



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”).

As a Director of Client Services at Gateway Financial, I have had over 10 years of insurance industry experience specializing in the effective application of life insurance in the areas of wealth & estate planning and executive benefits for affluent individuals. I also serve on the Estate Planning Council of Pittsburgh. I therefore 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

I currently am subject to an array of state insurance regulations and oversight for the sale of fixed and variable insurance products. These include:

- My broker dealer’s Annual Compliance Meeting (annual basis). This provides me with the opportunity to regularly discuss compliance issues while helping my broker dealer ensure that I remain current on changing compliance requirements and/or changes at my broker dealer.
- My broker dealer’s Regulatory Element continuing education program. I was required to complete the Regulatory Element on the occurrence of my second registration anniversary date and every three years thereafter, or as otherwise prescribed by FINRA.
- My broker dealer’s Firm Element continuing education program. I am required to participate on an annual basis. This program greatly enhances my overall variable/securities knowledge.

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- At least annually, my broker dealer evaluates and prioritizes its training needs (the “Needs Analysis”). The Needs Analysis will ensure that my broker dealer’s ongoing training is appropriate for its business and, at a minimum, covers the following matters concerning variable/securities products, services and strategies: (1) general investment features and associated risk factors, (2) suitability and sales practice considerations, and (3) applicable regulatory requirements.
- My broker dealer’s Registered Supervisory Principals are required to participate in separate, additional training designed specifically for their responsibilities. They notify the Compliance Department of any areas in which additional training should be provided to each Registered Representative under their supervision.
- In order to maintain my Pennsylvania resident insurance license, I must complete 24 credit hours for each 24 month period as defined by the Pennsylvania Department of Insurance.

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; and the client’s credit history. 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.

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. Also, our broker dealer annually does an internal inspection program (Review/Audit) of our OSJ branch office. These reviews/audits are usually announced, but sometimes they are unannounced. The purpose



of the Review/Audit is to monitor compliance by Associated Persons with applicable law and the policies and procedures of our broker dealer. The scope of a Review/Audit is broad and includes all office activities and functions related to our broker dealer. Upon completion of the Review/Audit, the Compliance Officer, who did the Review/Audit, will prepare a written report to document the results. Our firm will then have to respond to any issues identified during the Review/Audit, including corrective actions that we will undertake to eliminate issues identified in the Review/Audit report. Finally, in addition to FINRA and our own broker dealer, our office may be subject to periodic examinations by the SEC, MSRB, state securities and insurance regulatory agencies.

Generally, I do not sell many variable insurance products whereby funds are allocated to the separate accounts. When this occurs, the clients and their financial advisors make the decision as to where to allocate premiums and cash values. There are times, however, when I will sell a variable product whereby 100% of the premiums and cash values are invested in the fixed accounts of the insurance carriers, not the separate accounts. This is done to mimic fixed account products and in these cases, the clients benefit from the cost savings over straight fixed products.

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.

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 is 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 such a general standard will create liability and uncertainty, but 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 likes 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 -- 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,

Margaret A. Archinaco, CRC
Director of Client Services