



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:

Please accept this letter as a response to the request for public comment on the obligations and standard of care for brokers, broker-dealers and investment advisors. I feel that it might be helpful to give you my history of life insurance production, particularly as it relates to the sale of regulated life insurance products to retail and institutional buyers.

- In the early 1980s, I joined Wheat First Securities, a large regional brokerage firm in the Southeast, as an insurance salesman and registered representative. The majority of my activity was to make joint calls with Wheat First Security securities-based registered representatives and the distribution of insurance products to those customers. Wheat First Securities was the first large brokerage firm to set-up a life insurance distribution subsidiary. I sat on the compliance committee for 2 years.
- In 1985, I left Wheat First Securities and established an independent business; Belk Consulting Group, Inc. (d/b/a BCG Companies). By this time I had obtained Series 7, Series 63 and Series 24 licenses. Over the next several years, I placed my licenses with several broker-dealers for the purpose of distributing variable life insurance products. At that time, because of my experience with Wheat First Securities, I learned the broker-dealer community did not understand the unique aspects of life insurance distribution.
- In the early 1990s, I established BCG Investment Resources a NASD regulated broker-dealer. The primary reason for establishing BCG Investment Resources was to more clearly come into compliance with the NASD's and the Commonwealth of Virginia's rules and regulations regarding the distribution of variable life insurance products. During that time we were regularly audited by the Security and Exchange Commission (SEC), the NASD, the Commonwealth of Virginia's securities and exchange regulators and the Commonwealth of Virginia's insurance authorities.

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- After BCG Investment Resources was established, I created an SEC regulated Registered Investment Advisory firm; BCG Investment Advisory. BCG Investment Advisory was regularly audited by the SEC and the Commonwealth of Virginia's Securities and Exchange Commission.
- In the early 2000s, it became clear to me that the M Financial Group should create its own broker-dealer that could consolidate the compliance and regulatory functions. The cost of maintaining BCG Investment Resources as an NASD broker-dealer from a compliance and regulatory point of view was escalating at an exponential rate: legal, accounting, auditing, and reporting. During this time I worked to motivate M Financial Group to establish what has become M Holdings Securities, Inc.
- In 2005, I went through the process of terminating BCG Investment Resources and placing my licenses with M Holdings Securities, Inc.
- Over the last decade I have served on the board of M Financial Investment Advisors, Inc., the entity that oversees M's proprietary separate accounts, M Holdings Securities Advisory Committee, a FINRA broker-dealer, and the M Wealth Advisory Committee, M's SEC regulated RIA.

I have 30 years of experience regarding compliance, rules and regulations of the NASD (now FINRA) for broker-dealer activities, the SEC for registered investment advisory activities and broker-dealer activities, the Commonwealth of Virginia for securities and life insurance product distribution.

### **The Evolution of Rules and Regulations Regarding the Distribution of Variable Life Insurance Products**

In the early 1980s the rules and regulations regarding the distribution of variable life insurance products were virtually non-existent compared to the guidance we now have through FINRA. The evolution of the rules and regulations require us to:

- Evaluate investor suitability. BCG Companies' clientele would qualify under the Qualified Purchaser rules.
- Provide potential investors proper disclosure (i.e. prospectus, compliant illustrations, routine account statements, etc.). BCG Companies provides an annual review for all variable life policy holders.
- Review of all communications and correspondence. BCG Companies is its own OSJ with a Supervisory Principal that spends a significant amount of daily time to meet FINRA rules and regulations.
- Submit to annual broker-dealer audit. In addition to the annual audit, BCG Companies completes an internal audit every quarter.

The distribution of variable life insurance is highly regulated by FINRA and registered representatives selling variable life insurance products are currently subject to multiple layers of regulation. In addition, registered representatives distributing variable life insurance products are subject to more frequent and rigorous audit and examination than Registered Investment Advisors. This is a regulatory gap that the Securities and Exchange Commission should focus more closely on related to Registered Investment Advisors.

As a direct owner of a broker-dealer and experiencing NASD (now FINRA) audits and examinations, I know first-hand the depth and rigor the compliance and oversight required. Specific examples are:

- Registered Representatives selling life insurance must meet applicable standards, requirements and safeguards in every state in which they sell life insurance.
- State insurance laws regulate the activities of both insurance companies and registered representatives.
- Variable life insurance contracts require further representations and warranties by the registered representative, including that the producer will comply with licensing and other requirements of the jurisdictions in which we operate, as well as with the carrier's own rules and regulations relating to market conduct and other activity.
- Every penny of investor money must be accounted for in confirmation statements itemizing all charges associated with the policy premium.

Registered Representatives selling variable life products are subject to regulation by state insurance regulators, the SEC, FINRA, and state securities regulators. In addition, the Qualification and Continuing Education requirements for broker-dealer staff and supervisors exceed those of Registered Investment Advisors. Broker-dealer regulation and oversight provides greater protection to retail customers than does the regulation and oversight of investment advisers

I feel that for the distribution of variable life insurance products that FINRA has shown over my 30 years in the industry the ability to address issues relating to broker-dealer and registered representative activities (i.e. extensive regulatory requirements) and I believe they are in line with the best interest of investors. In my personal opinion, I feel that whether FINRA makes more rules and regulations or we go to a new standard of care, a Registered Representative or a Registered Investment Advisor who wants to work outside those rules and not in the best of investors will do so.

## **Discussion on a Single Standard of Care for Registered Representatives and Registered Investment Advisors**

Because I have been on both sides of the fence, as an Owner/Principal/Registered Representative of a broker-dealer and an Owner/Registered Investment Advisor of a Registered Investment Advisory firm, I know they are distinct and separate activities that require two different types of rules and regulations and auditing. You cannot lump broker-dealer and registered investment advisor rules into one general category. In my personal opinion, one set of rules for broker-dealers and registered investment advisors would be like applying one set of rules for doctors and attorneys. They are separate and distinct activities yet both professional as it relates to their method of distributing financial products and advice.

While FINRA does not use the term "standard of care", if you review its rules and regulations, it is clear they have already established a standard of care that is appropriate for product distributors. FINRA should be charged to continuing its development of new rules and regulations as they have done over the past 30 years to protect investors. Registered Investment Advisors have a different relationship (fee based versus commission based, ADV versus prospectus) with investors and the SEC should continue to evolve its rules and regulations to provide investor protection.

It seems obvious to me the discussion of a single standard of care evolved out of a feeling that investors are confused. A single standard of care is not going to reduce investor confusion. Investor confusion could be addressed, if the SEC finds through its study, through:

1. Full disclosure by a Registered Representative for FINRA and full disclosure by a Registered Investment Advisor for the Securities and Exchange Commission regarding investor rules
2. Investor responsibility to do research on the most appropriate relationship (i.e. Registered Representative or Registered Investment Advisor).

Again, the same set of rules for registered representatives and Registered Investment Advisors is like having the same set of rules to regulate baseball and football: I do not believe it can be done nor do I believe it should be done.

## **Summary**

Variable products sold by registered representatives regulated by the SEC, FINRA, state securities regulators and state insurance regulators are among the most highly-regulated and supervised financial products sold to retail investors. Access to these products could be significantly curtailed as a result of changes to the standard of care.

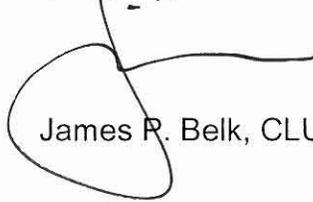
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The cost of meeting all regulatory and compliance obligations is already significant for registered representatives, and especially life insurance producers, due to levels of oversight and requirements that already exist. A change to a vague standard that requires increased time and costs to comply, as well as creating uncertain and potentially uninsurable liability, could significantly increase the costs associated with the delivery of these products.

I believe there are no gaps or shortcomings in legal or regulatory standards protecting customers served by producers who are licensed as registered representatives of a broker-dealer or who are dually registered. Broker-dealer registered representatives are currently subject to SEC, FINRA, state securities regulation, and state insurance regulation. The standard of care regulations would impose a broad, vague fiduciary duty on broker-dealers and would provide no increase in investor protection.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Belk", with a large, loopy flourish extending to the left and bottom.

James P. Belk, CLU, ChFC