

**STATEMENT
COMMISSIONER ROBERT J. JACKSON, JR.
SEC OPEN MEETING, APRIL 18, 2018**

Thank you, Chairman Clayton, and thank you to the exceptional Staff in the Divisions of Trading and Markets and Investment Management for their work on these proposals. As my colleagues have noted, today's proposals have been decades in the making, and I am especially grateful to Director Dalia Blass and her wonderful colleagues Sarah ten Siethoff, Doug Scheidt, Sara Cortes, Holly Hunter-Cecil, Jennifer Porter, Emily Rowland, Jennifer Songer, Parisa Haghshenas, Benjamin Kalish, Roberta Ufford, Elizabeth Miller and Gena Lai, and our Trading and Markets colleagues Director Brett Redfearn, Lourdes Gonzalez, Emily Russell, Alicia Goldin, Bradford Bartels, Geeta Dhingra, Stacy Puente, and Roni Bergoffen for bringing these proposals before the Commission.

After years of tireless advocacy and relentless lobbying, the Commission today finally steps forward to propose a framework for protecting the millions of American families who rely on professional advice to save for education and retirement. The proposals offer a sliver of hope that the SEC will finally fill an enormous gap in our securities laws between the protections those families deserve and the legal obligations of financial professionals—a gap we have allowed to persist for far too long.

Let me be clear: I could not support these proposals if we were today considering making them final agency rules. The problems with the proposals are too many to list, so I point my colleagues to the thoughtful statement issued by Commissioner Stein today. Yet the need for SEC action in this area has been made all the more urgent by the Administration's refusal to implement the crucial protections put in place by the Department of Labor in 2016 and the profoundly misguided recent judicial decision jeopardizing those protections. I strongly support the Department of Labor's rule because it protects investors from the very real costs of conflicted financial advice. But without an Administration willing to enforce it or courts willing to take the realities American families face seriously, as we sit here today investors lack protections against so-called advisers who might endanger their financial future.

The Commission can and should provide the protections those investors so urgently need, so today I am reluctantly voting to open these proposals for comment—and to continue the conversation about how best to protect Americans' financial futures from conflicted advice. I want to identify four areas where any final rule should be significantly improved—and urge commenters to help us make sure that the conversation we begin today ends with nothing less than the common-sense protections that America's investors deserve.

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First, the standard set forth in Regulation Best Interest is far too ambiguous about a question on which there should be no confusion: the duty that investors are owed by those who are entrusted with ordinary families' economic futures. Americans deserve a clear best interest rule that places the client's needs ahead of the broker's. Period. There are, of course, many ways to write one—we could have, and should have, simply started with the standard Congress articulated in the Dodd-Frank Act.

As written, the standard is muddled by confusing legalese, and I worry that it may be interpreted to permit conflicted advice to taint the investment decisions crucial to Americans' futures. Moreover, I worry that lawyers will use this ambiguity to defend broker conduct that has no place in our markets—a result that is good for brokers and their lawyers but not investors.

Second, I am deeply concerned about the extent to which today's proposal actually strengthens the so-called suitability standard that has for so long failed to protect investors from conflicted brokers. As the Department of Labor's detailed study of these questions made clear, the application of the suitability standard has too often left American families holding the bag while brokers pursue profit at investors' expense, and we should be leaving no doubt that those decisions will play no role in the application of Regulation Best Interest. I appreciate that today, "our intent [is] to make it clear that, insofar as existing broker-dealer obligations have been interpreted to stand for the principle that broker-dealers may put their own interests ahead of their retail customers . . . those interpretations would be inconsistent with Regulation Best Interest." But I urge commenters to explain how we can be even clearer so that the standards we are promulgating can best protect investors.

Third, while requiring mitigation of broker conflicts is an important step forward, we cannot and should not rely solely on mitigation to address the most egregious practices that are pervasive in this industry. Many of the most harmful conflicts in the market today are created by the firms themselves through practices—like sales contests, quotas, and bonuses for selling proprietary products—that make little sense for investors. I don't think these practices have any place in a market built to serve investors instead of brokers. That's why I believe that many of them should be banned outright. Today's proposal makes clear that these practices "may be more appropriately avoided in their entirety for retail customers." I appreciate the important message the Commission is sending today by identifying these especially perverse incentives that ultimately harm investors—and urge commenters to help us identify the practices we need to eliminate from American markets for good.

Fourth, I appreciate that these proposals contain restrictions on brokers' ability to use the titles adviser and advisor, or to mislead investors through advertisements or communications regarding the nature of their services. Any final rule should address the ability of brokers' to hold themselves out as advisors in a misleading manner.

Finally, the cost-benefit analyses in these proposals do not reflect a serious attempt to evaluate the effects on investors or markets. The courts can, and should, defer to the Commission's cost-benefit analysis so that the important work of assessing the economics of regulation is left in the hands of the experts. The cost-benefit analysis performed, however, is so slight that we should not expect, nor do we deserve, that deferential review. Comparing today's proposals to the research the Department of Labor conducted has convinced me that I will be unable to support a final rule in this area unless we do more to understand how our proposal will actually affect investors.

For starters, the proposals before us ignore much of the economic literature that academics and policymakers have generated in this area for decades. To know whether the disclosures in our proposed Customer Relationship Summary will be helpful, for example, we need to know how investors will respond to these disclosures. Will investors understand the implications of what they see on Form CRS? To what degree will investors actually use that information when making the crucial decision as to who to trust with their money? There is ample literature on questions like those, and indeed our exceptional Staff has long expressed skepticism about whether and how disclosure might work in this area. But little of that evidence has been seriously considered in the analysis before us today.

What's more, the Department of Labor helpfully collected that literature in what may have been the most extensive regulatory impact analysis in the history of federal rulemaking. The Department then took those empirical findings and formulated predictions about the effects of rules in this area for retail investors. Given that these data are available, we could have—and should have—formulated a range of assumptions that would have allowed us to meaningfully understand the costs and benefits of what we are

proposing to do. Instead, the proposal before us today deals with years of research conducted by a companion federal agency in a single dismissive footnote.

Perhaps the most glaring omission from our economic analyses is the absence of any attempt to assess the benefits of honest advice for ordinary investors. I counted seventeen occasions on which this proposal says that we are unable to quantify those benefits, as if our inability to calculate them precisely absolves us of our responsibility to calculate them at all.

As the agency charged with protecting America's investors, we must do more to understand the effects of this proposal on those we serve—and that work should start today. For example, we should test how investors will respond to the disclosures we're proposing. We should conduct experiments to understand how broker-dealers will alter their recommendations in response to our rules. And we should survey market participants, from the largest institutions to the smallest retail investors, about whether and how they understand their legal rights and responsibilities. Without that work, we will have no basis to know whether we are doing the right thing for investors and for the Nation. And we will inflict the unnecessary costs of significant uncertainty if our rules face legal challenges.

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These are just a few of my concerns with today's proposals—and I expect that commenters will identify many more. But I am mindful of the fact that, in light of recent decisions by the Administration and the courts, investors currently lack any meaningful protections from conflicted advice from brokers. And I believe that an open, public rulemaking process is the best way for us to be certain that our rules are giving investors the protections they deserve. For that reason, I am reluctantly voting to issue these proposals for comment—and look forward to continuing to work with our exceptional Staff to improve them.

This work is hard. In a world rife with a dizzying array of ever-more-complex financial products, America's families need honest financial advice more than ever. Protecting those families from the devastating consequences of advice that serves financial professionals rather than their clients' futures is not easy. That's why I'm inspired by the dedication it took our Staff to bring these proposals before us—even though today is only the beginning of the conversation on these proposals.

This area has become the subject of such intense advocacy that it is easy to forget what really brought us all here today. Millions of Americans are approaching retirement age, and most of them don't have the pensions that protected their parents from rising medical and housing costs. Instead, they must rely on financial advice to help them plan for a secure future. For these Americans, getting the right advice can be the difference between a secure retirement and a life of constant worry.

I am grateful to the Staff for all they have done to get us to today—and look forward to the public comments that will be crucial to making sure that we get this right.