's Fiduciary Rule in any potential actions relating to the standards of conduct for retail investment advice?

The Fiduciary Rules began to apply on June 9, 2017. The Impartial Conduct Standards require that (1) recommendations are in the client's best interest, (2) compensation is no more than reasonable, and (3) no misleading statements are made to the client.[20] The applicability of these new requirements, and the expectation that additional and significantly more burdensome requirements will take effect on January 1, 2018, have dramatically altered the investment advice environment in several ways.

---

[16]Cerulli Associates, *The Cerulli Report – US Advisor Metrics 2016: Combatting Fee and Margin Pressure*, at 189, Exhibit 8.01 (13th ed. 2016).

[17] Investment News Research, *The Economics of Change: How the DOL Fiduciary Rule Will Set Money In Motion and Alter Business Models Across the Advice Industry*, InvestmentNews, (May 6, 2016).

[18] Greg Iacurci & Christine Idzelis, *Broker-dealers Split on Commissions in Wake of DOL Fiduciary Rule*, Investment News, (Oct. 30, 2016), http://www.investmentnews.com/article/20161030/FREE/161029902/broker-dealers-split-on-commissions-in-wake-of-dol-fiduciary-rule; *see also* Megan Leonhardt, *Why [Edward Jones] Won't Let Investors Buy Funds and ETFs in Their IRAs*, Time Money (Aug. 22, 2016), http://time.com/money/4459130/edward-jones-bans-funds-etfs-in-iras.

[19] Meghan Milloy, *The Consequences of the Fiduciary Rule for Consumers*, American Action Forum (Apr. 10, 2017), https://www.americanactionforum.org/research/consequences-fiduciary-rule-consumers/.

[20] *See* U.S. Department of Labor, Employee Benefits Security Administration: *Conflict of Interest FAQs (Transition Period)*, (Washington, D.C.: May 2017), https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period-1.pdf.

Providers of Retirement Products, Advice, and Services are Broadly Complying with the Fiduciary Rules.

Jackson's experience, even before June 9, 2017, has been that most of the businesses providing advice and products to retirement savers have changed their practices and products to comply with the Impartial Conduct Standards. In some instances, these changes are helping retirement savers by realizing the DOL's and Jackson's shared goal of reducing undue leakage from retirement savings to the benefit of participants, beneficiaries, and individual retirement savers. For example, there has been wide adoption of pay structures that provide financial representatives with level compensation for investment products within the same product category.

Jackson is aware of more than 75 broker-dealers that have purposefully decided to require every annuity manufacturer with which they deal to offer the same commission options by product type to their representatives. This has resulted in over 145 commission schedule adjustments to Jackson's annuity products. This compensation reform is the direct result of the Impartial Conduct Standards' "best interest" and "reasonable compensation" requirements. Thus, these broker-dealers' representatives have no potential financial incentive to recommend one carrier's annuity product over another's product. The recommendation will be based solely on the merits of the annuities. This development in market practices addresses the principal motivating factor behind the Fiduciary Rules: retirement advisor recommending one retirement product over another because the advisor perceives that he or she will derive an economic advantage.[21] As the SEC considers further regulatory action, its efforts should promote this beneficial development.

In many more instances, however, changes adopted in response to the Fiduciary Rules are harming retirement savers.

Poorer Investment Returns Resulting from the Unavailability of Expert Advice

In addition to increasing the cost of advice for those retirement savers with enough money to establish a relationship with an adviser, another consequence of rising costs to distributors has been the loss of retirement investment advice for retirement savers with small and mid-sized accounts. Many savers with smaller accounts are unable to meet account minimums, which have

[21] It is important to note that business' compliance with the Impartial Conduct Standards has occurred absent any threat of enforcement by the DOL or the imposition of excise taxes by the Internal Revenue Service. Both organizations announced non-enforcement policies before the Impartial Conduct Standards took effect that removed these threats. In addition, financial institutions have not been subject to private litigation facilitated by the BICE's best interest contracts during the period when these extensive compliance efforts have taken place. Rather, the Impartial Conduct Standards have effected broad compliance without any need for the new and aggressive enforcement measures currently scheduled to take effect on January 1, 2018. *See*, U. S. DOL, Field Assistance Bulletin No. 2017-02, *Temporary Enforcement Policy on Fiduciary Rule*, (Washington, D.C.: May 22, 2017), https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-02.pdf; *see also*, U.S. DOT, IRS Announcement 2017-4, *Non-Applicability of Excise Taxes Under Section 4975 to Conform With DOL Temporary Enforcement Policy on Fiduciary Duty Rule*, (Washington, D.C.: Mar. 27, 2017), https://www.irs.gov/pub/irs-drop/a-17-04.pdf.

risen and can be expected to rise further. The heightened costs for distributors will continue to rise as a result of the Fiduciary Rules' extensive paperwork, process, and disclosure requirements, plus the unquantified costs and risks of litigation, excise taxes, and other potential penalties. These costs make the small fees associated with low-balance accounts uneconomical for retirement investment advisors. A 2016 study by A.T. Kearney found that, by 2020, broker-dealer firms will stop providing advice to retirement savers with low-balance accounts containing the majority of the $400 billion currently in such accounts.[22] Another recent study conducted by CoreData Research found that 71% of financial advisors plan to disengage from some retirement savers as a result of the fiduciary rule.[23] A 2017 survey by the National Association of Insurance and Financial Advisors found that nearly 90% of financial professionals believe consumers will pay more for professional advice services, and 75% have seen or expect to see increases in minimum account balances for the clients they serve.

A recent study by Vanguard indicates advisors can potentially add about 3% in net returns to investors. Six years ago, the DOL itself estimated that access to financial advice reduced the cost of retirement saver "mistakes" by $15 billion per year, and that increasing access to financial advice would enable retirement savers to save billions more.[24]

The SEC should acknowledge the value of professional investment advice and take steps to ensure that investors at all income and wealth levels have ready access to high-quality investment advice. These efforts should include working closely with the DOL to revise and streamline the Fiduciary Rules in a manner that eliminates undue barriers to retirement investment advice.

Unavailability of Retirement Products Helping to Grow Retirement Savings While Providing Guaranteed Lifetime Incomes

Beyond the loss of advice, retirement savers are losing access to retirement products, including products retirement savers want and need. For example, variable annuities allow Americans to address their greatest risk and fear in retirement: outliving their assets.[25] Variable annuities offer investors the opportunity to protect and grow their savings. They protect savings against market and longevity risk through guaranteed lifetime income and death benefits. They also offer the opportunity to grow savings on a tax-deferred basis through the construction of a diversified portfolio of investment strategies, including fixed account options with minimum guaranteed

[22] A.T. Kearney, *A.T. Kearney study: The $20 billion impact of the new fiduciary rule on the US. wealth management industry*, (Chicago, IL: Oct. 2016), https://www.atkearney.com/documents/10192/7041991/DOL+Perspective+-+August+2016.pdf/b2a2176b-c821-41d9-b12e-d3d2b0807d69

[23] VW Staff, *Fiduciary rule to leave US mass-market investors stranded, study shows*, ValueWalk (Nov. 28, 2016), https://www.valuewalk.com/2016/11/fiduciary-rule-bad/.

[24] DOL Investment Advice—Participants and Beneficiaries, 76 Fed. Reg66,152 (Oct. 25, 2011) (to be codified at C.F.R. pt. 2550), https://www.gpo.gov/fdsys/pkg/FR-2011-10-25/pdf/2011-26261.pdf.

[25] Chris Arnold, *How to Not Run Out of Money in Retirement*, NPR: Your Money & Your Life (Apr. 27, 2016), http://www.npr.org/2016/04/26/475759586/how-to-not-run-out-of-money-in-retirement.

returns. Since a majority of variable annuities are held by investors with annual income under $100,000, they need an opportunity to grow their assets.[26]

Yet, the Fiduciary Rules have caused a steep decline in the utilization of variable annuities. Despite a rising stock market, which has always led to increased sales of variable annuities in the past, sales declined by 21.6% from 2015 to 2016.[27] In the first quarter of 2017, variable annuity total sales declined an additional 4.6% from the prior quarter, and 10.2% when compared with the first quarter of 2016.[28] In the second quarter of 2017, variable annuity total sales declined 8% compared with the prior year's results. Sales from the first half of 2017 VA sales were $49.1 billion --- 8% lower than the first six months of 2016 and the lowest level in sixteen years.[29]

These declines in variable annuity sales are directly related to the DOL's decision to disfavor variable annuities by removing them from PTE 84-24 beginning on January 1, 2018, and subjecting them to the much more burdensome requirements of the BICE. Sales of fixed index annuities, which also would be removed from PTE 84-24 on January 1 if the DOL does not delay the applicability date as proposed, have also fallen in recent quarters.[30] By contrast, sales of fixed rate annuities, which will remain subject to PTE 84-24 after January 1, have grown. According to Todd Giesing, Director of Annuity Research for LIMRA Secure Retirement Institute, "[a] closer look at what's driving the drop in VA sales reveals qualified [i.e., retirement account] VA sales have experienced a more significant decline than non-qualified VAs . . . . VA qualified sales were down 16 percent in the second quarter, while nonqualified sales were actually up 5 percent."[31] Qualified variable annuity sales during the second quarter of 2017 accounted for 58% of retail variable

---

[26] Press Release, Insured Retirement Institute, IRI Issues Third-Quarter 2015 Annuity Sales Report (Dec. 15, 2015) (on file with author), http://www.npr.org/2016/04/26/475759586/how-to-not-run-out-of-money-in-retirement.

[27] Press Release, Insured Retirement Institute, IRI Issues Fourth-Quarter 2016 Sales Report (Mar. 30, 2017),https://www.myirionline.org/docs/default-source/press-release/q4-2016-annuity-sales-(3).pdf?sfvrsn=4 (variable annuity sales data provided by Morningstar, Inc.).

[28] Press Release, Insured Retirement Institute, IRI Issues First-Quarter 2017 Annuity Sales Report (June 6, 2017), https://www.myirionline.org/docs/default-source/press-release/q1-2017-annuity-sales-final.pdf?sfvrsn=2.

[29] Press Release, LIMRA, LIMRA Secure Retirement Institute: First Half 2017 Annuity Sales Reach Lowest Level in 16 Years (Aug. 23 2017), http://www.limra.com/Posts/PR/News_Releases/LIMRA_Secure_Retirement_Institute__First_Half_2017_Annuity_Sales_Reach_Lowest_Level_in_16_Years.aspx.

[30] Press Release, LIMRA, LIMRA Secure Retirement Institute: First Quarter 2017 Annuity Sales Decline (May 18, 2017),http://www.limra.com/Posts/PR/News_Releases/LIMRA_Secure_Retirement_Institute__First_Quarter_2017_Annuity_Sales_Decline.aspx

[31] Press Release, LIMRA, LIMRA Secure Retirement Institute: First Half 2017 Annuity Sales Reach Lowest Level in 16 Years (Aug. 23 2017), http://www.limra.com/Posts/PR/News_Releases/LIMRA_Secure_Retirement_Institute__First_Half_2017_Annuity_Sales_Reach_Lowest_Level_in_16_Years.aspx.

annuity sales during that period, which represents a five-percentage- point decline from the same quarter last year.[32]

Declining sales of variable annuities are not the product of consumer preferences. Variable annuities offer the opportunity to establish a regular "retirement paycheck" that helps control spending, protects financial resources from fraud and leakage, and ensures retirees have an income source other than Social Security that cannot be exhausted or outlived. A 2017 Insured Retirement Institute ("IRI") survey found that more than 85% of consumers believe they need a source of guaranteed lifetime retirement income other than Social Security.[33] In a recent survey conducted by IRI and Jackson, 80% of retirement savers said they would purchase an investment product providing guaranteed lifetime income, even if it cost more than an alternative.[34] Eighty percent of advisors participating in the IRI/Jackson survey said that annuities' guaranteed lifetime income features have had a positive impact for their clients.[35] More than half of the advisors predicted that some of their clients will run out of money during retirement if they do not buy annuities.[36] Yet, 60% of advisors reported that legal and regulatory barriers are "very" or "somewhat" impactful in reducing annuity purchases by retirement savers.[37]

When drafting its modifications to PTE 84-24, that are currently scheduled to take effect on January 1, 2018, the DOL weighed the benefits to retirement savers from the various types of annuities offered (fixed rate, fixed index, and variable). In the end, the DOL concluded that fixed rate annuities would be favored as the only type of annuity that will continue to be eligible for relief under PTE 84-24, and that fixed index and variable annuities "should be sold under the more stringent conditions of the [BICE.]"[38] The DOL favored fixed rate annuities because their payments are "predictable"[39] and disfavored fixed index and variable annuities because they

---

[32] *Id.*

[33] Insured Retirement Institute The Retirement Preparedness of the Boomer Generation: *Boomer Expectations for Retirement 2017*, at 17 (April 3, 2017), https://www.myirionline.org/docs/default-source/research/iri_boomers-expectations-for-retirement-2017.pdf

[34] Insured Retirement Institute & Jackson National Life Insurance Company, *The Language of Retirement 2017: Advisor and Consumer Attitudes Toward Securing Income in Retirement*, at 7 (Mar. 2017), https://www.jackson.com/content/dam/cfk/documents/cmc19005/Language%20of%20Retirement-IRI%20Study-CMC19005_0617_Final.pdf.

[35] *Id.* at 6.

[36] *Id.* at 2.

[37] *Id.* at 7.

[38] DOL Amendment to and Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters, 81 Fed. Reg. 21147 (Apr. 8, 2016), (to be codified at 29 C.F.R. pt. 2550), https://www.gpo.gov/fdsys/pkg/FR-2016-04-08/pdf/2016-07928.pdf

[39] *Id.* at 21152.

"typically require the customer to shoulder significant investment risk and do not offer the same predictability of payments as Fixed Rate Annuity Contracts."[40] This rationale is mistaken and contrary to sound investment and public policy. Retirement savers who purchase and hold variable annuities with lifetime income guarantees shoulder no investment risk that will adversely impact the dependability of their income payments. A decrease in the value of their investments will not decrease the value of their guaranteed lifetime income benefit, but an increase in the value of their investments may increase the amount of their guaranteed lifetime income benefit. Undersaved retirement savers need to grow their assets and variable annuities are one of the best ways to grow retirement savings through exposure to the equity markets while minimizing the risk of market downturns. The DOL Rules as currently written mistakenly discourage the use of variable annuities when they ought to be encouraging them.[41]

In the following table, Jackson assessed the consumer value differences of a fixed rate annuity, fixed index annuity, and variable annuity with a living benefit guarantee (i.e., a guaranteed lifetime income) over various time periods by comparing the withdrawal value available to the consumer.[42] The colors in the chart represent the highest (green), second highest (yellow), and lowest (red) withdrawal values.

	Fixed Annuity	**Fixed Index Annuity (7 yr term)**	**Variable Annuity w/ Living Benefit**
Year	Withdrawal Value	Withdrawal Value	Withdrawal Value
1	$97,713.00	$95,248.00	$95,890.00
5	$110,052.39	$108,396.00	$160,694.00
10	$123,682.87	$123,827.00	$259,742.00
15	$136,221.52	$139,492.00	$319,395.00
20	$150,031.30	$152,614.00	$247,734.00
25	$165,241.08	$173,432.00	$412,539.00

[40] *Id.* at 21153.

[41] *See* James Sopha, *In Regards to: RIN 1210 - AB82 – Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (the "RFI")*, Jackson National Life Insurance Company Public Comment Letter to DOL No. 574, Aug. 7, 2017, https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00574.pdf. Pages 4-5 provide two real-world illustrations of these facts.

[42] All three of the analyses in the table assume that the annuity purchaser is a 65-year-old female paying a premium of $100,000. The fixed rate annuity analysis assumes a guaranteed minimum interest rate of 1%, a first-year interest rate of 3.95%, and a base rate of 1.95%. The variable annuity analysis assumes that the funds are invested in a balanced fund (JNL/American Funds Growth & Income Fund). The fixed index annuity analysis also assumes that the fund is linked to the Standard & Poor's 500 index, but with a cap of 3.75% on annual growth, which is common for a fixed index annuity product. Jackson would be willing to provide a more detailed analyses supporting this table. The results included in the table are net of all fees (i.e., contract fees, which are inclusive of commission, benefit fees, and fund fees, as applicable). The withdrawal value is also net of surrender charges that are assessed in the initial 7 years (for variable annuity and fixed index annuity) and 6 years (for the fixed rate annuity) for partial withdrawals and surrenders.

Given persistently low interest rates, juxtaposed with record-setting growth in stock markets, variable annuities and fixed index annuities will produce a significantly higher net investment return than fixed rate annuities that becomes firmly established in Year 5 for variable annuities and Year 15 for fixed index annuities. The massive gap between the returns on variable annuities and the other two products further illustrates the critical role that variable annuities can play in helping to address the inadequacy of some participants, beneficiaries, and individual retirement savers, if the DOL will not disadvantage it against other products. Jackson urges the SEC to work with the DOL to ensure that all annuity products are treated equally and with due regard for their importance to investors' efforts to grow their retirement savings.

New and innovative compliance-oriented products have been slowed by undue regulatory barriers.

The Fiduciary Rules have also encouraged some market changes that are too new for the SEC, the DOL, the industry, and retirement savers to understand their meaning and effects. For example, in response to the Fiduciary Rules, retirement product manufacturers are in the process of innovating new products. As a leader in annuity sales in the United States, Jackson offers an excellent example.

Jackson introduced its first fee-based variable annuity in 2016. Last month, Jackson introduced the next generation of its fee-based variable annuity called Perspective Advisory II. The objective of Perspective Advisory II is increased transparency and better alignment with non-annuity fee-based product offerings. Like other non-annuity fee-based products, Perspective Advisory II includes no up-front or trailing sales charge, has no withdrawal charge fees or schedule, and utilizes Class I (Institutional) share funds that do not include 12b-1 fees. All compensation to the selling adviser will be paid directly by the retirement saver based upon the fee arrangement negotiated between the retirement saver and the adviser. Further, Jackson does not expect that there will be any variance in the fee paid to the adviser by the retirement saver based upon the features and benefits that the retirement saver chooses in the annuity. For example, an investor purchasing Perspective Advisory II can select from over 90 investment options and an *a la carte* menu of survivor and guaranteed income benefits when selecting an annuity. Jackson expects that a selling adviser will earn the same compensation regardless of the optional benefits that the client selects.

Even though Perspective Advisory II is an excellent solution for retirement savers with sufficient funds to establish a relationship with a fee-based adviser, fee-based insurance products must still overcome regulatory and platform integration obstacles before they are likely to be widely used. Fee-based annuities currently constitute approximately one percent of all annuity sales and, even apart from the Fiduciary Rules, still have significant impediments to their widespread utilization.[43] For example, FINRA Rule 2330 and NAIC 275-1 were adopted to address regulators' concerns

[43] Scott Stoltz, *Do Fee-Based Annuities Have a Future?*, ThinkAdvisor: Research on Wealth (July 3, 2017), http://www.thinkadvisor.com/2017/07/03/do-fee-based-annuities-have-a-future.

about sales of annuities with high up-front commission costs and long surrender periods.[44] They impose significant additional requirements on sales of annuities that do not apply to sales of other products, such as mutual funds. Based on an analysis prepared by Jackson, it takes approximately two days and 200 pages of documentation to complete a mutual fund transaction. In contrast, due to FINRA Rule 2330 and NAIC 275-1, it takes approximately five days and 1,000 pages of documentation to complete a variable annuity transaction. These regulatory burdens are likely to deter a fee-based adviser from recommending a fee-based annuity and will tend to steer the adviser's recommendation exclusively to other products, such as mutual funds, which require far less work. While there is nothing wrong with mutual funds, a portfolio that consists entirely of them may not be in the retirement savers' best interest because mutual funds (and ETFs and other non-guaranteed products) do not mitigate market and longevity risk.

It is not in investors' interests for FINRA Rule 2330 or NAIC 275-1 to apply to sales of the next generation of fee-based annuity that has <u>no</u> up-front commission and <u>no</u> surrender charges. Nonetheless, those regulations apply in many instances today, and it will be difficult for fee-based variable annuities to be widely offered to investors until these rules are modified.

The SEC, the DOL, states, and other policymakers should be doing everything they can to encourage greater utilization of guaranteed income products, or at least ensure that they are on a level playing field with other retirement products that do not offer valuable insurance-type features like lifetime income guarantees and death benefits.

If advisers are discouraged from recommending products like variable annuities, then market and longevity risks will be increasingly "managed" through the application of simplistic and ineffective rules of thumb, such as the so-called "4 percent rule" for systematic withdrawals.[45] The "4 percent rule" promotes the construction of a diversified portfolio from which the consumer withdraws 4 percent per year to fund 25-30 years of retirement. The reasoning has been that withdrawing this small amount every year, while obtaining the opportunity for market growth with the remainder of the portfolio, will preserve the retirement saver's resources and allow the resources to continue to

---

[44] *See* U.S. SEC/NASD Report, *Joint SEC/NASD Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products,* (Washington, D.C.: June 2004), https://www.sec.gov/news/studies/secnasdvip.pdf; *see also,* U.S. SEC, *Self-Regulatory Organizations; National Association of Securities Dealers Notice of Filing of Proposed Rule and Amendment No. 1 Thereto Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities; Corrected,* Release No. 34-52046A, (Washington, D.C.: July 19, 2005), https://www.sec.gov/rules/sro/nasd/34-52046a.pdf; *see also,* FINRA, 2015 Regulatory and Examination Priorities Letter (Washington, D.C.: Jan. 6, 2015), http://www.finra.org/industry/2015-exam-priorities-letter.

[45] PWC, *Leveraging Behavioral Simulation to Enhance the Four Percent Rule*, (Mar. 2015), noting:

> "[I]t is important to point out that many rules of thumb such as the Four Percent Rule ... are based on mortality assumptions that are undergoing constant revision. The Four Percent Rule makes the assumption that households spend 25 years in retirement. However, The Economist reports that life expectancy in wealthier nations has been revised upwards by about 2.5 years every decade for the past 50 years."

https://www.pwc.com/us/en/insurance/publications/assets/pwc-behavioral-simulation-four-percent-rule.pdf.

grow so they will last for a minimum of 25-30 years (not for life). In fact, the original and subsequent research behind the "4 percent rule" exposes its risk and inaccuracy in predicting a protected stream of guaranteed lifetime income for retirees.

William Bengen's original research in 1994, which is believed to have established the "4 percent rule," was premised upon asset class returns without taking into account fees and taxes.[46] Using Bengen's original research, but taking into account the fact that the retirement saver will have to pay fees and taxes in addition to the desired 4 percent withdrawal (assuming advisory fees and taxes of 2 percent per annum), the "4 percent rule" would have failed and resulted in the retirement saver running out of money in retirement in 61 percent of historical 30-year periods.

More recent research, which accounts for the current low interest rate environment, demonstrates that the risk of systematic withdrawal plans like the 4 percent rule has increased considerably over the last two decades. For example, a research study in 2013 that examined the effect of low interest rates on systematic withdrawal strategies concluded, "The success of the 4 percent rule in the U.S. may be an historical anomaly, and clients may wish to consider their retirement income strategies more broadly than relying solely on systematic withdrawals from a volatile portfolio."[47] Subsequent research by David Blanchett shows that the addition of guaranteed income through annuities and pensions drastically increases the amount of sustainable income a retiree can take at the same risk level. Under his model's assumptions, those with a moderate income stability preference (income risk tolerance) can take only 2.5 percent systematic withdrawals if they have no guaranteed income, but as much as 4.2 percent withdrawals with 50 percent guaranteed income and 6.8 percent withdrawals with 95 percent guaranteed income.[48]

The Fiduciary Rules, particularly the removal of variable annuities from PTE 84-24, are therefore reducing retirement savers' ability to eliminate their market and longevity risk through pooling. Variable annuities provide individual retirement savers with the opportunity to transfer their risks (e.g., the risk that they will die unexpectedly, live longer than expected, and/or be unlucky and suffer a market downturn shortly before or during retirement) to an insurance company's balance sheet. The insurance company pools the risks of its investors. Pooling reduces an individual's risk, for example, of living longer than expected simply because some other person in the pool may live a shorter life than expected. But annuity providers also supplement the value of pooling mortality and other risks by employing sophisticated hedging strategies to mitigate the risk of stock market declines and interest rate movements that are beyond the capabilities and budgets of individual retirement savers. Such a sophisticated solution is something an individual retirement saver could never execute or afford on his or her own through the application of the 4 percent rule or anything like it.

---

[46] William P. Bengen, *Determining Withdrawal Rates Using Historical Data* 7 (4) J. Fin. Planning: 171–180 (1994), http://www.retailinvestor.org/pdf/Bengen1.pdf.

[47] Michael Finke et al., *The 4 Percent Rule Is Not Safe in a Low-Yield World*, 26 (6) J. Fin. Planning: 46–55 (2013), https://davidlukasfinancial.com/wp-content/uploads/2015/08/4-percent-rule-not-safe.pdf.

[48] David M. Blanchett, *The Impact of Guaranteed Income and Dynamic Withdrawals on Safe Initial Withdrawal Rates*, 30 (4) J. Fin. Planning: 42–52 (2017).

Where does the U.S. stand in this area relative to other jurisdictions and should the approaches of other jurisdictions inform our analysis? Have any regulatory developments occurred in non-U.S. jurisdictions over the past years that you believe have impacted the market for retail investment advice in those jurisdictions in a manner that would be instructive to our consideration? Are there any related studies or analyses that demonstrate the impact of these reforms on the market for retail investment advice?

Jackson's parent company, Prudential plc, has first-hand experience with the adverse consequences of regulation like the DOL Rules, which discourages commission-based compensation arrangements in favor of fee-based compensation arrangements. The UK Financial Services Authority (predecessor to the current Financial Conduct Authority ("FCA") launched the Retail Distribution Review ("RDR") in 2006. The RDR led to several rules that came into effect at the end of 2012. These rules were intended to make the retail investment market work better for consumers. A key provision of these rules was the elimination of commission payments from product providers to advisers and platforms (i.e., third-party payments).

The result of the RDR reforms has been a 26 percent reduction in the number of FCA registered advisers providing financial advice to retail clients of moderate means during the period leading up to and following the effective date of the rules.[49] This reduction has resulted in an "advice gap" as advisers withdraw from serving small accounts that are no longer profitable. The advice gap means that many small account investors are now unable to get the financial advice they need. In 2015, the FCA conducted a Financial Advice Market Review (the "Review") to assess whether the advice market in the UK was working following the RDR changes.[50] In the final report of the Review, published in March 2016, the FCA noted that while the changes did impact conflicts of interest, it created a situation where "advice is expensive and is not always cost effective for consumers, particularly those seeking help in relation to smaller amounts of money or with simpler needs."[51] The Review has forced political and regulatory leaders in the UK to consider the advice gap as a serious issue that requires a solution.[52] The FCA identified advice as a priority in its 2016/2017 Business Plan.[53]

[49] Barclays, *Asset Management/Life Insurance UK Savings Conference 2015: What we learnt*, p 27, (June 9, 2015); *see also* Association of Professional Financial Advisers, *The Advice Market Post RDR Review*, (2014).

[50] HM Treasury, Financial Conduct Authority, *Financial Advice Market Review*, (London, U.K.: Aug. 3, 2015).

[51] HM Treasury, Financial Conduct Authority, *Financial Advice Market Review: Final Report*, at 5 (London, U.K.: March 2016). The report references a survey conducted in 2016 on behalf of the Association of Professional Financial Advisers in which 69 percent of advisers said that they had turned away potential clients in the last 12 months. The primary reason is that it was not economical to serve customers with lower amounts to invest. *Id.* at 6. https://www.fca.org.uk/publication/corporate/famr-final-report.pdf.

[52] Naomi Rovnick & Emma Dunkley, *FCA Proposes Reforms to Close 'Advice Gap'*, Financial Times, Mar. 14, 2016., https://www.ft.com/content/4324f4dc-e9c8-11e5-888e-2eadd5fbc4a4.

[53] HM Treasury, Financial Conduct Authority, *Business Plan 2016/2017*, 30 (London, U.K.: 2016), https://www.fca.org.uk/publication/corporate/business-plan-2016-17.pdf. .

Small account investors are among the very groups who most need to be encouraged to plan for retirement. These investors often need assistance in understanding their retirement needs and risk profiles. Periodic in-person meetings to update their investment plan and advice during periods of market uncertainty help to achieve this goal. A sound and responsible retirement policy intended to help consumers would support making personal advice and guaranteed income products more, not less, accessible. Consumers benefit from financial planning, behavioral coaching, and guidance that personal investment advice provides. Research has clearly shown that having a retirement plan improves both the amount saved and consumer confidence.[54] If only a limited number of businesses are willing to provide customized investment plans and ongoing advice to consumers with smaller accounts because of the costs and risks associated with serving the accounts, the result will be to harm, not help, consumers.

Jackson appreciates the opportunity to share our views and hopes that this letter is helpful to you, the other Commissioners, and the staff. We are happy to answers any questions you have or to provide additional information.

Very truly yours,

Andrew J. Bowden
Senior Vice President and General Counsel

[54] Lisa Greenwald et al., *The 2017 Retirement Confidence Survey: Many Workers Lack Retirement Confidence and Feel Stressed About Retirement Preparations*, Employee Benefit Research Institute, No. 431, 6 (Mar. 21, 2017), https://www.ebri.org/pdf/briefspdf/EBRI_IB_431_RCS.21Mar17.pdf.