January 30, 2007

Office of Regulations and Interpretation
Employee Benefits Security Administration
Room   N-5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Attention: IRA Investment Advice RFI

Ladies and Gentlemen:

John Hancock Financial Services, Inc. ("John Hancock") submits its comments in response to the Department's December 13, 2006 Request For Information (hereinafter, "RFI"), directed to the top fifty IRA "trustees," regarding use of a computer model to provide investment advice to beneficiaries of IRA plans.

The specific requests are set forth in the Federal Register on December 4, 2006 at pages 70427 through 70429:

1. *Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of plans described in section 4975(e)(1)[B]-[F] (and so much of subparagraph [G] as relates to such subparagraphs)(hereinafter "IRA") of the Code which:*
   (a) *Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;*
   (b) *Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;*
   (c) *Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;*
   (d) *Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and*
   (e) *Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.*

We are not aware of any computer model that satisfies all of these criteria. We generally are aware of existing computer programs that may provide some, but not all, of the listed criteria.

2. *If currently available computer models do not satisfy all of the criteria described above, which criteria are presently not considered by such computer models? Would it be possible to develop a model that satisfies all of the specified criteria? Which criteria would pose difficulties to developers and why?*

There are multiple "asset allocation" computer programs in the open market that can generate a diversified mix of available options within a finite range or menu of available options, based upon the prospective investor's input, and volatility modeling. Therefore, these models may consider some asset class performance over periods of time and some information about the beneficiary with respect to criteria (a), (b) and (e) above. Due in part to the unlimited universe of potential investment options an IRA beneficiary could select, however, our research to date has shown that no model has the capacity, in terms of bandwidth, data access, storage space and perpetual maintenance, to take into account the full range of investments existing in the open marketplace. See the response to Question 4.

3. *If there are any currently available computer model investment advice programs meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries, please provide a complete description of such programs and the extent to which they are available to IRA beneficiaries.*

We are not aware of any computer model that satisfies all of these criteria. See the response to Question 4.

4. *With respect to any programs described in response to Question 3, do any of such programs permit the IRA beneficiary to invest IRA assets in virtually any investment? If not, what are the difficulties, if any, in creating such a model?*

If the terms "virtually any investment" and "the full range of investments, including equities and bonds" contemplate offering to an IRA beneficiary an unlimited menu consisting of shares of every publicly traded corporation (listed on any exchange, foreign or domestic, over the counter, etc.), real estate, private placement, annuity contract, every debt offering of corporate, municipal and other governmental bonds, Treasury bills and notes, bank certificates of deposit, as well as every mutual fund registered with the SEC, then there is no computer program that can ever have the capacity to include such a broad universe. Such a universe is limitless, constantly changing, and would require massive daily maintenance to keep enormous quantities of underlying data as to each option current and accurate.

5. *If computer model investment advice programs are not currently available to IRA beneficiaries that permit the investment of IRA assets in virtually any investment, are there computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled by the computer program to a subset of the computer universe? If so, who is responsible for the development of such investment limitations and how are the limitations developed? Is there any flexibility on the part of an IRA beneficiary to modify the computer model to take into account his or her preferences?*

Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?

We are aware of several companies that have developed investment modeling or asset allocation programs to match client specified risk levels with specific investment portfolios. Although these programs may contain a large number of possible investment choices, they are constrained to a specific number of possible asset classes and are further constrained relative to the specific holdings within those asset classes. These limitations exist because of several factors. These factors include but are not limited to: data access, size of the potential data base and real time computer processing speed. We generally are aware of asset modeling tools that have been developed which are designed to support advisors and distributors in their role of providing advice or recommendations to their clients. Due to the complexity of these tools, they generally are not <u>directly</u> accessible by an IRA beneficiary, but are accessible through an advisor or broker-dealer. There may be other third party asset allocation/investment modeling programs available to IRA beneficiaries through Internet portals, but we are not in a position to measure how robust or complex they may be. Many of these Internet programs require some form of access fee, which limits their accessibility for some IRA beneficiaries.

6. *If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to investment accounts maintained by you on behalf of IRA beneficiaries?*

The John Hancock life insurance companies [hereafter, "the Company"] do not offer a computer model investment advice program based on nonproprietary investment products. Due in part to the complexity of maintaining current pricing changes and valuations, the asset allocation software available for use by financial representatives of IRA beneficiaries of a John Hancock annuity contract, as well as the annuity contract holders, does not extend beyond the available investment options within John Hancock's products. Expanding the software to nonproprietary products would involve not only extensive and expensive programming efforts, but also negotiation of new data sharing agreements with underlying terms and conditions addressing, inter alia, customer privacy, disaster recovery, data security, liability and indemnification.

7. *What are the investment options considered by computer investment advice programs? What information on such options is needed? How is the information obtained and made part of the programs? Is the information publicly available or available to IRA beneficiaries?*

See Response to question 6. The Company offers deferred variable annuity contracts and mutual funds as IRA investment options; each product has a prospectus that is delivered to the prospective IRA beneficiary before or at the same time as the initial investment. Investment performance results are posted on our website and periodically delivered to the IRA beneficiaries.

8. *How should the Department or a third party evaluate a computer model investment advice program to determine whether a program satisfies the criteria described in question 1 or any other similar criteria established to evaluate such programs?*

9. *How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?*

We generally are aware of computer model programs in the market that permit investment in any legally permissible IRA investment (or in a supermarket of several thousand investments, which is functionally equivalent for this purpose), however, the John Hancock life insurance companies do not offer such a product. The Company is not aware of any investment advice program for such open-architecture IRA products that meet the requirements specified in the RFI. Indeed, the database requirements alone for an investment advice program that surveyed the universe of investments available for IRA's would present massive challenges that seem to make any such program structurally unworkable.

The Company's products are offered on IRA annuity or mutual fund platforms that make available a specified set of investment options (44 options are available in the Company's variable annuity contracts and 61 fund choices on the Company's mutual fund platform, under product designs available today). Within the Company's variable annuity contracts, the underlying investment options may be funded with affiliated registered investment companies in the John Hancock Trust portfolios, non-affiliated funds or a mix of both. In any given asset class, there may be one option or multiple options. Under its variable annuity platforms, the Company's general account may be an option. The Company selects the options offered under any particular variable annuity product taking into account the intended market for that product, the perceived requirements and objectives of IRA beneficiaries in that market, and the Company's business objectives for the product. The Company generally reserves the right to add, delete or substitute investment options over time.

By selecting the Company's product from the broad universe of available IRA products, the IRA beneficiary makes the fiduciary decision (within the meaning of section 4975) as to the investment options for his or her account. This is an important difference between the employer-sponsored plan environment and the IRA environment. IRA beneficiaries may freely pick and choose among the universe of IRA providers, and frequently do choose to maintain multiple IRA accounts – e.g., with one IRA provider for laddered CD's, with a second provider for equity options, with a third provider for fixed income options, with a fourth provider for international options, with an insurance provider for annuity options. The IRA environment does not structurally constrain the investment providers available to the IRA beneficiary, and there is neither requirement nor need for any given IRA product to offer a diversified menu of proprietary and nonproprietary options in order for the IRA beneficiary to construct the investment program that best suits his or her needs. For the purposes of the RFI, this leads to an important distinction between investment advice programs that operate in the context of the entire IRA universe, and advice programs that operate within the four corners of the investment options available under a given IRA product.

IRA products that provide a menu of specified investment options are structurally similar to a typical participant-directed retirement plan, and an IRA investment advice program structured in accordance with the pertinent elements of ERISA section 408(g)/Code section 4975(f)(8)(C), adapted to the IRA environment, would provide appropriate and adequate protections for IRA beneficiaries. Accordingly, exemptive relief should be afforded for these programs. That is, an exemption consistent with the requirements of the Pension Protection Act can and should be granted for IRA investment advice programs that make recommendations among a specified menu of options under a given IRA product, for the many IRA products in the marketplace structured in this way. An investment advice computer model program for such a product could workably:
- Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;

- Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments; and
- Operate in a manner that, within the four corners of the investment options available under the IRA product, is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser. (That is, the program would be designed to produce, among the menu of specified options, investment recommendations falling within the range of judgments suggested by generally accepted investment theory for persons similarly situated to the IRA beneficiary, without bias reflecting any other business interests of the Company.)

In so doing, the computer model program may take account of not only historic return of asset classes, but also guarantees available under any annuity product selected by the IRA beneficiary – such as minimum accumulation, minimum withdrawal and lifetime income guarantees – in formulating recommendations for the IRA beneficiary to consider. Under current designs, these guarantees are limited to particular investment options or strategies. The Company anticipates that, particularly as the baby boom generation moves into retirement, these features will be increasingly material to the retirement security desires of and product/investment choices made by IRA beneficiaries, and would appropriately be factored into investment recommendations generated by computer models.

- The investment advice program would take into account all the investment options available under the IRA product in developing recommendations (as in the employer-sponsored retirement plan environment and as distinguished from the full investment universe available to IRAs), and the IRA beneficiary would have discretion to make choices among those investment options. In these respects, an exemption for IRA products with a menu of specific investment options poses fewer challenges than IRA products that permit virtually any investment.
- The recommendations presented to the IRA beneficiary may have varying degrees of interactivity to refinements in the inputs from the IRA beneficiary. The presence or absence of such interactivity is primarily a technology and resource issue, and any exemption granted for IRAs should not distinguish between IRA providers on the basis of their capability in this respect. The exemption provided by the statute is of course limited to investment advice programs under which the IRA beneficiary makes the investment decision (as opposed to programs that manage the investment choices for the IRA beneficiary), so that authority would necessarily seem an element of any exemption without regard to the details of how the program processes variations in the inputs from the beneficiary.

As contemplated by ERISA section 408(g)/Code section 4975(f)(8), both the revenue received by the Company or its affiliates and the compensation paid to the distributor of the IRA product may vary based on the investment choices actually made by the IRA beneficiary taking into account the investment recommendations provided by the computer program.

The Company is also supportive of an investment advice exemption for IRA products that makes available a supermarket of multiple, if not virtually all, investment options. To be most useful to IRA beneficiaries, such a computer program must be permitted to translate its recommendation as to allocation among asset classes (typically the starting point for such investment advice programs) into recommendations of a specific investment or a small number of investment possibilities within each pertinent class, and the exemption must allow the exercise of professional judgment in the

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development of the methodology for making that translation. So long as the methodology is reasonably transparent to the IRA beneficiary, the various purposes of the statute would seem prudently balanced.

The Company is appreciative of the detailed review and analysis being undertaken by the Employee Benefits Security Administration in evaluating the extension of an investment advice prohibited transaction exemption in the IRA marketplace. We welcome any follow-up inquiries or discussion regarding this response. Please contact me at 617-663-2203.

Sincerely,

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