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Submitted electronically to rule-comments@sec.gov

The Honorable Jay Clayton
Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

**Re: <u>Comments on Proposed Regulation Best Interest (File No. S7-07-18)</u>**

Dear Chairman Clayton:

Jackson National Life Insurance Company, the largest provider of individual annuities in the United States,[1] supports the strengthening of consumer protection standards that apply to recommendations by broker-dealers and offers the following observations and suggestions regarding proposed Regulation Best Interest:

- Jackson commends, and urges the retention of, the regulatory reform principles that shape Regulation Best Interest.

- Jackson recommends that the Retail Customer Investment Profile be enhanced by including, when relevant, consideration of a retail customer's exposure to market risk and

[1] Jackson National Life Insurance Company ("Jackson") and its U.S. affiliates employ more than 4,500 workers, who manage more than $215 billion in fixed and variable annuities for over 1.7 million investors.

Jackson's insurance products are offered by nearly 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.

According to LIMRA's Secure Retirement Institute, Jackson has been the largest provider of individual annuities in the United States since 2012. *See* LIMRA Secure Retirement Institute, US Individual Annuity Sales Survey, 2012, http://www.limra.com/uploadedFiles/limracom/Posts/PR/Data_Bank/_PDF/AnnuityCompanyRankings-Q4-2012.pdf; LIMRA Secure Retirement Institute, US Individual Annuity Sales Survey, 2013, http://www.limra.com/uploadedFiles/limra.com/LIMRA_Root/Posts/PR/Data_Bank/_PDF/Annuity-Company-Rankings-2013-Q4.pdf; LIMRA Secure Retirement Institute, US Individual Annuity Sales Survey, 2014, http://www.limra.com/uploadedFiles/limra.com/LIMRA_Root/Posts/PR/Data_Bank/_PDF/2014_year-end_AnnuityCompanyRankings.pdf; LIMRA Secure Retirement Institute, US Individual Annuity Sales Survey, 2015, http://www.limra.com/uploadedFiles/limra.com/LIMRA_Root/Posts/PR/_Media/PDFs/2015-Top-20-Rankings.pdf; LIMRA Secure Retirement Institute, US Individual Annuity Sales Survey, 2016, http://www.limra.com/Posts/PR/Data_Bank/_PDF/2016-Q4-Annuity-Company-Rankings.aspx.

longevity risk. The addition of these factors will increase the probability that "best interest" recommendations address consumers' biggest concern: running out of money in retirement.

- The Commission should coordinate with state insurance commissioners. Proposed Regulation Best Interest and the Suitability in Annuity Transactions Model Regulation that is currently being amended by the National Association of Insurance Commissioners ("NAIC Model Annuity Suitability Regulation") should be harmonized: purchases, sales, and exchanges of non-securities insurance solutions regulated by the states (including fixed and fixed index annuities) should be subject to the same standards that the Commission and FINRA apply to purchases, sales, and exchanges of securities (including variable annuities).

- The Commission should consider the technical recommendations submitted by the Insured Retirement Institute (IRI), the American Council of Life Insurers (ACLI), and The Committee of Annuity Insurers (CAI).

**<u>Proposed Regulation Best Interest is Founded on Strong Principles, Which Should Be Retained.</u>**

Jackson commends, and urges the retention of, the philosophical foundations of Regulation Best Interest, especially those referenced in the following excerpts:

- "Broker-dealers play an important role in helping Americans organize their financial lives, accumulate and manage retirement savings, and invest toward other important long-term goals . . . ."[2];

- "[The Commission's] goal in designing proposed Regulation Best Interest is to enhance investor protection, while preserving, to the extent possible, access and choice for investors who prefer the 'pay as you go' model for advice from broker-dealers, as well as preserve retail customer choice of the level and types of advice provided and the products available."[3];

- "The Commission believes that material conflicts of interest associated with the broker-dealer relationship need to be well understood by the retail customer and, in some cases, mitigated or eliminated."[4]; and

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[2] Regulation Best Interest, 17 CFR Part 240, Commission Release No. 34-83062, p. 6 (2018).

[3] *Id.*, p. 9.

[4] *Id.*, p. 16.

- "The proposed best interest obligation for broker-dealers set forth in Regulation Best Interest builds upon, and is tailored to, existing broker-dealer relationships and regulatory obligations under the federal securities laws and SRO rules . . . . We preliminarily believe it makes more sense to build upon this regulatory regime, rather than to create a completely new standard or simply adopt obligations and duties that have developed under a separate regulatory regime to address a different type of advice relationship."[5]

These principles are sound and consistent with the principles recommended by Jackson in its November 1, 2017[6], letter to Chairman Clayton, including:

- Do no harm. Do not enact regulatory "reform" that exacerbates the retirement crisis;
- Preserve consumer choice and diversity;
- Enhance the suitability standard of care; and
- Clarify labels.

**Exposure to Market Risk and Longevity Risk Should be Added to the Retail Customer Investment Profile, When Relevant.**

Nearly two-thirds of Americans between the ages of 20 and 70 fear running out of money in retirement more than they fear death.[7] Today, more Americans are reaching retirement age and shifting their focus from accumulation to decumulation strategies than at any point in history. Each day since the beginning of 2011, roughly 10,000 Americans have reached age sixty-five ... and as many or more will continue to do so each day until the end of 2029.[8]

These Americans have good reason for concern about living in retirement. With the decline of employer-provided pensions and the guaranteed lifetime "retirement paychecks" they provide,

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[5] *Id.*, p. 40.

[6] SEC Comment Letter from Andrew J. Bowden, General Counsel, Jackson National Life Insurance Company (Nov. 1, 2017), https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2661640-161405.pdf.

[7] Allianz, *Finally Feeling Better About Retirement, Optimistic Baby Boomers Offer Lessons for Younger Generations*, (Sept. 25, 2017), https://www.allianzlife.com/about/news-and-events/news-releases/Generations-Ahead-Study-2017.

Fear of running out of money in retirement is a global phenomenon. More than one-half of Australians spend less than the Age Pension each year. Jeff Gebler, *Surprising new research reveals the majority of Australian retirees spend less than the Government Age Pension*, Milliman (Feb. 14, 2018), http://www.milliman.com/insight/2018/Surprising-new-research-reveals-the-majority-of-Australian-retirees-spend-less-than-the-Government-Age-Pension/. Milliman believes that fear of running out of money in retirement is a key driver of this "unexpected" finding. *Id*.

[8] Pew Research Center, *Baby Boomers Retire*, (Dec. 29, 2010), http://www.pewresearch.org/fact-tank/2010/12/29/baby-boomers-retire/.

more retail customers than ever are dependent on their personal savings (and Social Security) for the money they need to support themselves in retirement. Only 23% of baby boomers believe that their savings will last them through the rest of their lives.[9] More than one-third of advisors have seen three or more of their clients exhaust their financial resources in retirement.[10]

Since running out of money in retirement has, for a variety of reasons, evolved into the biggest worry and challenge for retail customers, regulation should also evolve to promote "best interest" engagement between broker-dealers and retail customers that goes beyond discussion and consideration of a customer's general "risk tolerance" and specifically includes, when relevant, consideration of the customer's exposure to, and tolerance for, market risk and longevity risk. The Commission can easily accomplish this by adding the parenthetical "(including, when relevant, tolerance for market risk and longevity risk)" after the existing words, "risk tolerance."[11]

Thus, section (b)(2) of Regulation Best Interest should provide:

> *Retail Customer Investment Profile* includes, but is not limited to, the retail customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance (including, when relevant, tolerance for market risk and longevity risk), and any other information the retail customer may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.

This "nudge" from the Commission will increase the probability that retail customers seeking guidance about planning for, and living in, retirement receive recommendations that are in their best interest. It should not be a burden for broker-dealers acting with reasonable diligence, care, skill, and prudence. Jackson has distribution relationships with more than 600 broker-dealers. Our experience is that the majority of their representatives currently consider exposure to market and longevity risks when offering recommendations about retirement strategies. Independent surveys of advisors indicate that between 60% to 70% of them identify "generating sufficient income/withdrawals," "generating sustainable income or withdrawals," and "managing portfolio risk or volatility" as "significant challenges" in managing retirement income assets.[12]

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[9] Insured Retirement Institute, *Boomer Expectations for Retirement 2017*, p. 4, https://www.myirionline.org/docs/default-source/research/iri_boomers-expectations-for-retirement-2017.pdf.

[10] Insured Retirement Institute and Jackson National Life Insurance Company, *The Language of Retirement 2017: Advisor and Consumer Attitudes Toward Income in Retirement*, p. 7, https://www.myirionline.org/docs/default-source/research/iri_whitepaper_final_singlepg.pdf?sfvrsn=2.

[11] In Jackson's view, considerations of market and longevity risk may also include, when relevant, consideration of sequence of return, interest rate, and inflation risk. The Commission could acknowledge this implicitly, without addressing any of these additional risks in Regulation Best Interest, or include reference to one or more of them in section (b)(2).

[12] GDC Research and Practical Perspectives Research Report - Q3 2016, *Advisors and the Delivery of Retirement Income Support*, p. 56 (on file with author).

Jackson's suggested parenthetical language will not, on its face, require broker-dealers to inquire about, or consider, market risk and longevity risk when they are not relevant to the product or investment strategy recommended. In addition, the Commission has indicated that it intends to consider a Self-Regulatory Organization's ("SRO") interpretation and enforcement of its rules when Regulation Best Interest is based on a similar SRO standard.[13] The Retail Customer Investment Profile tracks, verbatim, the description of a "customer investment profile" in FINRA Rule 2111(a). In interpreting the requirements of Rule 2111(a), FINRA has stated that "not every factor may be relevant to all situations," and that the "significance of specific types of customer information generally will depend on the facts and circumstances of the particular case, including the nature and characteristics of the product or strategy at issue."[14]

Jackson also expects that specific mention of market risk and longevity risk in the Retail Customer Investment Profile will spur further innovation among broker-dealers, insurance companies, and financial technology providers in their efforts to address consumers' biggest concern and challenge.[15] Consideration of market and longevity risk is sensible policy that is responsive to consumer interests, consumers' growing dependence on their personal savings to fund their retirements, and demographic trends.

**Regulation Best Interest Should be Harmonized with the NAIC Model Annuity Suitability Regulation.**

While the Commission is considering proposed Regulation Best Interest, the National Association of Insurance Commissioners ("NAIC") is considering amendments to the NAIC Model Annuity Suitability Regulation[16]. The Commission and NAIC seek to enhance the suitability standard that applies to recommendations of securities by broker dealers and annuities by insurance producers, respectively. Many state insurance commissioners have indicated a desire to harmonize the NAIC Model Annuity Suitability Regulation with the new standards being considered by the Commission. Jackson strongly supports and encourages this harmonization.

Broker-dealers offering recommendations about securities (e.g., mutual funds, ETFs, variable annuities) are presently subject to different conduct standards than insurance producers offering recommendations about non-securities (e.g., fixed annuities, fixed index annuities). The former

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[13] 17 CFR Part 240, Commission Release No. 34-83062, p. 43, including n.89.

[14] FINRA Rule 2111 (Suitability) FAQ, A3.4, http://www.finra.org/industry/faq-finra-rule-2111-suitability-faq.

[15] It may also prompt FINRA to amend FINRA Rule 2111(a), although this is not necessary to achieve the beneficial effects of the change.

[16] NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS: SUITABILITY IN ANNUITY TRANSACTIONS 275-1(2015), https://www.naic.org/store/free/MDL-275.pdf.

are subject to rules and regulations adopted and enforced by the Commission and FINRA. The latter by the states. The standards differ. For example, the states do not regulate distribution-related activities, including permissible forms of cash and non-cash compensation, in the same way as FINRA.[17] Jackson urges the Commission, FINRA, and the NAIC to work together 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 producer selling a fixed annuity is subject to the same conduct standards as a broker-dealer representative selling a mutual fund or a variable annuity.

**Jackson Endorses the Technical Recommendations Submitted by the IRI, ACLI, and CAI.**

In addition to the recommendations made in this letter, Jackson endorses the technical recommendations submitted by the IRI, ACLI, and CAI, which are intended to better align proposed Regulation Best Interest with the Commission's mission to protect investors, to maintain fair, orderly, and efficient markets, and to promote capital formation.

Thank you for the opportunity to comment. We hope our thoughts are helpful and are grateful for the Commission's consideration of them. Please contact me if you have any questions or would like additional information.

Very truly yours,

Andrew J. Bowden
Senior Vice President and General Counsel

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[17] 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* U.S. Sen. Elizabeth Warren, *Villas, Castles, and Vacations: How Perks and Giveaways Create Conflicts of Interest in the Annuity Industry*, 2 (Oct. 2015), https://www.warren.senate.gov/files/documents/2015-10-27_Senator_Warren_Report_on_Annuity_Industry.pdf; *See also*, U.S. Sen. Elizabeth Warren, *Villas, Castles, and Vacations 2017 Edition: Americans' New Protections from Financial Adviser Kickbacks, High Fees, & Commissions are at Risk*, (Feb. 2017), https://www.warren.senate.gov/files/documents/2017-2-3_Warren_DOL_Rule_Report.pdf.