

August 10, 2010

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

RE: Request for Comment to Inform Study Regarding Obligations of Brokers, Dealers, and Investment Advisers (Release No. 34-62577; IA-3058; File No. 4-606)

Dear Ms. Murphy:

I am writing in response to the Securities and Exchange Commission ("Commission's") request for public comment to inform its study of the obligations and standard of care of brokers, dealers, and investment advisers when providing personalized investment advice about securities to retail customers. I am with the SilverStone Group, a human resource, employee benefit and risk management consulting firm. The area that I personally concentrate in is that of helping businesses design nonqualified benefit plans for their key employees. Many businesses fund these plans with life insurance products, some of which subject me to regulation by the Commission and the Financial Industry Regulatory Authority ("FINRA").

My firm has been in business for over sixty-five years and I have been an owner of my firm for almost twenty. In addition to my concentration in the area of helping businesses with designing and implementing plans for their key employees, others in my firm also sell life insurance products to help business owners plan for the succession of their business and plan for the payment of estate taxes upon their deaths. Of the life insurance products that we sell, about 25% are variable products that come under regulation as a security. We use M Financial Holdings as our broker dealer. I am both a CPA and an attorney, which I believe is very helpful to my clients because I use that knowledge to educate them on the differences in life insurance products, including the pricing, taxation and accounting for what they purchase. In most situations, I work with the owners of business and their financial advisors, and their financial and/or investment advisors typically make the actual selection of variable subaccounts. I simply educate them of the subaccounts that are available. My firm has clients in all fifty states and I work with clients in a number of states.

In my practice, I am regulated by the insurance departments of each of these states, by FINRA and by the SEC. Being properly licensed and compliant requires a great deal of effort on my firm and me. I therefore appreciate your efforts to obtain information from the public and to conduct a comprehensive and objective study, before deciding whether to propose new regulations. I am hopeful that opportunities for input from financial professionals will continue as the process unfolds.

### **Effectiveness of Existing Regulation of Brokers, Dealers, and Investment Advisers**

As noted above, I am currently subject to regulation by an array of state insurance departments and oversight for the sale of fixed and variable insurance products. When providing recommendations to my clients, I must consider factors such as the client's current financial status, needs, and goals. When dealing with individual executives, factors such as age, family, general health, existing medical conditions and the client's credit history are important considerations. These factors must be evaluated before even determining whether a fixed or variable product is appropriate. As a representative of an insurance carrier, I must also weigh the carrier's medical and financial underwriting standards, current financial stability, and claims-paying record, among a variety of other considerations. Again, I must do this before even considering whether a fixed or variable product is appropriate.

State insurance regulators oversee the sale of the insurance products and the market conduct associated with these transactions. In my situation, I am licensed in almost all fifty states, although in many I am not appointed to sell variable products because a fixed product serves my clients interests more appropriately.

In addition to the state insurance departments, I have contractual obligations to the life insurance companies that I represent. They each have requirements for me to satisfy with respect to market conduct and their compliance departments review each piece of marketing material and communication that I use with my clients.

As a life insurance producer who sells variable insurance products, I am also subject to the Commission's and FINRA's broker-dealer regulations. These require, among other things, that we treat customers fairly and abide by just and equitable principles of trade, including suitability standards. Our interaction with each client is extensively regulated and must be completely transparent; we are required to confirm all communications, to provide account statements, and to disclose conflicts of interest, which includes information about licensing, company affiliation, and receipt of commissions. Supervisory personnel must review all sales recommendations and review for compliance of all presentation materials. These requirements are extensive, well-known, often product-specific, and capable of being monitored and audited by supervisory personnel, as well as FINRA and the Commission.

FINRA regularly audits broker-dealers, and examiners typically review an array of transaction data, client correspondence, firm financial statements and procedures, and general supervisory structures. After the audit, broker-dealers typically have a brief period to provide comments on the regulators' findings and make any necessary corrections.

### **Gaps, Shortcomings or Overlap in Existing Law and Regulation**

I understand that your Study is designed to identify where there are gaps, shortcomings and overlaps in existing regulation, and whether the Commission should adopt new regulations to address any of these that the study may reveal. I do not believe that my clients would see a need for any changes in existing regulations. They understand my role in helping them design benefit plans for their employees and select an insurance product to satisfy the death benefit and financial needs of the plans. If a variable product is used, they understand that it is their

responsibility to select the variable subaccounts, and they typically use their own financial and investment advisors to do so.

In comparing the investment adviser and broker-dealer regulatory regimes, the broker-dealer regulatory regime provides better guidance to registered representatives and their supervisors, and therefore, better protection to their customers, because the rules are clear and specific, and the conduct of registered representatives is capable of being monitored and audited. By contrast, the principles-based nature of the investment adviser regulatory regime is more difficult to follow and enforce.

One of the most significant gaps in regulation is the lack of inspections and examinations of investment advisers. The fiduciary duty of investment advisers gives scant protection to investors in light of the infrequency of Commission examinations. Most small advisers have no federal regulation and oversight whatsoever, whereas insurance producers who sell variable insurance products must respond to examinations and audits at both the federal and state level, and are subject to regulation by both insurance and securities regulators. These gaps and shortcomings, in oversight of advisers, are an area of investor protection that the Commission should address first before changing any standards of care for brokers. In other words, the need (if any) to adopt a “uniform” standard of care for broker-dealers and investment advisers pales in comparison to the need to adopt uniform standards for examination and inspections of securities professionals.

If the issue of investor confusion over the legal obligations of the investor’s particular financial service provider is a point of concern—as has previously been suggested in published research reports—there are remedies currently available to address the confusion. Existing FINRA and Commission rules are extensive, but those rules, if necessary, could be supplemented with additional disclosures of the role in which a financial services professional is operating, including additional disclosures of the existence of any conflicts. I believe investors, if presented with appropriate information, can make a choice that is right for them. Disclosure is a far better alternative than eliminating investor choices by attempting to make all financial professionals the same.

### **Impact of Changing the Standard of Care for Brokers and Dealers to the Standard for Investment Advisers**

I have serious concerns about the possible adoption of a new “best interest” standard for broker-dealers, and by extension, life insurance producers who sell variable insurance products. I believe a general “best interest” standard will create liability and uncertainty. It will provide no measurable benefit to investors. If the Commission finds in its study that there are gaps in investor protection in the current regulation of brokers and dealers, then I would encourage you to propose specific rules designed to address specific conduct. None of us like new rules, but I believe a FINRA rules-based approach offers the best opportunities for compliance by brokers, and, therefore, the protection for investors.

While it is difficult to ascertain the practical impact of a general “best interest” standard, it most certainly will result in increased compliance costs with no measurable benefit to investors. Over

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time, I believe it will reduce product choice and access for investors.

It is my sincere hope that all financial professionals hold their clients in the highest regard and provide investors with the first-class service that enables them to accomplish their financial goals. However, writing rules that are difficult to define, and perhaps more difficult to implement and enforce, will not achieve this brand of conduct, nor will it create a better or safer financial landscape for investors.

I strongly encourage the Commission to consider the input on life insurance producers, as well as our unique role in the marketplace and the fundamental nature of the products we sell when moving forward with this study of the obligations and standards of care for broker-dealers and investment advisers. Again, I thank the Commission for the opportunity to comment and welcome future opportunities to provide input.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Von Riesen". The signature is fluid and cursive, with the first name being the most prominent.

Thomas J. Von Riesen

TVR/kj