Lisa Tate
Associate General Counsel, Litigation
(202) 624-2153 t (202) 572-4832 f
lisatate@acli.com

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VIA E-MAIL

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

SUBJECT: **File Number S7-22-06; Docket No. R-1274—Definition of Terms and Exemptions Relating to the "Broker" Exceptions for Banks**

Dear Ms. Johnson and Ms. Morris:

On behalf of our member companies, the American Council of Life Insurers submits comments on proposed rules, File Number S7-22-06—Definition of Terms and Exemptions Relating to the "Broker"
Exceptions for Banks, that were published in the Federal Register on December 26, 2006. ACLI represents 373 member companies operating in the United States. In the United States, ACLI members currently account for 93 percent of the industry's total assets, 91 percent of life insurance premiums, and 95 percent of annuity considerations in the United States. Many of our member companies offer individual variable life insurance and variable annuities that must be distributed through broker-dealers. As a matter of scope, over 50 percent of NASD's 675,000 registered representatives work for broker-dealers affiliated with life insurers.

Issued jointly by the Board of Governors of the Federal Reserve System and the Securities and Exchange Commission, the proposed rules would implement certain of the exceptions for banks from the definition of "broker" under Section 3(a)(4) of the Securities Exchange Act of 1934, as amended by the Gramm-Leach-Bliley Act. Each of the eleven statutory exceptions permits a bank to act as an agent with respect to specified securities products or in transactions that meet specific statutory conditions. Accordingly, the proposed rules would implement the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and safekeeping and custody activities. Among the exemptions is proposed Exchange Act Rule 775 that would, under certain conditions, allow a bank to effect transactions in investment company securities through the National Securities Clearing Corporation's Mutual Fund Services or directly with a transfer agent acting for an open-ended company.

ACLI supports balanced regulatory simplification and clarification. In this regard, the exemption provided in proposed Rule 775 should be extended to variable annuities. Doing so will ensure that current arrangements between banks, insurance companies, and employee benefit plans are not disrupted, that plan participants are not subject to additional fees attributable to redundant processes, and that parity will be maintained in the treatment of mutual funds and variable annuities under the proposed rules. In the first section of this letter, we address these concerns. Supplemental comments may be submitted at a later date regarding the treatment under the proposed rules of sub-custodian banks and directed trustees of benefit plans and individual retirement accounts.

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Proposed Rule 775 permits banks under the fiduciary, transfer agent, and safekeeping and custody exemptions to effect transactions in mutual funds through the Mutual Fund Services of the National Securities Clearing Corporation or directly with a transfer agent acting for the mutual fund. ACLI strongly supports this proposal. However the exemption should be extended to variable annuities as well as mutual funds.

Many employee retirement plans offer mutual funds as well as variable annuities offered by life insurers as investment options for participants. Plan participants can elect to have their contributions allocated among a number of different underlying funds through separate accounts maintained by a life insurer. Separate accounts are often registered with the Commission under the Investment Company Act of 1940 as a unit investment trust funding individual and group annuities, and for accounting and regulatory purposes, a separate account designates a "subaccount" for each investment option. Subject to certain limitations, plan participants can change their allocations among investment options. Under existing arrangements, life insurers register the plan participants' interests in their respective variable annuities and units of separate accounts and send plan participants their account statements. Thus, life insurers act like mutual fund transfer agents with respect to the plan participants' variable annuity administration and may rely on NSCC to provide certain centralized information services and money settlement for these transactions.[1]

As proposed, Rule 775 would instead require that, for transactions between mutual fund and variable annuity funding options under a plan, a bank custodian for a plan's underlying funds would need to effect transactions through a broker-dealer to settle variable annuity transactions that it currently settles with the life insurer.[2] Excluding variable annuities from the exemption imposes, without any enhancement to consumer protection, additional costs and processing redundancies to

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[1] The definition of "transfer agent" in § 3(a)(25) of the Securities Exchange Act of 1934 specifically excludes "any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life insurance policies which it issues..." Accordingly, while a life insurer may perform the functions traditionally performed by a transfer agent with respect to recording the interests of plan participants electing variable annuity contracts issued by the insurer, the insurer is not subject to registration and regulation as a transfer agent.

[2] For example, under the proposal, plan participant transactions from a plan's Section 403(b)(7) mutual fund investments held by the plan's custodian bank to Section 403(b)(1) variable annuity interests would need to be effected through a broker-dealer. The Internal Revenue Service has long recognized the tax-free status of such transfers. *e.g.,* Revenue Ruling 90-24 (Feb. 21, 1990)

arrangements that are intended to be safe and relatively simple. The disruptive, and anti-competitive, impact of a failure to extend the exemption to variable annuities as well as mutual funds will be significant: contributions to group annuities, which are sold through employer-sponsored retirement plans, increased to $110 billion in 2005, up 5 percent from 2004.[3] Moreover, such a disruption is not necessary: life insurers protect participants' funds and securities to the same extent as a mutual fund transfer agent protects client funds and securities in similar arrangements. For these reasons, the exemption provided in proposed Rule 775 should be extended to variable annuities.

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ACLI appreciates the opportunity to comment on the proposed rules. Please let us know if you have any questions or need additional information.

Sincerely,

Lisa Tate

Lisa Tate

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[3] American Council of Life Insurers, *Life Insurance Fact Book 2006*, http://www.acli.com