SUTHERLAND

SUTHERLAND ASBILL & BRENNAN LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
202.383.0100 Fax 202.637.3593
www.sutherland.com

April 17, 2012

VIA ELECTRONIC MAIL

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

Re: File No. S7-23-11; Release No. 34-64676
Broker-Dealer Reports

Dear Ms. Murphy:

We are submitting this supplemental letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in follow up to a meeting between members of the Staff (the "Staff") of the Securities and Exchange Commission (the "Commission" or the "SEC") and certain representative companies of the Committee[2] regarding Rule 17a-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and as proposed to be revised by the Commission in June, 2011 (hereafter, the Commission release proposing amendments to Rule 17a-5 is referred to as the "Proposing Release").[3] The Committee previously submitted a comment letter in response to the Proposing Release on August 26, 2011.[4]

---

[1] The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1982 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] Representatives of the Committee included Robert Rosenthal and Mary Block, MassMutual Financial Group; Jennifer Lewis and John Martinez, MetLife; and Holly Smith and Naseem Nixon, Sutherland Asbill & Brennan LLP.

[3] The Proposing Release was published as Release No. 34-64676 (Jun. 15, 2011).

[4] *See* Letter from Holly H. Smith and Michael B. Koffler, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Aug. 26, 2011).

The Committee appreciates the Commission's efforts to streamline and modernize the broker-dealer financial reporting structure and the opportunity to submit additional comments with respect to the Proposing Release. While the Committee supports the Commission's goals in this regard, it continues to have concerns regarding the scope and applicability of certain of the proposed requirements discussed in the Proposing Release, in particular, the classification of all broker-dealers that do not claim exemption under paragraph (k) of Exchange Act Rule 15c3-3 as "carrying firms," and the repercussions under the proposed amendments of applying the term "carrying" to broker-dealers that do not seek to hold customer money or securities or use customer money or securities for their own proprietary purposes. In this regard, the Committee urges the Commission to reconsider the current, two category classification of broker-dealers under the Proposing Release and recommends that the Commission recognize a third category of broker-dealers for purposes of the proposed amendments. Allowance for a third category would recognize certain realities that exist today with respect to variations among broker-dealer business models and would more closely align auditing standards with the risks presented by those business models.

I. BACKGROUND

The Proposing Release requests comment on three sets of amendments to Rule 17a-5. Each set of amendments makes distinctions between carrying and non-carrying firms, and in general, imposes different substantive standards on firms depending on their classification as a "carrying" or non-carrying firm. Under the proposed rules, "carrying" broker-dealers would be required to file annually with the Commission a new report asserting compliance with specified financial rules and internal controls (the "Compliance Report"). In addition, carrying broker-dealers would be required to engage an independent public accountant to examine the broker-dealer's assertions in the Compliance Report and issue an Examination Report, and the broker-dealer would be required to file the Examination Report with the Commission.

Under proposed paragraph (d)(2) of Rule 17a-5, broker-dealers who are exempt from the provisions of Rule 15c3-3 (*i.e.*, who "do not hold customer funds or securities" under the Proposing Release) would be required to file with the Commission (i) a report asserting their exemption from the requirements of Rule 15c3-3 (the "Exemption Report") and (ii) a report from their independent public accountant that would be the result of the accountant's review of the broker-dealer's assertion that it is exempt from Rule 15c3-3.

In the Proposing Release, the Commission asks whether there are types of broker-dealers that would not qualify to file an Exemption Report, but, based on the more limited scope of their businesses, should be allowed to file a more limited report than the Compliance Report.[5] The

---

[5] Proposing Release, Section II(B)(5).

Committee strongly believes the answer to this question is "yes," because not all broker-dealers, including members of the Committee, fit neatly within the two categories of broker-dealers the Proposing Release would establish. As discussed below, there are a significant number of broker-dealers that are at risk of being classified as "carrying" broker-dealers not because they routinely hold customer money or securities or clear or settle securities transactions, but because rules adopted under the Exchange Act require that, in order to be classified as a broker-dealer exempt from Rule 15c3-3, customer funds and securities must be forwarded to third parties by noon of the next business day following receipt, regardless of whether the broker-dealer's receipt of customer funds and securities is limited to the receipt of a check made payable to a third party.[6]

The Committee believes that the Commission's current efforts to modernize broker-dealer financial rules provides a unique opportunity to resolve some of the regulatory challenges faced by broker-dealers whose business models do not neatly fall within the current two category broker-dealer structure. This letter describes how the Committee believes the Commission could define a new "third" type of broker-dealer for purposes of Rule 17a-5, and the reasons why the adoption of a third category makes sense.

II. LIMITATIONS TO THE CURRENT TWO CATEGORY CLASSIFICATION OF BROKER-DEALERS

A. The Current Two Category Classification of Broker-Dealers Under the Proposed Amendments Imposes Unreasonable Burdens on Broker-Dealers That Do Not Seek to Hold or Use Customer Funds or Securities.

As the staff knows, among the almost 4,500 broker-dealers currently registered in the United States, there are significant differences in business models and product offerings. Some firms focus their business models on distributing a wide range of investment products and engage in proprietary activities such as market making and stock lending; other firms generally limit their distribution activities to a few product types and engage in no broker-dealer activities apart from retail distribution. Among the plethora of business models, it is widely acknowledged that broker-dealers who seek to operate as introducing firms present less risk to their customers and the financial system because they do not seek to hold customer funds or securities.

The distinctions from a risk perspective between broker-dealers that seek to hold customer funds and securities and those that do not, are evident in the business practices and conventions that have developed in the industry over time. Broker-dealers that distribute third party packaged products, typically variable insurance products and shares of investment

---

[6] The "noon-of-the-next-business day" standard is often referred to as the "prompt forwarding" or "prompt transmittal" requirement.

companies (mutual funds), build distribution models pursuant to which customers are asked to pay for their investments in these products by writing a check payable to the third party product manufacturer. Such broker-dealers may also enter into clearing arrangements with other broker-dealers so that customers of the introducing firm have access to securities and services that are only available through the clearing firm. In each of these cases, customers are instructed to make their checks payable to a third party. In the case of mutual funds, checks are typically made payable to the fund family; in the case of variable insurance products, checks are made payable to the insurance company issuing the variable insurance contract; and for securities made available by the clearing firm, checks are made payable to the clearing firm. From the perspective of the introducing broker-dealer, the clearing broker-dealer, and the product manufacturer, a business model that requests that checks be made payable to an entity *other than the introducing firm* reduces risk (*e.g.*, the risk that customer money will be mis-directed or mis-applied within the banking system) and increases processing efficiencies (*e.g.*, checks made payable to the product manufacturer can be applied directly to the purchase of the security).

In current distribution models widely used throughout the industry, the distinction between broker-dealers that seek to hold customer funds and those that do not is further evident in the processing of "check and app" business. Customers purchasing mutual funds and variable insurance products make the initial payment for their purchase at the time they submit an application for the purchase, *i.e.*, the application and the payment – in the form of the customer's check – are provided by the customer to his or her registered representative, together.[7] The application and the check are then forwarded to an office designated by the broker-dealer for processing business. The office receiving the customer's check and application is a registered "Office of Supervisory Jurisdiction" ("OSJ") under Financial Industry Regulatory Authority ("FINRA") rules.[8] Member firms typically require the forwarding of applications and checks to an OSJ as soon as the application is completed in good order, *e.g.*, the customer has completed the application fully and correctly and signed both the application and the check. The same is true with respect to customer checks made payable to a clearing firm: the introducing firm forwards customer checks to the clearing firm after processing by the introducing firm.

It should be noted that throughout the processing of "check and app" business, the broker-dealer is never in actual receipt of the customer's funds. Rather, the broker-dealer is in receipt of a check made payable to a third party.

---

[7] In our experience, broker-dealers using the "check and app" business model do not accept cash from customers.

[8] *See* NASD Rule 3010(g) (requiring that an office of a FINRA member be registered as an OSJ if approval of new accounts takes place at that office), and, with respect to processing applications for variable annuity securities, FINRA Rule 2330(c).

For broker-dealers with sales forces "in the field," it is impossible to consistently comply with a requirement that all customer funds (*i.e.*, customer checks) be transmitted to the product manufacturer or other third party by noon of the next following business day. For example, a registered representative working in a field office for a broker-dealer distributing mutual funds will receive checks made payable to the mutual fund sponsor on "Day 1." If the registered representative forwards applications and checks to an OSJ on a next day ("Day 2") basis, the OSJ has no ability as a practical matter to forward customers checks to the appropriate third party by noon of Day 2, per the requirements applicable to an introducing broker-dealer. Pursuant to SEC and FINRA rules (including suitability and anti-money laundering ("AML") rules), a broker-dealer in receipt of a customer application *must* perform certain principal-level reviews before an account is established for a customer and the customer's check is forwarded to the third party.[9] These reviews cannot be done by noon of "Day 2."

By way of example, broker-dealers affiliated with members of the Committee may each have several thousand registered representatives located in field offices throughout the United States. Notwithstanding strict policies that require registered persons to forward third party checks to broker-dealer OSJs as quickly as possible, even with the use of overnight delivery services, it is not possible for OSJs to perform critical account suitability and AML reviews while guaranteeing that all checks will be forwarded to the third party payee by noon of Day 2.

The timeline for forwarding complete applications and checks to member firm OSJs has been recognized as being incompatible with the prompt forwarding standard articulated in SEC Rule 15c3-3 with respect to checks received from customers for the purchase of variable annuities. In 2007, the Commission recognized the need to balance the investor protections provided by the "prompt forwarding" standard of Rules 15c3-1 and 15c3-3 and the business model and applicable suitability issues that arise with respect to processing variable annuity applications. At that time, the National Association of Securities Dealers (the "NASD") acknowledged that broker-dealers in the variable annuity industry may need to hold customer checks for more than one business day in order to comply with the supervisory review requirements of NASD Rule 2821 (now FINRA Rule 2330). FINRA Rule 2330 requires registered principals to review and determine whether to approve the initial purchase or exchange of a deferred variable annuity prior to transmitting a customer's application to the issuing insurance company, and permits an OSJ to hold the customer's application and check for seven business days after the OSJ's receipt of a complete and correct application package. The supervisory review required by Rule 2330 was established to foster an analytical review of

---

[9] *See, e.g.,* NASD Rule 2310 (Recommendations to Customers (Suitability)); FINRA Rule 2111 (Suitability), eff. July 9, 2012, requiring, among other things, that a broker-dealer making a recommendation that involves the continuing purchase of a security or securities has a reasonable basis to believe that the customer has the financial ability to meet such a commitment; and FINRA Rule 3310 (Anti-Money Laundering Compliance Program).

deferred variable annuity transactions in a time frame that would accommodate suitability reviews, thereby protecting investors.

In connection with the drafting of NASD Rule 2821 (now FINRA Rule 2330), the NASD requested that the SEC provide exemptive relief from the promptly forwarding requirement. In response to the NASD's request, the Commission exempted broker-dealers from any additional requirements of Rules 15c3-1 and 15c3-3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity. The Commission recognized the timeline associated with the supervisory review requirements of NASD Rule 2821[10] and, in granting the relief requested, balanced the investor protections provided by Rules 15c3-1 and 15c3-3 with those provided by Rule 2821.

To date, there has been no similar regulatory relief for broker-dealers receiving checks payable to mutual funds or clearing broker-dealers. Such broker-dealers must forward checks made payable to fund companies (or other third parties such as clearing firms) by noon of the next business day following receipt of the check, if the broker-dealer wants to rely on the exemptions provided under paragraph (k) of Rule 15c3-3. Similarly, under the proposed amendments to Rule 17a-5, we are concerned about situations where the introducing firm is trying to comply with a prompt forwarding requirement and cannot because of something beyond its control, such as occurs when a customer makes a check payable to the introducing firm instead of a third party.

As noted above, the practical problems associated with complying with the prompt forwarding requirement described above are not limited to the mutual fund and variable insurance product check and app business model; the same problem arises when fully disclosed introducing broker-dealers accept checks made payable to their clearing firms.[11] Clearing firms may require that customers that are fully introduced to the clearing firm make checks payable to the clearing firm for any purchases for which the clearing firm provides execution, clearance and settlement services.[12] Non-self-clearing broker-dealers face the same hurdles described above

---

[10] *See* Release No. 34-56376 (Sept. 7, 2007).

[11] References in this letter to a "clearing firm" denote a firm that both carries and clears customer accounts and transactions. *See, e.g.,* FINRA Rule 4311 (Carrying Agreements), expressly requiring that each carrying agreement pursuant to which accounts are to be carried on a fully disclosed basis expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of Exchange Act Rule 15c3-3.

[12] Although a non-clearing firm could accept a check made payable to itself and then deposit that check in an account established by the clearing firm, that option creates a problem for the non-clearing firm under Rule 206(4)-2 of the Investment Advisers Act of 1940 (the "Custody Rule") (*i.e.,* a dually registered broker-dealer/investment adviser could be deemed to have custody under the Custody Rule if it accepted a check made payable to itself). Accordingly, a non-self-clearing dual registrant will typically instruct its customers to make their checks payable to the dual registrant's clearing firm.

with respect to checks made payable to mutual fund sponsors, *i.e.,* trying to move checks made payable to a clearing firm by noon of the next business day following receipt from the customer.

B. Committee Members Typically Identify Themselves as "Carrying" Broker-Dealers Only as a Result of the Limited Applicability of the Promptly Forwarding Rule to Member Firm Business Models.

When Rule 15c3-3 was first adopted, the exemptions contained in paragraph (k) of the rule made sense for the business models prevalent at that time. Paragraph (k)(1) exempts from Rule 15c3-3 a broker or dealer whose business is limited to acting as an agent or dealer for shares of registered investment companies or interests or participations in an insurance company separate account. In addition to distributing only a limited number of products, a broker-dealer relying on the paragraph (k)(1) exemption must promptly transmit all funds and deliver all securities and is prohibited from otherwise holding funds or securities for, or owing money or securities to, its customers. Paragraph (k)(2)(i) exempts from Rule 15c3-3 a broker or dealer, regardless of the types of securities offered for sale, who carries no margin accounts, promptly transmits all customer funds and delivers all securities, does not otherwise hold funds or securities for, or owe money or securities to, customers and who effectuates all financial transactions between the broker or dealer and its customers through one or more special bank accounts.[13] Paragraph (k)(2)(ii) exempts a broker or dealer who acts only as an introducing broker or dealer and clears all transactions with and for customers on a fully disclosed basis with a clearing broker-dealer. Broker-dealers relying on paragraph (k)(2)(ii) must also promptly transmit all customer funds and securities to the clearing broker-dealer that carries the customer accounts, and the clearing broker-dealer must maintain books and records for the accounts pursuant to SEC Rules 17a-3 and 17a-4.[14]

Over the years, the ability of a broker-dealer to rely on any of the paragraph (k) exemptions has grown increasingly difficult. As noted above, if a broker-dealer, even one whose distribution is primarily limited to variable insurance products and mutual funds, has more than one sales office "in the field," that broker-dealer will have great difficulty complying with the requirement that all customer funds and securities be transmitted to a third party by noon of the next following business day. When applied to today's business models, in most cases it is simply not possible for broker-dealers – even those that accept only checks made payable to a third party – to comply with the delivery timeframe established by the paragraph (k) exemptions.

---

[13] Such bank accounts must be established in compliance with Exchange Act Rule 15c3-3(e).

[14] Paragraph (k) of Rule 15c3-3 also authorizes the Commission to exempt a broker or dealer from Rule 15c3-3 upon written application by the broker or dealer. *See* Rule 15c3-3(k)(3).

In the Committee's experience, the difficulties faced by broker-dealers operating as fully-disclosed introducing firms and trying to qualify for a paragraph (k) exemption have, in some cases, forced such broker-dealers to default to "carrying" broker-dealer status, even though such firms do not hold customer funds in proprietary accounts. Under the Proposing Release, these broker-dealers would be treated in the same manner as broker-dealers that have much different business models, receiving (and depositing into proprietary accounts) checks made payable to the broker-dealer as a matter of course. The Committee believes that broker-dealers that follow a more limited business model should not be grouped together with broker-dealers that have structured themselves as true clearing firms, depositing customer money into accounts maintained by the broker-dealer, extending margin, and paying for customer purchases and sales through accounts established in the broker-dealer's name. Indeed, if the proposed amendments to Rule 17a-5 do not provide some relief for broker-dealers following a "check and app" or similar business model, these broker-dealers could find themselves classified as carrying or clearing broker-dealers under Rule 17a-5, despite the fact that in many cases they are compensating true carrying and clearing firms for performing clearance, settlement and custody functions for the same customers whose checks they forward to those firms.

III. A New Third Category of Broker-Dealers Is Necessary in Order to Aptly Apply the Proposing Release to the Characteristics of Broker-Dealers with More Limited Business Models

A. The Committee Proposes That the SEC Narrowly Tailor a Third Category of Broker-Dealers for Purposes of Rule 17a-5.

The Committee believes that broker-dealers that do not fit the profile of true carrying and clearing firms should not be grouped together with traditional carrying and clearing firms under the amendments to Rule 17a-5. Instead, such broker-dealers should be classified in a new third category for purposes of Rule 17a-5. The Committee proposes that a broker-dealer would come within the third category if the broker-dealer's business model conformed to the following proposed terms and conditions:

The broker-dealer would:

- Not accept checks payable to an affiliate other than checks payable to an affiliated insurance company for the purchase of variable annuity or variable life insurance products or an affiliated investment company for the purchase of investment company shares, and

- Would hold checks payable to unrelated third parties (*e.g.*, mutual fund distributors, carrying broker-dealers) only for so long as necessary to complete reviews required by applicable regulations (*e.g.*, suitability, AML and other

reviews), and then forward such checks and associated required documentation to the third party.

The broker-dealer would not:

- Use customer funds for proprietary businesses,
- Extend margin to customers, or
- Self-clear or accept cash.

The broker-dealer would:

- Have policies and procedures designed to require that customers make checks payable to a third party, not the broker-dealer;[15] and
- Have policies and procedures in place to ensure timely forwarding of customer checks to the applicable third party(ies).

If a broker-dealer meets the above-related terms and conditions, we propose as discussed below that the broker-dealer would be subject to auditing standards that reflect the business model of the third category, *i.e.*, we are not suggesting that the third category not be subject to auditing standards. Rather, we are proposing that broker-dealers in the third category undergo audits that reflect the true nature of their business.

B. The Committee Proposes That the Third Category of Broker-Dealers, Who Do Not Perform Functions Typically Associated with the Business and Risks Associated with True Carrying and Clearing Firms, Should Not Be Required to Submit an Audit Report That Is Inconsistent with Their Business Model.

The Committee believes that if a broker-dealer meets the requirements listed above, and is unable to rely on any of the paragraph (k) exemptions from Exchange Act Rule 15c3-3, then that broker-dealer should not be required to submit a Compliance Report to the Commission under Rule 17a-5, in recognition of the fact that the broker-dealer is not performing the functions typically associated with carrying and clearing firms, and that an independent auditor would be expecting to audit for compliance with, under auditing standards (the "Proposed Attestation

---

[15] We do not believe that isolated instances of customer mistakes should be viewed as inconsistent with this standard, *e.g.*, if a customer mistakenly makes his or her check payable to the broker-dealer, the broker-dealer should be able to return the check to the customer or endorse the check for deposit to the appropriate third party's account, without jeopardizing the broker-dealer's ability to be included in the proposed third category.

Standards") proposed to be adopted by the Public Company Accounting Oversight Board (the "PCAOB").[16]

Although we understand that the form and content of the Compliance Report and the Examination Report (the "Reports") have not been finalized, we assume that both Reports, and applicable auditing and attestation standards set by the PCAOB, will be structured to reflect the business models of true carrying and clearing firms.[17] Moreover, we expect that the cost of engaging an auditor to audit a Compliance Report and produce an Examination Report will be higher for any firm classified under Rule 17a-5 as a carrying or clearing firm. Imposing these additional costs on broker-dealers that do not fit the true carrying or clearing firm model is unfair and unnecessary, given the alternatives. If, as we propose, a third category of broker-dealer was recognized in Rule 17a-5, auditing standards and the cost of the audit would be driven by the business models and risks of these broker-dealers, rather than being driven by a regulatory constraint. More importantly, regulatory review of broker-dealer annual audits would be made more efficient by having a correct picture of broker-dealers based on their business models, *i.e.*, true carrying and clearing firms could be reviewed by SEC staff for the risks they present, and broker-dealers coming within the other two categories would be reviewed by the staff for the risks they present.

By way of example, under the Proposed Attestation Standards for the Compliance Report, the auditor would be required to perform procedures that are sufficient to provide a reasonable basis for identifying the risks of material non-compliance, whether intentional or unintentional, associated with each specified Financial Responsibility Rule,[18] and designing further examination procedures, *e.g.*, testing controls over compliance and performing compliance tests.[19] In order to identify and assess risks of material non-compliance, auditors would, among other things: (i) evaluate the evidence obtained and the results of procedures performed in the audit of the financial statements and supplemental information; (ii) evaluate the

---

[16] The PCAOB's proposed standards for attestation engagements related to broker and dealer Compliance Reports and Exemption Reports were published in PCAOB Release No. 2011-004 (July 12, 2011) ("PCAOB Release 2011-004").

[17] In order to express an opinion on the assertions made by a broker or dealer in a Compliance Report, the auditor must perform an examination engagement to obtain appropriate evidence that is sufficient to obtain reasonable assurance about whether (i) one or more instances of material non-compliance exist as of the date specified in the broker's or dealer's assertion and (ii) one or more instances of material weakness exist during the period specified in the broker's or dealer's assertion. We would expect that, without the adoption of a third category in the amendments to Rule 17a-5, auditing and attestation standards designed by independent auditors and the PCAOB will not include any allowance for the business models of the type of broker-dealer we have described herein.

[18] The Proposing Release collectively refers to Exchange Act Rules 15c3-1, 15c3-3, and 17a-13, and self-regulatory organization rules requiring delivery of account statements to customers, as the "Financial Responsibility Rules".

[19] *See* PCAOB Release 2011-004, Appendix 1, paragraph 13.

nature of instances of non-compliance and deficiencies in internal control over compliance with the specified Financial Responsibility rules identified in previous examination engagements; and (iii) obtain an understanding of the broker's or dealer's processes, including relevant controls, regarding compliance with the specified Financial Responsibility Rules.[20] We believe that, with respect to the proposed third category of broker-dealers, auditing and attestation standards could and should be designed to reflect the fact that these types of broker-dealers are not structured – with regard to their internal controls or financial practices – in the same manner as true carrying and clearing firms, and that therefore, to perform the best audits of this type of broker-dealer, standards that differ from the standards of the Compliance and Examination Reports will need to be developed.

C. *In the Alternative, the Committee Proposes that the SEC Consider Receipt and/or Holding of Checks Made Payable to Third Parties Not to be Holding "Customer Funds" for Purposes of Rule 15c3-3 or Interpret "Noon-of-the-Next-Business Day" in a Manner to Afford Broker-Dealers Reasonable Opportunity to Qualify for a Rule 15c3-3(k) Exemption.*

In lieu of the suggested requirements (above) for a firm to be considered in a third category of broker-dealers, a similar result could be obtained (i) if the receipt and/or holding of checks payable to third parties is not considered to be a receipt and/or holding of "customer funds" for purposes of Rule 15c3-3 or (ii) if the "noon-of-the-next-business-day" interpretation of "promptly transmit" is slightly relaxed to afford broker-dealers the reasonable opportunity to qualify for a Rule 15c3-3(k) exemption in instances where the broker-dealer's holding of customer funds and/or securities is only as long as required to satisfy required regulatory reviews and suitability procedures.

IV. CONCLUSION

The Committee appreciates the opportunity to meet with the Staff and comment further on the Proposing Release. We are happy to provide more specific input on the issues raised both in this letter and in our earlier comment letter submitted to the Commission and answer any questions that the Staff may have regarding our comments. While we have endeavored to set forth what we believe is a workable proposal, we would be happy to discuss other alternatives and variations to our proposal that the Staff may deem appropriate.

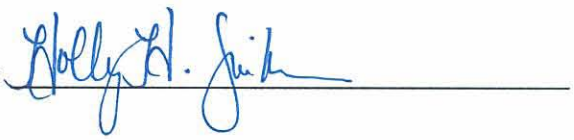
---

[20] *Id.*

Please do not hesitate to contact Holly H. Smith (202.383.0245) if you have any questions regarding the issues addressed in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 

FOR THE COMMITTEE OF ANNUITY INSURERS

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
(a Goldman Sachs 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
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
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 Financial Group
Symetra Financial
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company