UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

April 23, 2013

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For the Committee of Annuity Insurers
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Securities Industry and Financial Markets Association
1101 New York Avenue, NW, 8th Floor
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Carl B. Wilkerson
American Council of Life Insurers
101 Constitution Avenue, NW
Washington, DC 20001

Re: **Insurance Networking Arrangements**

Dear Messrs Arnold, Hammerman, and Wilkerson:

In your letter dated March 28, 2013, on behalf of the Committee of Annuity Insurers, the Securities Industry and Financial Markets Association, and the American Council of Life Insurers, you seek assurances from the staff of the Division of Trading and Markets ("Staff") that it will not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") against insurance agencies if insurance agencies: (1) enter into arrangements with registered broker-dealers ("insurance networking arrangements") for the offer and sale of variable annuity contracts, variable life insurance policies, and other life insurance policies or annuity contracts that are also securities or are otherwise registered as securities ("variable products"); and (2) make certain transaction-based payments (as discussed below), without the insurance agencies registering as broker-dealers under Section 15(b) of the Exchange Act, subject to the representations contained in your letter.[1]

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[1] You state that your request for no-action assurance is made in light of the Staff's May 8, 2006 revocation of No-action Relief Granted to M Financial Holdings, Inc. and Certain Insurance Agencies (the "M Financial Revocation Letter"). *See also M Financial Holdings, Inc. Letters* (avail. Nov. 2, 1987 and June 14, 1988) (collectively, "*M Financial Letters*").

## I. Insurance Networking Arrangements

### A. Background

Over the last several decades, the Staff has issued a number of no-action letters that permit insurance agencies to enter into insurance networking arrangements with registered broker-dealers for the offer and sale of variable products – which are both insurance products under state law and securities under the federal securities laws – without the insurance agencies registering as broker-dealers under Section 15(b) of the Exchange Act. Early insurance networking letters were in response to a specific problem in the way that commissions for the sale of variable products were paid to the persons involved in their sale.[2] In these early letters, registered broker-dealers proposed to establish subsidiaries that would apply for state insurance agency licenses and receive all commissions on the sale of variable products without the insurance agency subsidiaries registering as broker-dealers.[3] Over time, we extended no-action relief to additional arrangements between broker-dealers and insurance agencies that did not necessarily require the parties to an insurance networking arrangement to be affiliated.[4]

In 1995, the Staff issued a no-action letter to First of America Brokerage Service, Inc.[5] that detailed comprehensive terms and conditions for insurance networking arrangements. In the First of America Letter, the Staff stated it would no longer entertain requests for no-action relief for such arrangements unless they presented novel issues.

You state that many insurance networking arrangements are modeled on the terms and conditions contained in the First of America Letter. You also state that your current request for no-action assurances is made in light of the Staff's revocation of the no-action letters issued to M

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[2] In your letter, you state that under many state insurance laws at the time, broker-dealers could not receive commissions on the sale of insurance products unless they were licensed as insurance agencies, and the insurance laws of many states at the time effectively prevented the issuance of insurance agency licenses directly to broker-dealers.

[3] *See Merrill Lynch, Pierce, Fenner & Smith Inc.* (avail. May 21, 1975); *Dean Witter & Co., Inc.* (avail. May 6, 1977); *Loeb Rhoades, Hornblower & Co.* (avail. Aug. 10, 1978); and *Smith Barney, Harris Upham & Co. Inc.* (avail. July 12, 1979). *See also Dreyfus Service Corporation* (avail. Sept. 6, 1979); *Fidelity Management & Research Co.* (avail. Oct. 19, 1980).

[4] *See, e.g., Principal Marketing Services, Inc.* (avail. June 2, 1988); *Pacific Mutual Life Insurance Co.* (avail. April 13, 1989); *Traditional Equinet Business Corporation of New York* (avail. Jan. 8, 1992); *MML Investors Services, Inc.* (avail. Mar. 6, 1992); *Parkwood Financial Services, Inc.* (avail. July 1, 1987); *Pathway Financial* (avail. Sept. 21, 1987); *Seligman Marketing, Inc.* (avail. July 26, 1988); *Scudder Fund Distributors, Inc.* (avail. Oct. 12, 1988); *Mariner Financial Services, Inc.* (avail. Dec. 16, 1988); *Douglas Bremen & Co.* (avail. Dec. 19, 1988); *Investacorp, Inc.* (avail. Mar. 16, 1989); *Transamerica Financial Resources, Inc.* (avail. Sept. 19, 1989); *The Wolper Ross Corporation* (avail. Oct. 16, 1991); *Investment Centers of America, Inc.* (avail. June 5, 1992); *Delta First Financial, Inc.* (avail. Sept. 21, 1992); *FIMCO Securities Group, Inc.* (avail. July 16, 1993); and *M Financial Letters* (avail. Nov. 2, 1987 and June 14, 1988).

[5] *Howard & Howard* (*sub. nom. First of America Brokerage Service, Inc.*) (avail. Sept. 28, 1995) ("First of America Letter").

Financial.[6] In particular, you highlight the following text from the M Financial Revocation Letter that refers to the First of America Letter:

> First of America permits, among other things, the payment of commissions (or other transaction-related compensation) from insurance securities to an unregistered insurance agency, but only if state law requires that such commissions be paid to an insurance agency licensed to sell insurance in that state, and regulatory impediments exist that prevent a particular entity from both registering as a broker-dealer and acquiring an insurance agency license. First of America further requires, among other things, that commissions paid to dual representatives for securities transactions be determined solely by the broker dealer, and that such payments be paid directly by, and on behalf of, the broker-dealer.

You state that many broker-dealers had interpreted the First of America Letter as permitting the use of separate legal entities to hold insurance agency licenses in any state, including states that did not have a regulatory impediment to a broker-dealer becoming licensed as an insurance agency, and for those entities to receive transaction-based payments in connection with the sale of variable products. Consistent with this interpretation, you state that the predominant organizational structure for the national distribution of variable products involves a bifurcated approach in which different legal entities maintain the broker-dealer registration and insurance agency licensing.[7]

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[6] *See supra* note 1. In the M Financial Revocation Letter, the Staff explained that the *M Financial Letters* were being revoked because M Financial and its affiliates had changed their business plan such that their operations were no longer entirely consistent with the representations they made in their original requests for relief.

[7] You state that most insurance networking arrangements involve a licensed insurance agency that controls, is controlled by, or is under common control with, a broker-dealer. In other networking arrangements, however, you state there may be no affiliation between an insurance agency and the broker-dealer. In the latter situation, you state that the only connection between the entities would be the individuals who are registered representatives of the broker-dealer that are also licensed insurance agents associated with an insurance agency ("dual representatives"), and the written insurance networking agreement. *See, e.g., The Wolper Ross Corporation* (avail. Oct. 16, 1991). In your letter, you state that the concept of "control" as used to describe insurance networking arrangements is defined under Form BD – Uniform Application for Broker-Dealer Registration.

In your view, however, affiliation or a control relationship in an insurance networking arrangements is not necessary to ensure compliance with applicable laws, rules and regulations. Accordingly, your no-action request is not premised on there being an affiliate relationship in an insurance networking arrangement. You state the written agreements that memorialize networking arrangements include provisions addressing such things as supervisory responsibilities, limitations on activities and compensation of unregistered personnel, and recordkeeping. In addition, you state Commission rules and rules of self-regulatory organizations ("SRO") provide a rigorous framework that is applicable to insurance networking. In particular, you cite to National Association of Securities Dealers ("NASD") Conduct Rules 3010 and 3012, and to Financial Industry Regulatory Authority ("FINRA") Rule 3130.

Based on the views expressed in the M Financial Revocation Letter quoted above, you state that a broker-dealer that offers and sells variable products through an insurance networking arrangement may also have to be licensed as an insurance agency in all states in which the broker-dealer solicits variable product sales, or in the alternative, the insurance agency may have to register as a broker-dealer. Although many states no longer have impediments that would prohibit a broker-dealer from also becoming a licensed insurance agency, you state that other regulatory and business concerns make it cumbersome in most instances for a broker-dealer to do so.[8] Regardless of whether the parties to a networking arrangement are affiliated or in a control relationship, you state that most insurance networking arrangements already include the representations outlined below and in your letter.

B. Request for Relief

You seek assurances from the Staff that it will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act against insurance agencies if they are parties to, or enter into, insurance networking arrangements with registered broker-dealers without the insurance agencies registering as broker-dealers under Section 15(b) of the Exchange Act, subject to the following representations:

*Registered Broker-Dealers*

- The registered broker-dealer will supervise the activities of dual representatives, including by providing conduct manuals and/or written policies and procedures to dual representatives and monitoring their activities to help ensure compliance with the conduct manual and/or the written policies and procedures.
- The registered broker-dealer will provide conduct manuals and/or written policies and procedures to insurance agencies, and to unregistered employees of the insurance agencies, specifying the limitations on what activities they may engage in with respect to variable products. The registered broker-dealer will conduct periodic reviews consistent with SRO obligations to ensure that the insurance agencies and their unregistered employees are complying with the conduct manual and/or written policies and procedures, and shall make and keep a record of the results of any findings related to that periodic review.
- Designated principals of the registered broker-dealer authorized to supervise employees will train, supervise, control, and assume responsibility for all of the securities activities of the dual representatives in connection with the offer and sale of variable products.
- The registered broker-dealer, in accordance with SRO rules, will approve all variable product advertisements and promotional materials it creates prior to their distribution to ensure they are in compliance with applicable statutory and regulatory requirements of the federal and state securities laws and SRO rules. The registered broker-dealer will assume responsibility for all such advertisements and promotional materials, and all such materials will be

[8] You maintain that a broker-dealer licensed as an insurance agency on a 50-state basis could be subject to 50 different sets of requirements in connection with its operations and structure, meaning that the chances of a "combined entity" being subject to disparate and inconsistent standards under the insurance laws and the federal securities laws are fairly high.

considered materials of the registered broker-dealer for purposes of the federal and state securities laws and SRO rules.

- The registered broker-dealer will maintain all required books and records related to transactions in variable products, and will make them readily accessible to the staff of the Commission, to FINRA, to any other SRO, or to other relevant federal and state governmental authorities, including state insurance regulators, upon request. The registered broker-dealer will ensure that these books and records comply with all applicable statutory and regulatory requirements of the federal and state securities laws and SRO rules, including Section 17(a) of the Exchange Act and the rules thereunder.
- Registered broker-dealers will handle customer funds and securities in accordance with all applicable statutory and regulatory requirements of the federal and state securities laws and SRO rules, in particular the net capital and customer protection rules of the federal securities laws.
- In accordance with NASD Conduct Rule 3012, registered broker-dealers entering into insurance networking arrangements will test and verify their policies and procedures regarding those arrangements at least annually to verify that they are in compliance with the representations and conditions of this letter; and in accordance with FINRA Rule 3130, the chief executive officers will certify that the registered broker-dealers have processes in place to establish, maintain, review and test written supervisory policies and procedures.
- Any books and records related to transactions in variable products maintained by the insurance agencies will be the books and records of the registered broker-dealer and will be made readily accessible to the staff of the Commission, to FINRA, to any other SRO, or to other relevant federal and state governmental authorities, upon request.[9]

*Dual Representatives*

- All securities services provided in connection with the offer and sale of variable products will be provided only through dual representatives who are: (1) registered representatives of the broker-dealer that are also registered and qualified as necessary with FINRA; and (2) licensed by an appropriate state regulator as insurance agents in the states in which they do business and, when required under applicable state insurance law, appointed insurance agents of the insurers for which they solicit applications for variable products.
- If any dual representative is subject to a bar imposed by the Commission or an SRO, suspended by the Commission or an SRO from association with a broker-dealer, or subject to any final order from a state insurance commission or state securities commission (or agency or officer performing like functions) that bars or suspends the dual representative from being

[9] The Staff notes that all books and records related to transactions in variable products that are maintained and held by the insurance companies on behalf of and as agents for the registered broker-dealers shall be the books and records of the broker-dealers and at all times subject to inspection by the Staff, FINRA, any other SRO, or other relevant federal and state governmental authorities. *See Distributions of Variable Annuities by Insurance Companies Broker-Dealer Registration and Regulation Problems Under the Securities Exchange Act of 1934,* Exchange Act Release No. 8389 (Aug. 29, 1968) ("Release No. 34-8389").

associated with an insurance agency or broker-dealer, the insurance agency will terminate or suspend that dual representative from all variable product sales activities.

- Dual representatives will adhere to the terms contained in the conduct manuals and/or written policies and procedures provided by the registered broker-dealer.
- Only dual representatives may receive or handle customer funds routed through the registered broker-dealer and the insurance agencies. Furthermore, only dual representatives may receive or handle customer funds or securities in connection with the sale of variable products.

*Insurance Agencies*

- In an insurance networking arrangement, each insurance agency is considered an associated person of the networking broker-dealer within the meaning of Section 3(a)(18) of the Exchange Act. Any insurance networking agreement between a registered broker-dealer and an insurance agency that is modified or entered into after this letter becomes publicly available will reflect this representation.
- In the event that any dual representative is subject to a bar imposed by the Commission or an SRO, suspended by the Commission or an SRO from association with a broker-dealer, or subject to any final order from a state insurance commission or state securities commission (or agency or officer performing like functions) that bars or suspends such person from being associated with an insurance agency or broker-dealer, the insurance agency will terminate or suspend that dual representative from all variable product sales activities.
- Each insurance agency will have written policies and procedures reasonably designed to ensure that only dual representatives receive or handle customer funds routed through the registered broker-dealer and the insurance agency, and that only dual representatives receive or handle customer funds or securities in connection with the sale of variable products.
- Each insurance agency will monitor the activities of its unregistered employees and will have written policies and procedures reasonably designed to ensure their compliance with the applicable conduct manual and/or written policies and procedures provided by the registered broker-dealer.
- Each insurance agency will have written policies and procedures reasonably designed to ensure that the insurance company issuing the variable product is the payee (or in the case of electronic fund transfers, the direct recipient) of any customer funds intended for the purchase of a variable product, and that an insurance agency, or any of its associated persons is not the payee (or in the case of electronic fund transfers, the direct recipient) of any customer funds intended for the purchase of variable products.

*Unregistered Employees*

- Unregistered employees will only have clerical or ministerial involvement in variable products transactions, will not engage in any securities activities that are not clerical or ministerial, and will not receive any compensation based on transactions in variable products or the provision of advice with respect to variable products.

- Unregistered employees will not handle or maintain customer funds or securities in connection with transactions in variable products.
- Unregistered employees will not recommend any variable products, give investment advice with respect to variable products, discuss the merits of any variable products, or handle any question that might require familiarity with variable products. Unregistered employees will refer all variable products-related questions to dual representatives.

*Transaction-Based Payments*

- Commissions resulting from transactions in variable products may be paid by the insurance company to the registered broker-dealer or the insurance agency. Commissions paid to dual representatives on transactions in variable products will be determined solely by the registered broker-dealer. Such payments will be paid by, or as directed by and on behalf of, the registered broker-dealer.
- All commissions received for transactions in variable products will be reported on the registered broker-dealer's FOCUS and FINRA Fee Assessment Reports.

## II. Payment of Commissions by Insurance Agencies

### A. Background

In your letter, you cite a 1968 release[10] in which the Commission published the Staff's views regarding some common problems arising out of the public offering of variable products. In particular, you reference a situation described in Release No. 34-8389 in which an insurance company that creates a separate account under state law for the offer and sale of variable products funded by the separate account, forms a subsidiary that is registered as a broker-dealer to act as the distributor of the variable products. Among other things, Release No. 34-8389 stated that the Staff would not object if an insurance company pays sales commissions to associated persons of the broker-dealer who are also insurance agents for the insurance company, subject to certain conditions, including that payments were made as a purely ministerial matter.[11] In this respect, you also cite to a Staff 1988 no-action letter stating that, for the performance of commission payment services by an insurer to be considered a "purely clerical and ministerial function" within the meaning of Release No. 34-8389, the payments must be made only in "strict

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[10] *See* Release No. 34-8389.

[11] The conditions in Release No. 34-8389 include, among other things, that: (1) the payments would be performed as a purely ministerial matter and related records would be reflected on the books and records maintained by or for the broker-dealer; (2) the services would be provided pursuant to a written agreement; (3) the insurer would agree to make any books and records maintained by it available to the Commission for inspection upon request; and (4 ) the broker-dealer would assume full responsibility for the securities activities of all persons engaged directly or indirectly in the offer and sale of variable products.

accordance" with the instructions of the broker-dealer and the insurance company must not exercise any discretion over the amount or allocation of the payments.[12]

Although Release No. 34-8389 and the cited no-action letters concerned payments by insurance company issuers and not insurance agencies, you request assurances that insurance agencies also may make transaction-based payments to registered representatives for the sale of variable products. You state that any Staff concerns regarding the participation or influence of an insurance agency in making transaction-based payments to registered representatives for the sale of variable products should be mitigated by the representations outlined below that are modeled on those in Release No. 34-8389.

B. Request for Relief

You seek assurances from the Staff that it will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act against insurance agencies that are parties to insurance networking arrangements with registered broker-dealers if they make transaction-based payments to dual representatives without the insurance agencies registering as broker-dealers under Section 15(b) of the Exchange Act. In this context, transaction-based payments would include payments that are commissions, bonuses, and any other forms of transaction-based compensation. Insurance agencies in this situation would make those payments in accordance with the following conditions:

- Any transaction-based payments related to transactions in variable products made by the insurance agency will be made on a purely ministerial basis pursuant to instructions received from the registered broker-dealer. The insurance agency will not exercise any discretion over the amount of the payments;
- Any transaction-based payments related to variable product sales made by the insurance agency will be made only to persons registered with and under the supervision and control of the registered broker-dealer;
- Any transaction-based payments related to transactions in variable products sales that are made by the insurance agency will be made "on behalf of" the registered broker-dealer; and
- The registered broker-dealer will assume full responsibility for the securities activities of all persons in connection with the sale of variable products, including responsibility for training, supervision, and control as contemplated by Section 15(b)(4)(E) of the Exchange Act and NASD Conduct Rule 3010.

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[12] *See Allstate Life Ins. Co., Lincoln Benefit Life Co.* (avail. Sept. 12, 1988). You also cite a 1987 Staff no-action letter for the proposition that a broker-dealer can be related to the insurance company that issues the variable products by sharing a common parent, rather than through the direct parent-subsidiary relationship situation described in Release No. 34-8389. *See, e.g., Sentry Insurance a Mutual Company* (avail. Sept. 6, 1987). You also cite this letter for the proposition that the paymaster may be the issuer of the variable products, or an affiliate of the issuer.

III. Response

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your conclusions and analysis, the Staff will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if insurance agencies, without registering as broker-dealers under Section 15(b) of the Exchange Act: (1) enter into insurance networking arrangements with registered broker-dealers for the offer and sale of variable products; and (2) make transaction-based payments based on the sale of variable products.

This position is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This position is subject to modification or revocation at any time the Staff determines that such modification or revocation is consistent with the public interest or the protection of investors. Furthermore, this response only expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please call David Blass, Chief Counsel; Timothy White, Special Counsel; or me at (202) 551-5550.

Sincerely,

Joseph Furey
Assistant Chief Counsel
Division of Trading and Markets

THE Committee OF Annuity Insurers

sifma Invested in America

ACLI

March 28, 2013

David W. Blass
Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Insurance Networking Arrangements**

Dear Mr. Blass:

The American Council of Life Insurers ("ACLI"),[1] the Committee of Annuity Insurers ("CAI")[2] and the Securities Industry and Financial Markets Association ("SIFMA")[3] hereby request assurances from the staff of the Division of Trading and Markets ("Staff") of the Securities and Exchange Commission ("SEC" or "Commission") that the Staff will not recommend enforcement action to the Commission under Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") against insurance agencies if insurance agencies enter into arrangements with registered broker-dealers ("insurance networking arrangements") under

[1]The American Council of Life Insurers is a national trade association with over 300 members that represent more than 90 percent of the assets and premiums of the life insurance and annuity industry. In addition to life insurance and annuities, ACLI member companies offer pensions, including 401(k)s, long-term care insurance, disability income insurance, and other retirement and financial protection products.

[2] The Committee of Annuity Insurers is a coalition of 28 life insurance companies that issue fixed and variable annuities. The CAI 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 CAI represent more than 80% of the annuity business in the United States.

[3] The Securities Industry and Financial Markets Association brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("GFMA"). For more information, visit www.sifma.org.

which these parties will perform the activities described below, solely in connection with the offer and sale of variable annuity contracts, variable life insurance policies, and other life insurance policies or annuity contracts that are also securities("variable products"), without the insurance agencies registering as broker-dealers under Section 15(b) of the Exchange Act. This request is made in light of the Staff's May 8, 2006, revocation of No-action Relief Granted to M Financial Holdings, Inc. and Certain Insurance Agencies (the "Revocation Letter").

## I. BACKGROUND

In the 1970s, wirehouse brokers became interested in offering variable products to customers. As discussed in the no-action positions taken with respect to these brokers, they faced a conundrum: while state insurance laws prohibited them from receiving insurance commissions unless they were licensed as insurance agencies, the insurance laws of many states at the time effectively prevented the issuance of insurance agency licenses directly to the broker-dealers. For example, the laws of many states prohibited corporations, or non-domestic corporations, or corporations not primarily engaged in the business of insurance, from being licensed to sell insurance within those states. Other states prohibited foreign control of insurance agencies. In addition, New York Stock Exchange rules at the time prohibited sales representatives of member firms from receiving insurance commissions directly from insurance carriers.

### 1. Historical Progression of No-Action Letter Requests

**Wirehouse Brokers Request No-Action Relief from Conflicting Regulatory Mandates.** Without insurance agency licenses, broker-dealers were prohibited from receiving insurance commissions, and insurance carriers in turn were prohibited from paying commissions to unlicensed broker-dealers. Wirehouse brokers seeking to expand their activities to include the sale of variable products sought relief from the Staff for arrangements that became known as "insurance networking."[4] As a solution, the wirehouse brokers proposed the establishment of subsidiaries that would apply for state insurance agency licenses and receive all commissions on the sale of variable products. On behalf of their subsidiaries, the wirehouse brokers sought relief from broker-dealer registration requirements, and the Staff granted the requested relief based on the facts and representations in the incoming letters.[5]

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[4] This approach was first outlined in a letter obtained by Merrill Lynch and became the structure adopted by various segments of the broker-dealer industry. *See Merrill Lynch, Pierce, Fenner & Smith Inc.* (avail. May 21, 1975).

[5] *See, e.g., Dean Witter & Co., Inc.* (avail. May 6, 1977); *Loeb Rhoades, Hornblower & Co.* (avail. Aug. 10, 1978); and *Smith Barney, Harris Upham & Co. Inc.* (avail. July 12, 1979). A few broker-dealers functioning as mutual fund distributors also obtained relief for arrangements under which the broker-dealers would form a number of wholly-owned insurance agency subsidiaries that would sell variable products. *See Dreyfus Service Corporation* (avail. Sept. 6, 1979); *Fidelity Management & Research Co.* (avail. Oct. 19, 1980).

**Insurer-Affiliated Firms Request No-Action Relief.** During the late 1980s and early 1990s, many broker-dealers affiliated with insurers sought no-action relief from broker-dealer registration for insurance networking as well. The request for relief often was triggered by broker-dealers seeking to expand their product line to include variable products offered by unaffiliated carriers. To satisfy state insurance agency licensing requirements, the broker-dealers generally proposed the establishment of an affiliate licensed as an insurance agency.[6]

**Independent Broker-Dealers Request No-Action Relief.** Independent broker-dealers that were not affiliated with an insurance carrier also obtained a number of no-action letters.[7] These broker-dealers generally sought relief for insurance networking arrangements under which the broker-dealer would form one or more subsidiaries to be licensed as insurance agencies in the various states. The broker-dealers generally represented that the insurance agencies would be "controlled" by the broker-dealer, and each insurance agency and its officers and employees would be treated as associated persons of the broker-dealer.

**Letters Requested by Insurance Agencies.** In addition, a few no-action letters were issued to insurance agencies seeking to associate with a broker-dealer for the purpose of offering variable products.[8] These letters presented arrangements in which existing insurance agencies sought to "associate by contract" with a broker-dealer for the purpose of jointly offering variable products. Unlike the scenarios above, it appears that much of the infrastructure required for the offer and sale of variable products resided within the insurance agencies rather than the broker-dealers; accordingly, the insurance agencies in these arrangements often played a substantial role in the offer and sale of variable products.

**2. Insurance Networking Developments Since 1995**

**First of America No-Action Letter.** In 1995, the Staff issued a response to First of America Brokerage Service, Inc., setting forth a comprehensive set of terms and conditions for insurance networking arrangements ("First of America"), upon which many current insurance networking arrangements are modeled.[9] In the First of America response letter, the Staff stated

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[6] *See, e.g., Principal Marketing Services, Inc.* (avail. June 2, 1988); *Pacific Mutual Life Insurance Co.* (avail. April 13, 1989); *Traditional Equinet Business Corporation of New York* (avail. Jan. 8, 1992); *MML Investors Services, Inc.* (avail. Mar. 6, 1992).

[7] *See, e.g., Parkwood Financial Services, Inc.* (avail. July 1, 1987); *Pathway Financial* (avail. Sept. 21, 1987); *Seligman Marketing, Inc.* (avail. July 26, 1988); *Scudder Fund Distributors, Inc.* (avail. Oct. 12, 1988); *Mariner Financial Services, Inc.* (avail. Dec. 16, 1988); *Douglas Bremen & Co.* (avail. Dec. 19, 1988); *Investacorp, Inc.* (avail. Mar. 16, 1989); *Transamerica Financial Resources, Inc.* (avail. Sept. 19, 1989); *The Wolper Ross Corporation* (avail. Oct. 16, 1991); *Investment Centers of America, Inc.* (avail. June 5, 1992); *Delta First Financial, Inc.* (avail. Sept. 21, 1992); *FIMCO Securities Group, Inc.* (avail. July 16, 1993).

[8] *See, e.g., M Financial* (avail. Nov. 2, 1987 and June 14, 1988).

[9] *Howard & Howard* (*sub. nom. First of America Brokerage Service, Inc.*) (avail. Sept. 28, 1995).

that it would no longer entertain requests for no-action relief for insurance networking arrangements unless they presented novel issues. Among other things, the Staff stated:

> You further represent that many states impose requirements relating to the domestic incorporation of insurance agencies and restrictions relating to foreign control of insurance agencies. To comply with these and other restrictions imposed by state insurance laws, First of America proposes to enter into agreements ("Networking Agreements") with insurance agencies ("Insurance Agency or Agencies"), each of which will be licensed to sell insurance in at least one state. . . . .

**Revocation Letter**. The Revocation Letter revoked two no-action positions that had been taken with respect to M Financial Holdings, Inc. While the Revocation Letter focuses on the specific no-action relief granted to M Financial Holdings, Inc., the Staff addressed insurance networking generally as follows:

> First of America permits, among other things, the payment of commissions (or other transaction-related compensation) from insurance securities to an unregistered insurance agency, but only if state law requires that such commissions be paid to an insurance agency licensed to sell insurance in that state, and regulatory impediments exist that prevent a particular entity from both registering as a broker-dealer and acquiring an insurance agency license. First of America further requires, among other things, that commissions paid to dual representatives for securities transactions be determined solely by the broker dealer, and that such payments be paid directly by, and on behalf of, the broker-dealer.

## II. NEED FOR RELIEF

Since the issuance of the First of America letter, and as a result of revisions to insurance agency licensing laws in response to initiatives under the Gramm-Leach-Bliley Act of 1999 to streamline and make state licensing more uniform, very few states still have regulatory impediments that *prohibit* a broker-dealer from becoming insurance agency licensed (although, as discussed in detail below, other regulatory and business concerns make it cumbersome in most instances). However, until the issuance of the Revocation Letter, many broker-dealers had interpreted the First of America no-action letter (and its predecessors) as permitting the use of separate legal entities (most often subsidiaries or other affiliates of the broker-dealer) to hold insurance agency licenses in any state, including states that did not have a regulatory impediment to a broker-dealer becoming a licensed insurance agency, and for those entities to receive transaction-based compensation in connection with the sale of variable products. Consequently, the issuance of the Revocation Letter has called into question many longstanding insurance networking arrangements that had been developed in good faith and on the advice of counsel upon a reasonable review of existing Staff no-action positions.

For broker-dealers selling variable products through insurance networking arrangements, complying with the preconditions of the Revocation Letter would for certain broker-dealers likely require either licensing a broker-dealer as an insurance agency in all states in which the broker-dealer solicits variable product sales, or registering the insurance agencies as broker-dealers. As described in greater detail below, this would create a significant burden on the variable products industry. This result would be particularly problematic given that the predominant industry model developed over the years—and based on terms prescribed by First of America—has served the variable products industry well. The practical solution outlined in that letter resulted in a distribution model in which securities regulators and the investing public could be sure that persons selling variable products were subject to the federal securities laws and the rules of any applicable self-regulatory organizations ("SROs"). The model also accounted for the unique regulatory issues posed by the issuance and sale of a product regulated both as a security and as an insurance product. For instance, the insurance networking arrangements described in First of America not only provided assurance that persons selling variable products were properly licensed, trained and supervised, it enabled large financial services complexes to segregate their insurance business from their traditional securities business, which was valuable for both business and risk management reasons. From a business perspective, many variable product distributors have structured their operation and administration of variable products in a manner that is separate from their other securities business. In doing so, they have been able to achieve efficiencies and reduce administrative costs and burdens that may exist where the functions are forced to be merged for both variable product and other securities business. This practice also allows distributors to better assess the financial performance of distinct lines of business. In addition, from a risk management perspective, it may make sense to keep certain insurance agency lines of business segregated from the broker-dealer. This structure can allow financial services organizations to determine that certain insurance lines of business may be more appropriately housed in an entity apart from the broker-dealer.

**1. Predominant Insurance Networking Model**

The predominant organizational structure for distribution in the national variable product marketplace today involves a bifurcated approach in which different legal entities maintain the broker-dealer registration and insurance agency licensing. This structure is a direct outgrowth of the restrictions imposed on the ability of broker-dealers to obtain insurance agency licenses, and the historical development of variable product distribution. Most insurance networking arrangements involve a licensed insurance agency that controls, is controlled by, or is under common control with, the broker-dealer.[10] In some cases, there are management agreements, common officers or directors, or complicated ownership structures of both the broker-dealer and the insurance agency that make it difficult to determine whether there is a "control" relationship between the broker-dealer and the insurance agency. In other networking arrangements, there may be no affiliation between the insurance agency and the broker-dealer; the only link might be

[10] We use the term "control" in this description of insurance networking arrangements as defined under Form BD – Uniform Application for Broker-Dealer Registration.

individuals who are registered representatives of a broker-dealer who are also licensed insurance agents associated with one or more insurance agencies ("dual representatives") and the written insurance networking agreement.

We note that the insurance networking no-action letters have never been conditioned on demonstrating some precisely articulated level of "affiliation" or "control" between the insurance agency and the broker-dealer, and have granted relief in a number of cases simply through an indication that there was a contractual relationship between the parties.[11] We believe that the rigorous framework imposed on associated persons, both registered and unregistered, under SEC and SRO rules provides significant and substantial controls on the individuals and entities who may be involved with variable product marketing. Moreover, the written agreement that memorializes the insurance networking arrangement would contain covenants identifying each party's duties and obligations, including those addressing supervisory responsibilities, limitations on the activities and compensation of unregistered personnel, recordkeeping and the payment and reporting of commissions, that also create additional and adequate safeguards to ensure that insurance networking activities are conducted in accordance with those SEC and SRO rules. In light of the foregoing, we believe that the existence of a "control relationship" or "affiliation" is not necessary to ensure that these networking arrangements are compliant with applicable laws, rules and regulations. As you will see in the representations below, we therefore have not suggested that any concept of "affiliation" between a broker-dealer and a networking insurance agency must be demonstrated to obtain the relief requested under this letter.

While insurance networking arrangements have evolved over time, today most arrangements, regardless of the type of distribution channel involved, have the following characteristics:

- Variable products are sold by dual representatives operating under an insurance networking agreement between a registered broker-dealer and an insurance agency.

- Variable product sales activity of the dual representatives is subject to the control and supervision of the registered broker-dealer.

- Registered broker-dealers and the insurance agencies with whom they network enter into selling agreements with the issuing insurer and/or the principal underwriter of the variable products. Under such selling agreements, and under SRO rules, the registered broker-dealer is required to supervise the sales activities of the dual representatives, conduct suitability reviews and determine the compensation paid to the dual representatives for variable products sales.

- Insurance agencies are usually parties to the selling agreements along with the registered broker-dealer for the purpose of complying with state insurance laws. Alternatively, the

[11] *See, e.g., The Wolper Ross Corporation* (avail. Oct. 16, 1991).

selling agreements require the registered broker-dealer to comply with state insurance laws by conducting sales in conjunction with properly licensed insurance agencies.

- Selling agreements generally call for payment of variable product compensation to an insurance agency licensed in the state of sale. All revenues generated from variable product sales are recorded on the registered broker-dealer's books and records.

- All networking insurance agencies and registered representatives involved in securities transactions are associated persons of a broker-dealer and subject to SEC and Financial Industry Regulatory Authority, Inc. ("FINRA") jurisdiction.

**2. Unique Regulatory Considerations Facing Broker-Dealers Wishing to Obtain Insurance Agency Licenses and Insurance Agencies Wishing to Register as Broker-Dealers**

Requiring a broker-dealer to hold an insurance agency license subjects the broker-dealer to state insurance laws. Given the detailed manner in which broker-dealers are regulated under the Exchange Act and SRO rules, the insurance laws and regulations adopted in at least some of the 50 states regarding the operation of insurance agencies will likely conflict with the requirements imposed on broker-dealers by the SEC and/or SROs. We note, by way of example, that some states require a licensed insurance agency to follow naming conventions, such as having the phrase "insurance agency" appear in the name, that could require a name quite different from the broker-dealer's name. While the broker-dealer could file a "doing business as" name for use in conjunction with insurance agency activities in the state and receive an insurance agency license, this practice could create significant customer confusion because a firm operating on a 50-state basis could be compelled to do business under different names. Such an approach is also potentially confusing to customers who recognize the name and branding of their broker-dealer firm. In addition, at least one state imposes separate capital requirements on limited liability companies holding insurance agency licenses, and some states also impose particular recordkeeping requirements on an insurance agency.

This problem illustrates an important point that results from the dual regulatory structure of variable products: any broker-dealer that would be licensed as an insurance agency on a 50-state basis is subject to 50 different sets of requirements in connection with its operations and structure, meaning the chances of the "combined entity" being subject to disparate and inconsistent standards under the insurance laws and the federal securities laws are fairly high. We thus fear that broker-dealers selling variable products would need to seek no-action relief from the Staff and/or staff of an SRO on a regular basis whenever a substantive requirement under an insurance law or regulation is not entirely consistent with the federal securities laws and/or SRO rules.

### 3. Existence of Additional Safeguards for Networking Arrangements under NASD Rules 3010 and 3012 and FINRA Rule 3130[12]

Under FINRA rules governing annual reviews of broker-dealers, insurance networking relationships are subjected to both ongoing and periodic review for compliance with applicable legal requirements and standards.

NASD Conduct Rule 3012 requires FINRA member firms, among other things, to designate one or more principals to establish, maintain, and enforce a system of supervisory control policies and procedures that test and verify whether the member firm's supervisory procedures are reasonably designed to comply with applicable securities laws and NASD rules and to amend those supervisory procedures when necessary. The principal must produce a report to the firm's senior management at least annually that details the firm's system of supervisory controls, provides a summary of the test results and discusses significant identified exceptions as well as any additional or amended supervisory procedures created in response to the test results.

FINRA Rule 3130 requires the chief executive officer of each broker-dealer to annually certify that senior executive management has in place processes to: (1) establish, maintain, and review written supervisory policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, Municipal Securities Rulemaking Board ("MSRB") rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory, and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which must be reasonably designed to ensure continuing compliance with FINRA rules, MSRB rules and federal securities laws and regulations.

Finally, NASD Conduct Rule 3010 has long required the establishment of a supervisory system for a member firm's business activities, including the adoption of policies and procedures reasonably designed to achieve compliance with applicable securities laws and regulations and NASD and MSRB rules.

These review and testing requirements ensure that broker-dealers will adequately supervise their insurance networking arrangements, and conduct periodic reviews to verify that they (and their associated persons) comply with the insurance networking representations discussed below.

### 4. Conclusions

Retaining a structure that was developed in good faith over many years and operated without significant regulatory problems would allow broker-dealers selling variable products to

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[12] The references herein to the rules applicable to FINRA member firms are identified either as "FINRA" rules or "NASD" rules depending on whether such rules appear in the FINRA consolidated rulebook or remain in the NASD rulebook.

avoid the expense and burdens of examining, reviewing and revising many facets of their business including, but not limited to: reporting lines; chain of command; licensing; supervisory structure; books and records; and commission and account processing and compensation systems. As noted above, we believe that business and legal impediments still exist that argue against requiring broker-dealers to obtain all the required state insurance agency licenses and operating as broker-dealers and insurance agencies on a 50-state basis. As described below, all securities services provided in connection with the sale of variable products will continue to be provided only through dual representatives who are registered representatives of a broker-dealer and subject to all applicable FINRA rules related to the offer and sale of variable products. Moreover, the SEC will continue to have complete access to the applicable books and records related to variable product sales, as well as regulatory oversight over the insurance agencies and their personnel in their capacity as associated persons of a broker-dealer.

**5. Extending Paymaster Arrangement Relief to Payments by Insurance Agencies**

Soon after insurance companies entered the variable products industry they sought relief from broker-dealer regulatory requirements so that they could pay variable product sales compensation directly to their agents on behalf of their broker-dealer affiliates. The SEC issued an interpretive release in 1968 ("Release 8389") that is still applicable to the variable products industry today.[13] Release 8389 states that the Commission would not object if an insurer paid commissions to its agents for variable products sales, even though the insurer was not registered as a broker-dealer, so long as the insurer did so on behalf of its broker-dealer affiliate, and the making of payments by the insurer to the agents was performed as a "purely ministerial service" for the broker-dealer, and related records were reflected on the books and records maintained by or for the broker-dealer. Release 8389 requires that the services be provided pursuant to a written agreement and that the insurer agrees to make any books and records maintained by it available to the SEC for inspection upon request.

A few no-action letters have elaborated on the conditions set forth in Release 8389. For example, the Staff stated in a 1988 no-action letter that, for the performance of commission payment services by an insurer to be considered a "purely clerical and ministerial function," the payments must be made only in "strict accordance" with the instructions of the broker-dealer and the insurance company must not exercise any discretion over the amount or allocation of the payments.[14] In addition, the Staff has stated that the broker-dealer can be related to the insurer issuing the variable products merely by sharing a common parent, rather than as a matter of the direct parent-subsidiary relationship as described in Release 8389.[15] Also, the paymaster need

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[13] *See Distributions of Variable Annuities by Insurance Companies Broker-Dealer Registration and Regulation Problems Under the Securities Exchange Act of 1934,* Exchange Act Release No. 34-8389 (Aug. 29, 1968).

[14] *See Allstate Life Ins. Co., Lincoln Benefit Life Co.* (avail. Sept. 12, 1988).

[15] *See, e.g., id.*; *Sentry Insurance a Mutual Company* (avail. Sept. 6, 1987).

not be the issuer of the variable products, so long as it is affiliated with the issuer of the variable products.[16]

Although Release 8389 and the cited no-action letters concerned payments by insurance company issuers, not insurance agencies, we believe Staff concerns related to the participation or influence of an insurance agency in the payment of transaction-based securities compensation for variable product sales to registered representatives under an insurance networking relationship would be addressed by representations outlined below that are modeled on the restrictions set forth in Release 8389, and request the Staff's assurance that such payments are permissible.

## III. PROPOSAL

In light of the foregoing, we seek assurances from the Staff that it will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act against insurance agencies if they are parties to or enter into insurance networking arrangements with registered broker-dealers without the insurance agencies registering as broker-dealers under Section 15(b) of Exchange Act, subject to the following representations:

**Registered Broker-Dealers**

- The registered broker-dealer will supervise the activities of dual representatives, including by providing conduct manuals and/or written policies and procedures to dual representatives, and monitoring their activities to help ensure compliance with the conduct manual and/or the written policies and procedures.
- The registered broker-dealer will provide conduct manuals and/or written policies and procedures to any insurance agencies, and to unregistered employees of the insurance agencies, specifying the limitations on what activities they may engage in with respect to variable products. The broker-dealer will conduct periodic reviews consistent with SRO obligations to ensure that the insurance agencies and their unregistered employees are complying with the conduct manual and/or written policies and procedures, and shall make and keep a record of the results of any findings related to that periodic review.
- Designated principals of the registered broker-dealer authorized to supervise employees will train, supervise, control, and assume responsibility for *all* of the securities activities of the dual representatives in connection with the offer and sale of variable products.
- The registered broker-dealer, in accordance with SRO rules, will approve all variable product advertisements and promotional materials it creates prior to their distribution to ensure they are in compliance with applicable statutory and regulatory requirements of the federal and state securities laws and SRO rules. The registered broker-dealer will assume responsibility for all such advertisements and promotional materials, and all such materials will be the

[16] *Id.*

materials of the registered broker-dealer for purposes of the federal and state securities laws and SRO rules.

- The registered broker-dealer will maintain all required books and records related to transactions in variable products, and will make them readily accessible to the staff of the Commission, to FINRA, to any other SRO; or to other relevant federal and state governmental authorities, including state insurance regulators, upon request. The registered broker-dealer will ensure that these books and records comply with all applicable statutory and regulatory requirements of the federal and state securities laws and SRO rules, including Section 17(a) of the Exchange Act and the rules thereunder.
- Registered broker-dealers will handle customer funds and securities in accordance with all applicable statutory and regulatory requirements of the federal and state securities laws and SRO rules, in particular the net capital and customer protection rules of the federal securities laws.
- In accordance with NASD Conduct Rule 3012 and FINRA Rule 3130, registered broker-dealers entering into insurance networking arrangements will test and verify their policies and procedures regarding those arrangements at least annually to verify that they are in compliance with the representations and conditions of this letter.
- Any books and records related to transactions in variable products maintained by the insurance agencies will be the books and records of the registered broker-dealer and will be made readily accessible to the staff of the Commission, to FINRA, to any other SRO, or to other relevant federal and state governmental authorities, upon request.

**Dual Representatives**

- All securities services provided in connection with the offer and sale of variable products will be provided only through dual representatives who are: (1) registered representatives of the broker-dealer that are also registered and qualified as necessary with FINRA; and (2) licensed by an appropriate state regulator as insurance agents in the states in which they do business and, when required under applicable state insurance law, appointed insurance agents of the insurers for which they solicit applications for variable products.
- If any dual representative is subject to a bar imposed by the Commission or an SRO, suspended by the Commission or an SRO from association with a broker-dealer, or subject to any final order from a state insurance commission or state securities commission (or agency or officer performing like functions) that bars or suspends the dual representative from being associated with an insurance agency or broker-dealer, the insurance agency will terminate or suspend that dual representative from all variable product sales activities.

- Dual representatives will adhere to the terms contained in the conduct manuals and/or written policies and procedures provided by the registered broker-dealer.
- Only dual representatives may receive or handle customer funds routed through the registered broker-dealer and the insurance agencies. Furthermore, only dual representatives may receive or handle customer funds or securities in connection with the sale of variable products.

**Insurance Agencies**

- In an insurance networking arrangement, each insurance agency is an associated person of the networking broker-dealer within the meaning of Section 3(a)(18) of the Exchange Act. Any insurance networking agreement between a registered broker-dealer and an insurance agency that is modified or entered into after a response to this no-action letter request becomes publicly available will reflect this representation.
- In the event that any dual representative is subject to a bar imposed by the Commission or an SRO, is suspended by the Commission or an SRO from association with a broker-dealer, or is subject to any final order from a state insurance commission or state securities commission (or agency or officer performing like functions) that bars or suspends such person from being associated with an insurance agency or broker-dealer, the insurance agency will terminate or suspend that dual representative from all variable product sales activities.
- Each insurance agency will have reasonable written policies and procedures designed to ensure that only dual representatives receive or handle customer funds routed through the registered broker-dealer and the insurance agency, and that only dual representatives receive or handle customer funds or securities in connection with the sale of variable products.
- Each insurance agency will monitor the activities of its unregistered employees and will have reasonable written policies and procedures designed to ensure their compliance with the applicable conduct manual and/or written policies and procedures provided by the registered broker-dealer.
- Each insurance agency will have reasonable written policies and procedures designed to ensure that the insurance company issuing the variable product is the payee (or in the case of electronic fund transfers, the direct recipient) of any customer funds intended for the purchase of a variable product, and that an insurance agency, or any of its associated persons is not the payee (or in the case of electronic fund transfers, the direct recipient) of any customer funds intended for the purchase of variable products.

**Unregistered Employees**

- Unregistered employees will only have clerical or ministerial involvement in variable products transactions, will not engage in any securities activities that are

not clerical or ministerial, and will not receive any compensation based on transactions in variable products or the provision of advice with respect to variable products.

- Unregistered employees will not handle or maintain customer funds or securities in connection with transactions in variable products.
- Unregistered employees will not recommend any variable products, give investment advice with respect to variable products, discuss the merits of any variable products or handle any question that might require familiarity with variable products. Unregistered employees will refer all variable products-related questions to dual representatives.

**Transaction-Based Payments**

- Commissions resulting from transactions in variable products may be paid by the insurance company to the registered broker-dealer or the insurance agency. Commissions paid to dual representatives on transactions in variable products will be determined solely by the registered broker-dealer. Such payments will be paid by, or as directed by and on behalf of, the registered broker-dealer.
- All commissions received for transactions in variable products will be reported on the registered broker-dealer's FOCUS and FINRA Fee Assessment Reports.[17]

**Payment of Transaction-Based Compensation by Insurance Agencies**

- In the event that a registered representative is paid transaction-based compensation that is related to variable product sales by insurance agencies that have insurance networking arrangements with a registered broker-dealer, such payments are made in accordance with the applicable conditions announced in Release 8389 and the Staff's guidance in the Allstate no-action letter discussed above (*see* footnote 14). In particular, the following representations must be satisfied:
    - Any transaction-based payments related to variable product sales that are made by the insurance agency are made on a purely ministerial basis pursuant to instructions received from the registered broker-dealer. The insurance agency's payments will be made only in accordance with the instructions of the registered broker-dealer; the insurance agency will not exercise any discretion over the amount of variable product payments. The foregoing applies to all transaction-based payments made in connection with the distribution of variable products, whether the payments are commissions, bonuses, or other forms of transaction-based compensation.

[17] FOCUS reports are financial and operational reports required to be filed by registered broker-dealers periodically. The FINRA Fee Assessment Report is required to be filed annually by FINRA member firms; the fee assessment report determines the annual fees payable by a member firm.

- Any transaction-based payments related to variable product sales that are made by the insurance agency are made only to persons registered with and under the supervision and control of the registered broker-dealer.
- Any transaction-based payments related to transactions in variable products sales that are made by the insurance agency are made "on behalf of" the registered broker-dealer.
- As is the case under the First of America conditions described above, regardless of the fact that the insurance agency may be making the payments of the variable product transaction-based compensation to the dual reps, the registered broker-dealer assumes full responsibility for the securities activities of all persons in connection with the sale of variable products, including responsibility for training, supervision and control as contemplated by Section 15(b)(4)(E) of the Exchange Act and NASD Conduct Rule 3010.

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We believe that insurance networking arrangements that operate in accordance with the above representations will prevent any person that is not a registered broker-dealer, or a properly licensed associated person of a registered broker-dealer subject to the supervision or control of the broker-dealer, from directing or controlling the sales of variable products or incenting dual reps associated with a broker-dealer to sell certain variable products. These representations also will ensure that the full scope of variable product sales efforts will be conducted by the broker-dealer and that the broker-dealer will fully comply with FINRA and SEC rules. We therefore request assurances from the Staff that it will not recommend enforcement action to the Commission under section 15(a)(1) of the Exchange Act if registered broker-dealers enter into arrangements, described above, with insurance agencies under which the parties will perform the activities and satisfy the representations described above in connection with the distribution of variable products without the insurance agencies registering as broker-dealers under Section 15(b) of the Exchange Act.

Sincerely,

Sutherland Asbill & Brennan LLP,
For the Committee of Annuity Insurers

By: Eric A. Arnold
Eric A. Arnold

Securities Industry and Financial Markets Association

By: Ira D. Hammerman
Ira Hammerman

American Council of Life Insurers

By: Carl B. Wilkerson
Carl B. Wilkerson