From: Hanna, Issa
Sent: Monday, March 10, 2014 5:58 PM
To: OFM Performance and Planning
Subject: SEC Release No. 34-71466 - Draft 2014-2018 Strategic Plan for Securities and Exchange Commission

Please find attached a comment letter responding to SEC Release No. 34-71466 – Draft 2014-2018 Strategic Plan for Securities and Exchange Commission, submitted on behalf of the Committee of Annuity Insurers by Stephen E. Roth and Clifford E. Kirsch of Sutherland Asbill & Brennan LLP.

March 10, 2014

VIA E-MAIL

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Draft Strategic Plan of the U.S. Securities and Exchange Commission for Fiscal Years 2014-2018

Dear Ms. Murphy:

This letter is submitted on behalf of the Committee of Annuity Insurers (the "Committee"),[1] in response to the Draft Strategic Plan of the U.S. Securities and Exchange Commission for Fiscal Years 2014-2018 (the "Draft Plan").[2] The Draft Plan is called for by the Government Performance and Results Modernization Act of 2010, which requires federal agencies to outline their missions, planned initiatives, and performance goals for a five-year period. The Committee appreciates the opportunity to comment on this important initiative.

The Draft Plan is very general in nature, outlining 70 initiatives designed to support four strategic goals of the U.S. Securities and Exchange Commission (the "SEC"). The four strategic goals are:

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[1] The Committee of Annuity Insurers is a coalition of 28 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1982 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] *Draft Strategic Plan of the U.S. Securities and Exchange Commission for Fiscal Years 2014-2018* (Feb. 3, 2014), *available at* http://www.sec.gov/about/secstratplan1418.htm.

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- Establish and maintain an effective regulatory environment;
- Foster and enforce compliance with the federal securities laws;
- Facilitate access to the information investors need to make informed investment decisions; and
- Enhance the SEC's performance through effective alignment and management of human, information, and financial capital.

Each of these goals is accompanied by a number of strategic objectives which in turn are accompanied by various initiatives.

One of the cited objectives is to promote "high-quality disclosure." In order to accomplish this objective, the SEC indicates that it will continue to evaluate and, where necessary, amend its requirements to improve the quality and usefulness of registrants' disclosure to investors.[3] Another cited objective is to seek to ensure that investors have access to high-quality disclosure materials that facilitate informed investment decision-making.[4]

During the past several years, the Committee has urged the SEC to fully embrace electronic delivery of required disclosure documents (*e.g.*, prospectuses, Form ADV, and annual reports).[5] We would urge that the Draft Plan include as an objective the furtherance of electronic delivery of disclosure and further request that this objective be accompanied by a specific initiative to review and modernize as necessary the SEC's regulatory framework relevant to electronic disclosure and to seek avenues to allow required disclosures to be transmitted electronically (by both issuers and intermediaries) without the need for affirmative client consent, while continuing to allow investors to opt-in to paper delivery of disclosure documents.

We note that this broader initiative would impact a number of filings and disclosure documents required to be delivered by registered entities. To be clear, however, the Committee is not advocating that this broader initiative should slow down the momentum and progress that the SEC staff is making on the form revisions and rulemaking already underway to allow for variable annuity summary offering and summary update prospectuses.

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[3] *See* Draft Plan, at pg. 7.

[4] *See id.*, at pg. 27.

[5] *See, e.g.*, Committee Comment Letter re: Study Regarding Financial Literacy Among Investors, Release No. 34-66164, File No. 4-645 (Mar. 23, 2012); Committee Comment Letter re: Duties of Brokers, Dealers, and Investment Advisers, Release Nos. 34-69013, IA-3558, File No. 4-606 (July 5, 2013).

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THE DRAFT PLAN SHOULD EMBRACE ELECTRONIC DELIVERY OF DISCLOSURE

The Committee recommends that the Draft Plan include as an objective the modernization of the SEC's electronic disclosure framework by taking into consideration technological and societal developments over the last two decades. In particular, the Committee recommends that the Draft Plan adopt as an objective allowing required disclosures to be transmitted electronically (by both issuers and intermediaries) without the need for affirmative client consent, while continuing to allow investors to opt-in to paper delivery of disclosure documents.

The Committee notes that current SEC guidance governing the electronic delivery of documents was developed during the mid-1990s when use of the Internet for information delivery was still in its infancy.[6] In most relevant part, the guidance requires as a practical matter that firms obtain an investor's affirmative consent to electronic delivery in advance.[7] This affirmative consent requirement is unnecessarily burdensome given the current widespread use of the Internet, and has the unintended practical consequence in many circumstances of precluding the use of electronic delivery on a widespread and effective basis.

Since the SEC last issued general guidance focused on electronic delivery in 2000, the Internet has become the dominant provider of information and investors have embraced its "24/7" availability. The Investment Company Institute found that 92% of U.S. households owning mutual funds had Internet access, and that of this group, 94% used the Internet to obtain access to e-mail and 82% used the Internet for financial purposes.[8] Overall, more than eight in ten mutual fund owning households with Internet access used the Internet daily.[9]

Furthermore, the latest research shows that the demographic "gap" among retail investors who have and use the Internet has closed. For example, in the context of retail investors owning mutual fund shares, the incidence of Internet access traditionally was viewed as greatest among younger retail investors. However, increases in Internet access among older retail investor age

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[6] *See* Securities Act Release No. 7856 (Apr. 28, 2000) (the "2000 Release"); Securities Act Release No. 7288 (May 9, 1996) (the "1996 Release"); Securities Act Release No. 7233 (Oct. 6, 1995) (the "1995 Release").

[7] *See* 1995 Release, *supra* note 7; 1996 Release, *supra* note 7; 2000 Release, *supra* note 7.

[8] ICI Research Perspective, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2013," at 20-23 ("ICI Research Perspective"). *See also*, ICI 2013 Investment Company Fact Book, 53rd Edition, at 102 ("ICI Fact Book").

[9] *Id.*; ICI Research Perspective, at 21.

groups have narrowed the generational gap considerably.[10] The use of the internet by these retail investors is no longer constrained by age or socioeconomic status.

Research has also shown that the availability of electronic media creates more knowledgeable retail investors. In 2013, 82 percent of mutual fund investors with Internet access went online for financial purposes, most often to obtain investment information or check their bank or investment accounts.[11] In addition, mutual fund–owning households were more likely than non-fund-owning households to engage in common online activities, such as accessing e-mail, obtaining information about products and services other than investments, or purchasing products and services other than investments.[12] This use of the Internet by these retail investor households underscores that they expect to be able to access and store information about their investments online.

The Committee believes that modernizing the SEC's electronic disclosure framework to embrace electronic delivery of documents by both issuers and intermediaries will make disclosures more accessible to retail investors and more likely to be read and utilized. This increased accessibility will result in more seamless delivery of the information that retail investors (including investors in SEC-registered annuities) need to make informed financial decisions (about both products and financial intermediaries), and will generally increase transparency in the context of transactions involving investment services and products.

For all of these reasons, the Committee believes that the Draft Plan should include as an objective the furtherance of electronic delivery of disclosure.

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[10] ICI Research Perspective, at 20; ICI Fact Book, at 102. The percentage of households owning mutual funds who accessed e-mail on a daily basis was 94%, versus 86% for those households that do not own mutual funds. ICI Research Perspective, at 23.

[11] ICI Research Perspective, at 23-24.

[12] *Id.* at 23.

The Committee appreciates the opportunity to provide comments in response to the Draft Plan. We would be happy to meet with you in order to provide more specific input on the comments offered in this letter and answer any questions that the staff may have regarding our comments. Please contact Steve Roth (202.383.0158, steve.roth@sutherland.com) or Clifford Kirsch (212.389.5052, clifford.kirsch@sutherland.com) if you have any questions regarding the comments provided in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

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FOR THE COMMITTEE OF ANNUITY INSURERS