



CAPITAL STRATEGIES

August 27, 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 a life insurance producer, and my principal source of business is the sale of life insurance products to retail customers. Some of the products I offer subject me to regulation by the Commission and the Financial Industry Regulatory Authority ("FINRA").

My firm, Capital Strategies Group, Inc., is involved in the placement of large life insurance cases throughout the southeastern United States. We have been in business, in this marketplace, for over 20 years. We place a substantial amount of insurance death benefit, or which only about 20 to 25% is variable in nature. A typical transaction in our business involves from 8 to twelve meetings, over a period of 18 to 24 months. At the end of that time, we know our clients and their advisors, and they know us, extremely well. All of our presentations, correspondence, and method of doing business are approved by our broker-dealer on an ongoing basis. Our mantra is that "if we would not do this transaction, we will not recommend it to the client." Whether or not we would do the transaction is, of course, based on the circumstances of the client – the transaction must be absolutely suitable for the client given his circumstances.

Success in our business involves considerable education and training. My education background includes a law degree (JD) and a Masters in Taxation (LLM) from New York University. I am licensed to place insurance in the state of Alabama, as well as most of the states within the southeastern United States. My licensing for securities purposes includes Series 6 and Series 63.

I appreciate your efforts to obtain information from the public and 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

The continuing education, supervisory activities, and audit requirements which we participate in seem constant; if not constant, they are at least consistently in front of us and directing us. I currently am subject to an array of state insurance regulations and oversight for the sale of fixed and variable insurance products. As indicated above, when providing recommendations to my clients, I must consider factors such as the client's current financial status, needs, and goals; age, family, general health, and existing medical conditions. These factors must be evaluated before 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.

State insurance regulators play a central role in overseeing the sale of insurance products and the market conduct associated with these transactions. My contractual obligations to the carrier require me to comply with all requests and exams and adhere to any conduct regulations and guidelines enforced by the carrier.

As a life insurance producer who sells variable insurance products, I am also subject to the Commission's and FINRA's broker-dealer regulations in all respects. These require, among other things, that we treat customers fairly and abide by just and equitable principles of trade, including suitability obligations. Our interaction with each client is extensively regulated and must be completely transparent; we are required to confirm all communications, provide account statements, and disclose conflicts of interest—which could include information about licensing, company affiliation, and receipt of commissions. Supervisory personnel must review all sales recommendations and review for compliance with a multitude of FINRA and Commission regulatory requirements. 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

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.

I am paid on the basis of a commission, for the sale of a product, a point which we make clear with prospective clients in the first meeting. We disclose to clients that we are not financial planners or investment managers; we sell insurance and are paid by commission. We also tell clients that though we have an obligation to make suitable, truthful recommendations suitable for their financial situation, we would recommend they engage a lawyer, accountant or investment manager to review our ultimate proposal in order to obtain completely unbiased advice. We are advocates – truthful advocates, advocates making suitable recommendations – but advocates for



insurance product. Our clients operate under no misunderstanding as to our role, our obligations, or as to the source of our compensation.

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. This is the experience of my clients.

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

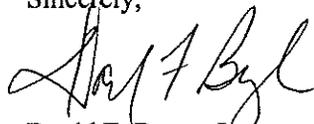
Should a “best interest” standard be adopted for those in the variable insurance product marketplace, we and, I would think, many, many others in our business would simply cease to be engaged in the sales of variable products. The “best interest” standard is too vague for us to interpret or comply with, due to the fact that we are compensated by a commission, not a fee. It is not consistent with our approach, and solves no problems that our clients experience. We do not have to, from a business perspective, offer variable products, but do it only as a convenience for the client. Ultimately, I suspect investment in variable products will be decreased industry-wide, due to the number of professionals no longer willing to engage based on a standard which, in their experience, they know to be both unjustified and undoable. This would be an unfortunate new restriction on consumers' access to what are often desirable financial products.

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



David F. Byers, Jr.  
Managing Principal

