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August 30, 2010

VIA E-MAIL

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

Re: File No. 4-606: Study Regarding Obligations of Brokers, Dealers, and Investment Advisers

Dear Ms. Murphy:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to the Securities and Exchange Commission's ("SEC" or the "Commission") request for comments in connection with its study ("Study") on the effectiveness of legal and regulatory standards of care for brokers, dealers and investment advisers, and their associated persons,[2] who provide personalized investment advice about securities to retail customers. The Study also is required to analyze whether there are gaps, shortcomings or overlaps in regulatory standards relating to broker-dealers and investment advisers.

The Committee believes that this a unique opportunity for the SEC, as directed by Congress, to focus on the significant but complicated issues facing the investment community with respect to the delivery of personalized investment advice about securities to retail customers and to develop a creative, efficient and lasting framework that will preserve confidence in the capital markets as well as protect investors.

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[1] The Committee of Annuity Insurers is a coalition of 31 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] For simplicity, the Committee refers herein to "broker-dealers" to mean "brokers" and "dealers." In addition, references herein to broker-dealers and investment advisers are intended to cover their appropriate associated persons unless otherwise noted.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to provide comments on the Study. Set forth below are a series of comments focused on a number of issues of particular interest to the Committee which we offer with a view to informing the Study. In summary, the Committee believes:

- The availability of multiple business models for delivering personalized investment advice about securities to retail customers is extremely important and should be preserved;
- The scope of the standard of care applicable to broker-dealers and investment advisers that provide personalized investment advice about securities to retail customers should be carefully tailored based upon the services for which any particular retail customer has contracted and should not include non-securities related activities;
- Any newly proposed standard of care should focus on disclosure and process, including collecting and analyzing retail customer data, rather than on outcomes viewed retroactively; and
- FINRA rulemaking efforts that impact the standard of care and other issues addressed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") should be curtailed at least during the pendency of the Study.

PERMITTING A RANGE OF OPTIONS FOR THE DELIVERY OF SECURITIES PRODUCTS AND SERVICES

Most of the Committee members are part of holding company complexes that include a number of regulated entities. In particular, many of the Committee members act as issuers of variable annuities and also have one or more broker-dealer affiliates that serve as wholesale and/or retail distributors of variable annuities (and in many cases, other securities). During the course of debate leading up to the enactment of the Dodd-Frank Act, the issues created by imposing an increased standard of care on broker-dealers providing personalized investment advice about securities to retail customers while offering products of their affiliated product issuers received considerable attention. The Committee urges that the Study carefully consider any recommendations that would jeopardize the viability of any current distribution model for delivery of securities products and services to customers, including a model that allows broker-dealers to offer securities products, including those of affiliated and non-affiliated issuers, with or without offering or providing ongoing advice. The Committee appreciates the importance of appropriate disclosures and investor protection and the particular considerations that arise from an affiliated distribution model, and the Committee looks forward to participating in deliberations on those issues in connection with any applicable SEC rulemaking on such matters called for under the Dodd-Frank Act.

The Committee urges the Study to consider the likely adverse impact of advocating, favoring, or even appearing to favor a specific model for delivering personalized investment

advice about securities to retail customers. The Committee feels very strongly that varied channels of securities product distribution are beneficial to retail customers who are offered a range of product choices, levels of advice, and costs for such products and advice. Preserving the existing diversity of broker-dealer distribution models for securities, as well as allowing flexibility for the development of future models, should be a goal of any reworking of the broker-dealer and investment adviser regulatory regime.

Limited Range of Products. The Committee believes that fostering multiple types of broker-dealer distribution models requires flexibility with respect to imposing special requirements where a broker-dealer offers solely proprietary products, or a limited range of products. The Committee believes that the marketplace will benefit from having certain firms that choose to offer a limited range of products, and others that choose to offer a great number of products. The Committee is concerned that any disclosure changes or specific regulation of firms with respect to their product offerings should not create an incentive for broker-dealers to offer a very small or large number of products, or any specific product mix.

Disclosure Requirements. The Committee believes the Study should focus on certain general principles with respect to disclosures required of broker-dealers and investment advisers, and rely on those principles to guide any efforts to change the disclosure regime. For instance, with respect to broker-dealer distribution, the Committee believes that disclosure requirements should be even-handed, should not overly burden one particular type of securities product or distribution channel as compared to another, and should focus upon the services for which any particular retail customer has contracted. The Committee believes the numerous different sections of the Dodd-Frank Act[3] focusing on disclosure should be carefully reviewed and reconciled with respect to any changes to required disclosures to be provided by a broker-dealer or investment adviser.

Moreover, the Study should consider opportunities to provide customers with effective disclosure. In this regard, disclosure to customers should be concise with those customers seeking more detailed information being able to access such additional information electronically via a firm's website (or by hardcopy if requested by a customer). In order to advance more effective disclosure, the SEC should establish rules that call for adviser and broker-dealer disclosures to be made by a web-based "access equals delivery" disclosure system or a layered disclosure approach in which certain information would be in writing supplemented by additional detailed information that would be made available on the Internet.

Fees and Charges Should Not Be the Definitive Measuring Stick of the Standard of Care. The Committee believes that whatever standard is ultimately placed on broker-dealers and investment advisers, it cannot be a standard that compels recommending retail customers only the cheapest product (or a cheaper product compared to a recommended product), based on an after-the-fact assessment of the universe of products, services and delivery mechanisms

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[3] *See* e.g., new Sections 15(l)(1) and 15(n) of the Securities Exchange Act of 1934 found in Section 913(g) and Section 919, respectively, of the Dodd-Frank Act.

available. While fees and charges should be considered in analyzing the suitability of personalized investment advice about securities as part of the standard of care analysis, and must be disclosed, these should not be the definitive or even the most significant factors in assessing whether a broker-dealer or investment adviser met its required standard of care.

THE REACH OF THE STANDARD OF CARE IMPOSED ON A BROKER-DEALER

The Committee believes that any increase in the standard of care imposed on broker-dealers should be carefully delineated with respect to its scope and the terms under which it attaches to a broker-dealer's conduct. In order to preserve the types of services that many broker-dealers have traditionally provided, a broker-dealer's increased standard of care should **only** apply when it is: (1) providing personalized investment advice; (2) about securities; (3) to a retail customer.

Personalized Investment Advice. The Committee believes the appropriate trigger for any increased standard of care imposed on a broker-dealer should be the provision of personalized investment advice. There should be no change to the duty imposed in the context of routine servicing and maintenance of retail customers' accounts. A specific example of this is utilizing the allocation re-balancing features available under a variable annuity contract, or a customer initiated reallocation. The Committee believes that with respect to these types of transactions, where there is no personalized investment advice provided by the broker-dealer to the owner of the variable annuity contract, there should be no change to the standard of care owed by the broker-dealer. Similarly, there should be no change to the standard of care that applies to routine, periodic contact between a broker-dealer and its customers. We note that such a change would potentially "chill" communication between a broker-dealer and its customers and reduce the level of customer service provided.

About Securities. The Committee believes strongly that any increased standard of care imposed on a broker-dealer and investment adviser should apply only to personalized securities-based investment advice. The standard should not apply to the provision of advice related to any insurance or annuity product that is not deemed to be a security. First, such a standard would go beyond what is provided for in the Dodd-Frank Act. Second, there is a panoply of non-securities based regulatory requirements that dictate the broker-dealer's conduct with respect to other financial products (*e.g.*, insurance and banking laws). Third, imposing any new standard of care on fixed insurance related business of a broker-dealer would create overly complex and possibly conflicting mandates from different regulators and sources of law. Fixed insurance product sales are subject to demanding state insurance statutes and regulations, and also driven by hundreds of years of common law that define the contours of the relationship between an insurance agent, an insurer and the purchaser of an insurance policy or contract.

To a Retail Customer. The Committee believes that the focus of the Study on retail customers is appropriate. The Committee suggests that the Study should not be expanded to focus on non-retail customers, nor should there be any focus on, or suggestion that, any new

standard of care on broker-dealers should be applicable to underwriting or wholesaling efforts of broker-dealers.

FOCUS UPON SPECIFIC PROCESS-BASED BUSINESS CONDUCT RULES

The Committee urges that the Study focus upon current practices by broker-dealers and investment advisers with respect to the provision of personalized investment advice. More specifically, the SEC should, among other things, review practices with respect to disclosure, gathering customer information, training and supervision and determine whether there are regulatory gaps which should be addressed or otherwise whether any enhancements are called for.

If after this Study and analysis the SEC determines that rulemaking is necessary, the SEC should focus upon establishing guidelines which are well defined and which center upon the areas of any identified "gaps" in disclosure, gathering customer information, training and supervision. We believe that specific guidelines will be more effective than subjecting broker-dealers, advisers and their associated persons to broad, undefined standards.

LIMIT OR CURTAIL FINRA RULEMAKING PROPOSALS

As part of its Rulebook Consolidation project, FINRA has been working through a number of proposed rules to be incorporated in the new FINRA rulebook. Recently, FINRA has filed rules with the SEC related to: suitability; know-your-customer; and outside business activities. For example, the proposed revisions to create FINRA Rules 2111 and 2090 (which concern Suitability and Know-Your-Customer, respectively) are very likely to be directly impacted by the results of the Study and/or the rulemaking under the Dodd-Frank Act. The Committee has significant concerns that broker-dealers will be subject to multiple, material, and perhaps potentially inconsistent rule changes from FINRA, and then the SEC over a short period of time. This will require significant time and expense for broker-dealers to respond to two or more sets of rule changes. In addition, it is likely to create confusion among retail customers. The Committee believes that FINRA rulemaking proposals that are likely to be directly impacted by the Study (including, as noted above, FINRA's Suitability and Know-Your-Customer proposals) and/or the Dodd-Frank Act should be curtailed or limited until at least the completion of the Study.

CONCLUSION

The Committee appreciates the opportunity to comment on the Study. Please do not hesitate to contact Eric Arnold (202.383.0741), Clifford Kirsch (212.389.5052), or Michael Koffler (212-389-5014) if you have any questions on the issues addressed in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Michael Koffler

BY: Clifford E. Kirsch (EOH)

FOR THE COMMITTEE OF ANNUITY INSURERS

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
Robert W. Cook, Director, Division of Trading and Markets
Andrew J. Donohue, Esq., Director, Division of Investment Management

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
American General Life Insurance Companies
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
CNO Financial Group, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company (USA)
Life Insurance Company of the Southwest
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company
(an Ameriprise Financial company)
SunAmerica Annuity and Life Insurance Company
Sun Life Financial
Symetra Financial
TIAA-CREF
USAA Life Insurance Company