



May 31, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Incentive-Based Compensation Arrangements (File Number S7-12-11)

Dear Ms. Murphy:

Massachusetts Mutual Life Insurance Company (“MassMutual”) appreciates the opportunity to comment on the joint rule proposal related to incentive-based compensation arrangements (the “Proposed Rule”) developed by the Securities and Exchange Commission (the “Commission”) and other Agencies pursuant to Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

Built on more than a century-and-a-half of financial strength and customer service, MassMutual is a leading mutual life insurance company headquartered in Springfield, MA. We operate for the benefit of our members and participating policyholders and offer a range of quality financial products and solutions, including life insurance, disability income insurance, long-term care insurance, annuities and retirement/401(k) plan services. We strive to help our customers make good financial decisions for the long term, ensuring their needs come first. At year end 2010, MassMutual’s total adjusted capital exceeded \$12 billion, while surplus (the amount MassMutual has on hand after setting aside reserves to meet our projected future obligations) exceeded \$10 billion. MassMutual is ranked 101 on the Fortune 500 by FORTUNE magazine (May 23, 2011) and is ranked among the World’s “Most Admired Companies” in the life and health insurance industry category by FORTUNE magazine (March 22, 2010). MassMutual is also a registered investment adviser under the Investment Advisers Act of 1940. MassMutual has approximately 5,500 employees, most of whom are involved with insurance activity and not investment advisory activity.

While MassMutual generally supports the Agencies’ efforts, we believe that the Commission should modify the proposed methodology for determining whether an investment adviser is a covered financial institution to take into account the unique features of those investment advisers whose primary business is other than providing investment advice (e.g., insurance). Absent this flexibility, the Proposed Rule will be inequitably applied to certain companies that are registered with the Commission as investment advisers, while not applying to other investment advisers that may create greater systemic risk when considering assets attributable to their investment advisory activities.

In the release accompanying the Proposed Rule, the Commission’s Division of Investment Management estimated that only seven investment advisers would be subject to the deferral

requirements of the Proposed Rule.¹ This estimate was based on the assumption that only investment advisers with assets under management of at least \$500 billion would have total consolidated assets of at least \$50 billion. Yet, MassMutual, with less than \$35 billion in investment advisory assets under management, would be considered a “larger” covered financial institution subject to the Proposed Rule’s deferral requirements because it has more than \$50 billion in assets that are attributable to its insurance business.² MassMutual is primarily and predominantly an insurance company, not an investment adviser. Yet, it appears that failing to take into consideration the unique features of an insurance company (such as minimum capital requirements) will have the unintended consequence of subjecting certain investment advisers, such as MassMutual, to the Proposed Rule.

We believe the Commission has recognized that the Proposed Rule may have unintended consequences. During the Commission’s open meeting to announce the Proposed Rule, Chairman Schapiro remarked:

I am also very interested in [commenters’] views on how the proposal might affect the broad array of financial firms covered by Section 956, including broker-dealers and advisers—most particularly private fund advisers, given how they often structure their compensation; and the proposal’s potential impact on broker-dealer and investment adviser business models and the variety of services they provide to investors. *This is an area where we want to be very attuned to unintended consequences.*³

During the same open meeting, Commissioner Paredes encouraged commenters to explain whether it would be “appropriate to treat broker-dealers and investment advisers differently from other financial institutions, such as banks,” because in his view, “*there is ... room to treat different types of financial institutions differently.*”⁴

MassMutual’s potential inclusion as a covered financial institution under the Proposed Rule is an example of the unintended consequences the Commission acknowledged during its open meeting. Section 956 of the Dodd-Frank Act focuses on risks that may be inappropriately assumed by a bank, credit union, broker-dealer or investment adviser as a result of the entities’ *bank, credit union, broker-dealer or investment adviser activities*; it is not focused on or directed at, an insurance company’s insurance business.

We do not believe that the Proposed Rule should favor a particular business model. The failure to take the unique features of insurance companies into account, however, may cause competitive disadvantages for insurance companies that are registered investment advisers versus those that are not so registered (and therefore not subject to the Proposed Rule). We believe that there are only a

¹ Incentive-Based Compensation Arrangements, Release No. 34-64140 (Footnote 40) (April 14, 2011)

² As of December 31, 2010, MassMutual had consolidated assets of approximately \$141 billion.

³ Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, Opening Statement – SEC Open Meeting: Proposed Rules on Incentive-Based Compensation (Mar. 2, 2011), *available at* <http://sec.gov/news/speech/2011/spch030211mls-icomp.htm> (emphasis supplied).

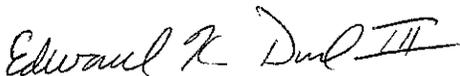
⁴ Troy A. Paredes, Commissioner, U.S. Securities and Exchange Commission, Statement at Open Meeting to Propose Incentive-Based Compensation Arrangements (Mar. 2, 2011), *available at* <http://sec.gov/news/speech/2011/spch030211tap-icomp.htm> (emphasis supplied).

small number of insurance companies similarly situated to MassMutual. Other insurance companies are engaged in the investment advisory business, but do so through a separate investment advisory subsidiary. Without changes to the Proposed Rule's method for determining whether an investment adviser is a covered financial institution, we believe it is likely that those insurance companies that are currently registered as investment advisers will consider deregistering or transitioning investment advisory activities to subsidiaries.

We note that the Commission has, in other contexts,⁵ tailored its rules to address those investment advisers whose primary business is other than providing investment advice, and we believe that such treatment is necessary here. We therefore request the Commission tailor the method for determining whether an investment adviser should be subject to the Proposed Rule (e.g., such as by modifying the assets size test or coupling the current asset size test with an assets under management test), in a way that takes into consideration the unique features of an insurance company while also addressing the risks the Proposed Rule is intended to address.

If you have any questions or would like to discuss further our comments, please contact me at 413-744-4528.

Sincerely,



Edward K. Duch, III
Assistant Vice President & Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
Eileen P. Rominger, Director, Division of Investment Management

⁵ Prudential Insurance Co. of Am. (publicly available March 1, 2005); Northwestern National Life Insurance Co. (pub. avail. Jan. 6, 1983); Prudential Insurance Co. of Am. (pub. avail. June 3, 1977).