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May 31, 2011

VIA ELECTRONIC MAIL

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

Re: File No. S7-12-11; Release No. 34-64140
Incentive-based Compensation Arrangements

Dear Ms. Murphy:

This letter is submitted on behalf of our client, Mutual of America Life Insurance Company (the "Company"), in response to the request for comments on *Incentive-based Compensation Arrangements* (the "Proposing Release").[1] The Proposing Release requests comment on rules proposed to be adopted under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and other federal statutes (the "Proposed Rules"). The Proposed Rules would give effect to Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"),[2] which requires the federal financial regulators, including the U.S. Securities and Exchange Commission (the "Commission" or "SEC"), to adopt rules prohibiting incentive-based payment arrangements that encourage inappropriate risks by a financial institution covered by Section 956. Section 956 also requires a covered financial institution to disclose to its appropriate federal regulator the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides "excessive compensation, fees, or benefits" or "could lead to material financial loss" to the institution. The Dodd-Frank Act does not require a covered financial institution to report the actual compensation of particular individuals as part of this requirement.

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[1] The Proposing Release was published by the SEC as Exchange Act Release No. 64140 (Mar. 29, 2011). The Department of the Treasury, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Department of the Treasury, the National Credit Union Administration and the Federal Housing Finance Agency, all joined in publishing the Proposing Release and issued it pursuant to their own authorizing statutes.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

For the reasons stated below, we believe that the SEC's definition of "covered financial institution" as proposed in the Proposing Release should be amended to exempt the Company from the Proposed Rules. This request is based on the fact that the Company is in a unique situation and is inherently different from the types of broker-dealers that Congress intended Section 956 to reach. The Company is primarily and essentially an insurance company, not a broker-dealer. The Company's assets are insurance company assets, not broker-dealer assets. In fact, we believe that the Company is the only insurance company in the United States registered as a broker-dealer with the Commission. If the Proposed Rules are not amended to exempt the Company, the Company and its policyholders will be harmed in a manner that was certainly not intended by the Dodd-Frank Act, and the purposes of the Dodd-Frank Act will not be furthered by the inclusion of the Company within rules adopted pursuant to Section 956.

I. BACKGROUND

A. The Company's Business and SEC Regulation

The Company was founded in 1945 and today is a mutual life insurance company organized under the laws of the State of New York. Its primary prudential regulator is the New York Insurance Department. The Company provides retirement and employee benefit plans in the small and medium-size company market, principally, although not exclusively, to employees in the not-for-profit social health and welfare field, as well as individual retirement products such as IRAs and Flexible Premium Annuities (FPAs). These products are funded through variable accumulation annuity contracts. The Company also offers and sells fixed annuities and life insurance and disability benefits on both a group and individual basis.

In 1983, the Company established a separate account under New York state insurance law for the purpose of funding variable annuity contracts to be issued by the Company. A different separate account was also established for variable universal life policies. The separate accounts were registered with the Commission as investment companies under the Investment Company Act of 1940, as amended (the "1940 Act"). The Company also registered certain variable accumulation annuity contracts and variable universal life policies under the Securities Act of 1933, as amended (the "1933 Act"), which contracts are funded in part by the separate accounts. The Company registered with the SEC as a broker-dealer in 1984 in order to sell these products.[3] The Company's products are sold only by its salaried sales force, each member of which is properly licensed by, and/or registered with, the necessary states for insurance sales purposes, is registered with FINRA, and only distributes the Company's variable products. The Company does not use third-party administrators, general agents, independent agents,

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[3] The Company is also a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") (CRD No. 15356), which membership permits it only to engage in the sale of variable life insurance and annuities.

commissioned agents or any other third parties to distribute or service its products. There are no sales charges or front or back-end loads associated with the Company's products.[4]

At the time of its SEC broker-dealer registration, the Company was not alone among insurance companies in registering as a broker-dealer. In 1968, following the Supreme Court's ruling in *SEC v. Variable Annuity Life Insurance Co. of America et al.*,[5] any insurance company doing business in the United States and offering variable annuities for sale needed to either register itself as a broker-dealer or form an affiliate or subsidiary and register that affiliate or subsidiary as a broker-dealer. SEC staff gave this choice to insurance company issuers of variable annuities in a seminal release commonly referred to as "Release 8389."[6] In the years following the publication of Release 8389, many insurance companies elected to register as broker-dealers.[7]

Release 8389 recognizes the differences between insurance companies, broker-dealers that are owned by insurance companies, and traditional, non-insurance company affiliated broker-dealers. It creates a regulatory structure for insurance companies registered as broker-dealers that addresses the practical difficulties such a company has in complying with rules designed for traditional broker-dealers. For example, insurance companies registered as broker-dealers with the SEC are not required to identify all of their officers on SEC Form BD in recognition of the fact that many such officers will not be directly or indirectly engaged in broker-dealer activities.[8] With respect to financial reporting, the Release permits an insurance company registered as a broker-dealer and exempt from Exchange Act Rule 15c3-1 (the "Net Capital Rule") to comply with the reporting requirements set forth in Exchange Act Rule 17a-5 by submitting to the SEC a copy of its most recent certified financial statement filed with the

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[4] The Company also distributes shares of Mutual of America Investment Corporation ("Investment Corporation"), an investment company registered under the 1940 Act. However, Investment Corporation shares are only available to the Mutual of America Separate Accounts and to two inactive separate accounts of a former subsidiary. The inactive separate accounts are a declining block of business, as no new sales have been permitted in the accounts since 2001. Mutual of America distributes shares of Investment Corporation solely for the purpose of facilitating the investment of the separate accounts assets in the funds of Investment Corporation and for no other purpose.

[5] 359 U.S. 65 (1959) (hereinafter "VALIC") at 71-73. The Supreme Court held that variable annuities are "investment contracts," and thus "securities," under section 2(a)(1) of the 1933 Act. *See also* SEC v. United Benefit Insurance Co., 387 U.S. 202, 212 (1967).

[6] Exchange Act Release No. 8389 (Aug. 29, 1968). The SEC has extended this relief to insurance company issuers of variable life insurance policies. *See, e.g.*, Sentry Insurance a Mutual Company (pub. avail. Sep. 6, 1987); Pacific Mutual Life Insurance Co. (pub. avail. Apr. 13, 1989); Century Life of America (pub. avail. Aug. 6, 1987).

[7] To our knowledge, the Company is currently the only insurance company registered as a broker-dealer with the SEC. For reasons discussed in this letter, transferring the Company's business to another broker-dealer or forming a new broker-dealer would impose significant costs on the Company's policyholders.

[8] *Id.*

SEC pursuant to the requirements of the 1933 Act.[9] Most notably, Release 8389 provides that an exemption from the Net Capital Rule is available to insurance companies that are registered as broker-dealers and have substantial financial positions and satisfactory safeguards for the protection of customer funds and securities.[10]

The Company has relied on the guidance provided in Release 8389 for almost thirty years. In accordance with that guidance, the Company sought and obtained an exemption from the Net Capital Rule in 1984.[11] This exemption recognizes that reserves held by the Company in order to comply with applicable state insurance law are not customary broker-dealer debts, but, without relief from the Net Capital Rule, would make it unlikely that the Company could consistently meet the requirements of that rule. The exemption also acknowledges that the Company "will not be engaged in a general securities business or have customers' accounts in the customary manner of a broker-dealer."[12]

B. Regulation by the New York Insurance Department

As an insurance company organized under the laws of New York, the Company is subject to extensive regulation by the New York Insurance Department. Many of the New York insurance laws and regulations to which the Company is subject are directed at ensuring the financial viability of New York domiciled insurance companies or regulating the standard of care of a New York-domiciled insurance company's directors.

For example, New York insurance laws limit the types of financial instruments in which insurance companies may invest[13] and limit the amount of insurance company general account assets that may be dedicated to any particular type of investment.[14] Thus, the entirety of the Company's general account assets are subject to restrictions on investment in compliance with New York insurance laws and regulations. Further, as a matter of policy that reflects the

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[9] *Id.*

[10] *Id.* These safeguards include: (1) the maintenance of blanket fidelity bonds covering all officers, employees, and agents; (2) arrangements for sending all customer payments directly to the insurance company without handling by sales personnel, and for the insurance company to mail certificates directly to the customer; (3) restrictions on withdrawals of funds and securities from the company's separate account; and (4) the maintenance of internal and independent audit systems. *Id.*

[11] Mutual of America Life Insurance Co. (pub. avail. Aug. 19, 1984).

[12] *Id.*

[13] *See* N.Y. INS. LAW § 1405 *et seq.* (McKinney's 2011) (limiting insurance company general accounts to investments in the following types of financial instruments: government obligations; corporate obligations and preferred shares; obligations secured by real property; real property; personal property; equities; foreign investments; and subsidiary investments).

[14] *See* N.Y. INS. LAW §§ 1405, 1409, 1411, 1705 (McKinney's 2011).

Company's orientation toward the not-for-profit market, the Company's general account investment policies are considerably more conservative than the limits established by New York insurance law. Both New York insurance law and the Company's more conservative investment policy are aimed at minimizing investment risk that could adversely affect the Company's ability to perform under its contracts and policies, promoting needed liquidity and maintaining a strong capital position. The Board of Directors of a New York-domiciled insurance company or a committee composed of Board members must approve loans and investments,[15] and directors are held to a "prudent person" standard in performing their duties, meaning that they must act in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.[16]

New York Insurance Department Regulation 126[17] requires the Company to provide an annual actuarial certification to the Insurance Department that its assets and cash flow are adequate to meet its contractual obligations to its policyholders under a number of different interest rate scenarios. The Company also is subject to an extensive examination by the New York Insurance Department every five years. The examination process includes a risk-based financial audit of the Company's financial statements that focuses on certain items in the financial statements including, among others, premiums, investments and reserves and also focuses on the Company's claims paying ability, which involves evaluating the quality of its investments and the matching of the duration of these investments to its liabilities.

Notably, New York insurance laws place certain limitations on the compensation that can be paid to officers and directors of insurance companies. More specifically, officers and directors of life insurers are generally prohibited from receiving direct or indirect compensation beyond their fixed salaries for negotiating, procuring, recommending or aiding in any purchase or sale of property, or loan, made by a life insurer or any affiliate or subsidiary thereof.[18] In addition, insurers are generally prohibited from directly or indirectly making loans to their officers and directors.[19] With respect to an insurance companies' officers and employees, Section 4230 of the New York Insurance Law requires that the board of directors of a life insurance company approve the payment of any "salary, compensation or emolument" to a principal officer or to a salaried employee making a salary equal to or greater than the compensation paid to any principal officer.[20] This section provides in part: "No principal officer or employee of the class described in subsection (a) hereof who is paid a salary for his services

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[15] *See* N.Y. INS. LAW § 1411(a) and 1411(b).

[16] *See* N.Y. BUS. CORP. LAW § 717(a) (McKinney 2011).

[17] N.Y. COMP. CODES R. & REGS. tit. 11, § 95.1 *et seq.* (2011).

[18] *See* N.Y. INS. LAW § 1411(e) (McKinney 2011).

[19] *See* N.Y. INS. LAW § 1411(f)(1) (McKinney 2011).

[20] See N.Y. INS. LAW § 4230(a) (McKinney 2011).

shall receive any other compensation, bonus or emolument from such company, directly or indirectly, except in accordance with a plan recommended by a committee of the board pursuant to subsection (b) of section one thousand two hundred two of this chapter [committee to be comprised solely of outside directors] and approved by the board of directors."[21] Section 4230(b) restricts agreements to pay a salary, compensation or other emolument to an officer or salaried employees (except sales agents covered by section 4228) to a maximum of 36 months in length.[22]

In addition, as part of its required annual statutory financial statement filing with the New York Insurance Department, the Company must disclose the details of the compensation paid to certain officers.

II. COMMENTS

As noted above, Section 956(b) of the Dodd-Frank Act requires the federal financial regulators, including the Commission, to prohibit incentive-based payment arrangements, or any feature of any such arrangement, at a covered financial institution that such federal agencies determine encourages inappropriate risks by a financial institution by providing excessive compensation or that could lead to material financial loss.[23] Section 956(e)(2) defines a "covered financial institution" as any of the following entities with assets of $1 billion or more: a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act; a broker-dealer registered under section 15 of the Exchange Act; a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; an investment adviser, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940; the Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; and any other financial institution that the appropriate federal regulators, jointly, by rule, determine should be treated as a covered financial institution.[24]

The SEC has proposed to define "covered financial institution" to mean "a broker or dealer registered under Section 15 of the [Exchange Act] and an investment adviser [defined under the Investment Advisers Act of 1940] that has total consolidated assets of $1 billion or

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[21] *See* N.Y. INS. LAW § 4230(c) (McKinney 2011).

[22] *See* N.Y. INS. LAW § 4230(b) (McKinney 2011). Section 4228 circumscribes the types of allowances, compensation and reimbursement that are permitted and places limits on the amounts and duration of various forms of compensation and reimbursement for sales personnel with respect to individual products sales. *See* N.Y. INS. LAW § 4228(d)-(e) (McKinney 2011). Section 4228 also requires insurers to file their compensation arrangements for sales personnel with the Insurance Department and to perform and file a demonstration of compliance with section 4228 every two years. *See* N.Y. INS. LAW § 4228(f) (McKinney 2011).

[23] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 1905 (2010).

[24] *Id.*

more."[25] It proposes to define "total consolidated assets" to mean, for brokers or dealers registered under Section 15, total assets reported in the broker or dealer's most recent year-end audited Consolidated Statement of Financial Condition filed pursuant to Exchange Act Rule 17a-5.[26]

The Company is registered as a broker-dealer under Section 15 and has total assets in excess of $1 billion reported on its most recent Consolidated Statement of Financial Condition. As discussed below, the Company files its Statement of Financial Condition pursuant to an exemption from the Net Capital Rule and does not report its financials in the same manner as traditional broker-dealers, in recognition of the Company's insurance company business. Nonetheless, the Company potentially could be deemed a "covered financial institution" under the Proposed Rules. For the reasons stated below, the Company believes that the proposed definition of "covered financial institution" should be amended to exclude broker-dealers such as the Company that are exempted from the Net Capital Rule.

A. The Proposed Rules Should Recognize Differences Among Broker-Dealers.

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

> I am also very interested in [commenters'] views on how the proposal might affect the broad array of financial firms covered by Section 956, including broker-dealers and advisers—most particularly private fund advisers, given how they often structure their compensation; and the

[25] *See* Proposing Release, *supra* note 1, at 187.

[26] *Id.* at 188. The Proposed Rules also make a distinction between "covered financial institutions" and "larger covered financial institutions." A "larger financial institution" means a covered financial institution with total consolidated assets of $50 billion or more. A larger covered financial institution is subject to additional regulation, such as deferral of incentive-based compensation for executive officers, as well as a requirement that the board of directors for such an institution identify covered persons who have the ability to expose the institution to substantial losses and approve such covered persons' incentive-based compensation package. *Id.* at 192-93. The Company would not be a "larger covered financial institution" under the proposed definition of that term.

> proposal's potential impact on broker-dealer and investment adviser business models and the variety of services they provide to investors. *This is an area where we want to be very attuned to unintended consequences.*[27]

During the same open meeting, Commissioner Paredes encouraged commenters to explain whether it would be "appropriate to treat broker-dealers and investment advisers differently from other financial institutions, such as banks," because in his view, "*there is ... room to treat different types of financial institutions differently*."[28]

We believe the Company's potential inclusion as a "covered financial institution" under the Proposal is an example of the unintended consequences the Commission acknowledged during its open meeting. The Company is not a traditional broker-dealer and it is not representative of the types of broker-dealers the Dodd-Frank Act intended to cover.[29] Section 956 of the Dodd-Frank Act focuses on risks that may be inappropriately assumed by a bank, credit union, broker-dealer or investment adviser as a result of the entities' *bank, credit union, broker-dealer or investment adviser activities*;[30] it is not focused on or directed at, an insurance company's insurance business. We believe that Section 956's establishment of a $1 billion threshold was reflective of Congress's intention to regulate broker-dealer (and bank, credit union and investment adviser) businesses that are systemically important.

Neither the Company nor its broker-dealer business is systemically important. Its broker-dealer business is limited to the sale of its own variable life insurance and annuities. All sales of variable products are conducted through the Company's employees. The Company's total assets, as reported in its most recent filing with the Commission pursuant to the financial reporting

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

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

[29] The Proposing Release estimates that 132 Commission-registered broker-dealers have assets of $1 billion or more, and that approximately 55 of these broker-dealers are affiliated with banking organizations. The Company does not know if it was counted among the estimated 77 non-bank broker-dealers that would be subject to the Proposed Rules but believes that among these non-bank broker-dealers, the Company is the only entity not primarily engaged in the broker-dealer business. *See* Proposing Release, *supra* note 1, at note 40 and accompanying text; Proposing Release, *supra* note 1, at note 46 and accompanying text.

[30] Section 956(e)(2) also includes within the definition of "covered financial institution" the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and any other financial institution that the appropriate federal regulators, jointly, by rule, determine should be treated as a covered financial institution. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 1906 (2010).

requirements of Release 8389, consist entirely of assets invested in a separate account registered with the Commission under the 1940 Act, and assets held in the Company's general account. Both general and separate account assets are subject to and regulated by the New York Insurance Department. The Company invests its general account assets only in the types of financial instruments allowed by New York insurance laws, and in fact holds itself to a stricter and more conservative standard than that imposed by stringent New York insurance law.[31]

The Commission has previously recognized that the assets of insurance companies registered as broker-dealers are qualitatively different from the assets of traditional broker-dealers and thus do not lend themselves to reporting on the financial forms used by traditional broker-dealers. As noted earlier, Release 8389 permits an insurance company registered as a broker-dealer in order to offer and sell variable insurance products, to file with the Commission a copy of its most recent certified financial statement filed with the Commission pursuant to the requirements of the 1933 Act, in lieu of a report fully complying with SEC Form X-17A-5 (the "FOCUS Report"). The FOCUS Report, which gives a snapshot of a broker-dealer's business *as a broker-dealer*, *e.g.*, showing gains and losses in trading accounts, haircuts on securities positions, amounts held at clearing firms, and the segregation of customer funds and securities, was determined not to be a useful report with respect to insurance company broker-dealers. In fact, the Company's audited financial statements are prepared in accordance with accounting practices prescribed or permitted by the State of New York Insurance Department, not U.S. generally accepted accounting principles ("GAAP").

If the Proposed Rules were applied to the Company, the result would be that an insurance company has been singled out, not because of any systemic risk it might pose for the U.S. financial system, but because under another regulatory scheme insurance company issuers of variable products must register themselves or a subsidiary or affiliate as a broker-dealer in order to comply with federal securities laws and as a matter incidental to their insurance businesses. If the Company formed a new entity and registered that entity as a broker-dealer, that broker-dealer would have minimal assets and would not be subject to the Proposed Rules. Although the Company has considered this option, it does not consider it to be an attractive alternative for a number of reasons, including costs. The Company is organized as a mutual company, not a stock company, which means that its owners are its individual policyholders and group contract holders. The disruption, time and costs of registering a new entity as a broker-dealer or transferring its broker-dealer activities to another broker-dealer, particularly in light of the need to satisfy the requirements of the various state insurance laws and regulations as part of such a transfer, would be significant, and such costs would have to be assumed by the Company's

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[31] *See* N.Y. INS. LAW § 1405 *et seq.* (McKinney's 2011).

policyholders. This does not seem like an equitable result of Section 956, nor a result that Congress would have intended.[32]

In publishing Release 8389, the Commission recognized that a flexible approach was necessary with respect to the registration and regulation of insurance company issuers of variable products that must register themselves as broker-dealers in order to comply with federal securities laws. A similar flexible approach is needed with respect to the Proposed Rules to avoid an unintended consequence. In the interests of the Company's policyholders, the Company urges the Commission to amend the definition of "covered financial institution" to exclude SEC-registered broker-dealers that are exempt from the Net Capital Rule.

B. If the Commission Does Not Amend the Definition of "Covered Financial Institution," It Should Amend the Proposed Rules Such That It May Grant Exemptions in the Future, and It Should Accord the Company and Similarly Situated Companies Flexibility in the Design of Their Policies and Procedures under Section 206 of the Proposed Rules.

For all of the reasons noted above, we strongly believe that the Commission should exempt the Company from the Proposed Rules by amending the definition of "covered financial institution" to exclude insurance companies registered as broker-dealers solely to offer their own variable insurance products, and that are exempted from the Net Capital Rule under Release 8389.

If the definition of "covered financial institution" is not amended, we request that the Commission amend the Proposed Rules such that it may grant exemptions from the rules in the future. The Proposing Release states that, "Each Agency may issue supplemental guidance specific to their regulated entities, including guidance as necessary to clarify the regulatory requirements proposed in this rulemaking."[33] The addition of specific exemptive authority to the Proposed Rules would appear to be consistent with this statement. More importantly, however, the ability of the federal financial regulators to grant exemptions to the rules when finalized will be critical to achieving the policy goals expressed by Chairman Schapiro and Commissioner Paredes during the open meeting announcing the Proposal, *i.e.*, the avoidance of unintended consequences.

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[32] We also note that in the Proposing Release the Commission states that one potential benefit of the Proposed Rules would be the allocation of capital by covered financial institutions to less risky investments, and thus the more effective use of capital. *See* Proposing Release, *supra* note 1, at 117. In this regard we note that investments in the Company's general account are already subject to restrictions in composition and concentration pursuant to New York state insurance laws; additional protections from the Proposed Rules would be unnecessary and redundant.

[33] Proposing Release, *supra* note 1 at 17.

If the definition of "covered financial institution" is not amended as requested in this comment letter, we request in the alternative that section 206 of the Proposed Rules be amended to afford the Company, and those similarly situated, flexibility in the design of incentive compensation policies and procedures. Specifically, we request that section 206 be amended to provide flexibility with respect to the strict requirements of section 206(b)(2) and (b)(3) so that, rather than a "one size fits all" approach, the proposed regulation require that the policies and procedures with regard to the design and monitoring of incentive-based compensation arrangements be reasonably designed to achieve the goals of Dodd-Frank Section 956 of eliminating any incentive-based payment arrangement, or any feature of any such arrangement, that encourages inappropriate risks by covered financial institutions. We note that section 206(a) properly recognizes the need for flexibility when dealing with many business models and types, by including this language: "commensurate with the size and complexity of the organization, as well as the scope and nature of its use of incentive-based compensation." We submit that such recognition is even more appropriate in subsections (b)(2) and (3) where specific procedural steps and practices are prescribed. With respect to section 206(b)(2) we believe it would be appropriate to add to this section the language quoted directly above from section 206(a). Similarly, with respect to section 206(b)(3) we believe it would be appropriate to include a reference to the scope and nature of the company's use of incentive-based compensation. With these amendments we believe that subsections (b)(2) and (3) would afford companies the needed flexibility to adopt policies and procedures that reflect their specific business models.

Mutual of America has long-established and well controlled incentive compensation arrangements which, as required by section 4230 of the New York Insurance Law, are subject to annual review and approval by the Board of Directors. To comply with the one size fits all approach of the regulation, particularly as set forth in section 206(b)(2), the Company may well be forced to redesign its approach to risk management. The Company has a conservative approach regarding enterprise risk and an overall low risk profile, which is dictated by senior management and the Board of Directors and consistent with New York state insurance laws and regulations. The Company manages its enterprise risk across the entire spectrum of the Company's operations through a number of internal corporate committees that meet on a periodic basis. Each of these Committees, which are largely comprised of executive and senior officers, is responsible for risk identification and monitoring related to certain broad areas of the Company's operations. The Company's investment policies for the general account are recommended by management and approved by the Board of Directors, and the Board, through its Investment Committee, is provided reports on the general account investments and performance at each meeting. If the Company were required to draft and implement new policies and procedures, its policyholders would bear that cost, for no purpose. The Commission has estimated that these costs will be significant for non-bank broker-dealers, and we agree.[34] Rather than incur these significant costs for a broker-dealer business that is clearly unlike the

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[34] Proposing Release, *supra* note 1, at 82-88, 112-13.

businesses of the other companies that will be covered by the Proposed Rules, we request that the rules be amended so the Company may continue to use its existing risk management systems instead of assuming additional costs to develop and implement new policies and procedures as would be required by 206(b)(2) and (b)(3) as proposed.

III. CONCLUSION

In view of the purposes of Section 956 of the Dodd-Frank Act and what we believe to be the Commission's desire to avoid unintended consequences, the Company respectfully requests that the Commission amend the definition of "covered financial institution" in the manner and for the reasons described above, thereby exempting from the Proposal the Company and any similarly situated broker-dealers that are also insurance companies. The Company does not believe that the Proposed Rules are intended to apply to broker-dealers like the Company whose primary business is insurance and are only registered as broker-dealers because they sell their own variable products.

In the alternative, the Company respectfully requests that: (i) the Commission amend the Proposed Rules such that it may grant exemptions in the future, and (ii) the Commission accord the Company and similarly situated companies flexibility in the design of their policies and procedures under section 206 of the Proposed Rules.

The Company appreciates the opportunity to comment on the Proposal. We would be pleased to provide more specific input on the issues raised in this letter and answer any questions the staff may have regarding our comments. Please do not hesitate to contact Stephen E. Roth (202.383.0158) or 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: Stephen E. Roth

BY: Holly H. Smith

FOR MUTUAL OF AMERICA LIFE INSURANCE COMPANY

cc: James Roth, Executive Vice President and General Counsel
Thomas Martin, Executive Vice President and Deputy General Counsel
Mutual of America Life Insurance Company