SAMPLE INSURANCE BROKER
COMPENSATION DISCLOSURE

(For Use by Insurance Brokers in Providing Disclosures To Retirement Plan Clients of Indirect Compensation Expected To Be Received From John Hancock Life Insurance Company (U.S.A.) or, With Respect to Recordkeeping Agreements and Group Annuity Contracts Issued in New York, by John Hancock Life Insurance Company of New York)

John Hancock Life Insurance Company (U.S.A.) and John Hancock Life Insurance Company of New York herein collectively referred to as "John Hancock".

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OVERVIEW OF SAMPLE INSURANCE BROKER
COMPENSATION DISCLOSURE

ERISA’s Prohibited Transaction Provisions And The Purpose Of The Sample Disclosure

The following sample Insurance Broker Compensation Disclosure (“Sample Disclosure”) was prepared by Drinker Biddle & Reath LLP. It is designed to be used by insurance brokers (“Brokers”) and their counsel in disclosing indirect compensation that Brokers expect to receive in connection with services provided to retirement plans. The Sample Disclosure is appropriate for use in connection with plans sponsored by employers whose plans are funded by group annuity contracts issued by John Hancock Life Insurance Company (U.S.A.) and/or John Hancock Life Insurance Company of New York (with respect to group annuity contracts, administrative service agreements and/or recordkeeping agreements issued in New York). The disclosure suggested by the Sample Disclosure is consistent with – and is intended to assist Brokers in complying with – the provisions of the Final Regulation issued February 3, 2012 (the “regulation”) by the United States Department of Labor (“DOL”) which appears at 77 Fed.Reg. 5632, et seq.

Section 406(a) of ERISA generally prohibits transactions between covered plans and “parties in interest,” including service providers. ERISA §408(b)(2) excepts from this general rule “[c]ontracting or making reasonable arrangements with a party in interest for … legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefore.”

The regulation sets forth conditions that “covered service providers” must meet in order to demonstrate that their contracts or arrangements with covered plans constitute “reasonable arrangements” within the meaning of §408(b)(2).

Consequences of Non-Compliance

The failure of covered service providers to comply with the provisions of the regulation gives rise to a prohibited transaction under ERISA and the Internal Revenue Code. Service providers who engage in prohibited transactions may be required to refund to the Plan their compensation as well as interest, penalties and taxes.

The Regulation

The regulation is a final regulation. This Sample Disclosure is based upon the language of the regulation as issued February 3, 2012.

The preamble to the regulation states that, in the near future, the DOL intends to issue a separate proposal that would require a guide or summary requirement. Although no such guide or summary is required by the regulation at this time, service providers may ultimately be required to provide a guide or other summary. The regulation attaches, as an appendix, a “Sample Guide to Initial Disclosures.” Although it is not likely that any such summary or guide requirement will be in
effect as of the July 1, 2012 effective date of the regulation, service providers may subsequently be required to comply with a summary or guide requirement, and therefore, to modify their disclosure documents accordingly.

“Covered Service Providers”

The regulation applies to “covered service providers” that reasonably expect to receive $1,000 or more in direct or indirect compensation and that provide “covered services.” Brokers will be considered “covered service providers” if either of two situations applies. Those two situations are (1) when a Broker provides brokerage services to an individual account plan (such as a 401(k), profit sharing or ERISA-governed 403(b) plan) that offers at least one designated investment alternative in connection with the brokerage services and (2) when a Broker reasonably expects to receive indirect compensation for providing consulting services (relating to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), or investment brokerage services. “Indirect” compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor. The Broker should consult with counsel to determine which situations are subject to the regulation.

“Covered Plans”

The disclosures required by the regulation must be made to “covered plans,” which include “employee pension benefit plans” or “pension plans” as defined by ERISA §3(2)(A), but do not include SEP-IRAs, SIMPLE IRAs, IRAs and individual retirement annuities. Plans not governed by ERISA (e.g., government plans) are not “covered plans.” However, some private sector 403(b) plans are covered by ERISA and therefore, Brokers who provide covered services for those plans are subject to the regulation. Annuity contracts and custodial accounts in 403(b) plans that were issued to a current or former employee before January 1, 2009 where no additional contributions have been made and the contract is fully vested and enforceable by the employee are not “covered plans.”

As pointed out in the preamble to the regulation, “... some contracts or arrangements will fall outside the scope of the regulation because they do not involve a ‘covered plan’ and a ‘covered service provider.’ ERISA nonetheless requires such contracts or arrangements to be ‘reasonable’ in order to satisfy the ERISA section 408(b)(2) statutory exemption.”

The Required Disclosures

Under the regulation, covered service providers must provide written disclosures to a “responsible plan fiduciary” (defined as a fiduciary with the power to cause the plan to enter into, extend or renew the contract or arrangement) of:

(1) the services provided;

(2) fiduciary status or status as a registered investment adviser under the
(3) all direct and indirect compensation received by covered service providers (and their affiliates and subcontractors).

“Compensation,” for purposes of the regulation, means anything of monetary value (for example, money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement. The description may include a reasonable and good faith estimate if the covered service provider cannot otherwise readily describe compensation or cost. In that case, the covered service provider must explain the methodology and assumptions used to prepare the estimate.

The regulation also requires additional disclosures of amounts paid to affiliates or subcontractors if the compensation (1) is set on a transaction basis (e.g., commissions, soft dollars, finder’s fees or other similar incentive compensation based on business placed or retained) or (2) is charged directly against the covered plan’s investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees).

The regulation also requires that a covered service provider disclose the “manner of receipt” of the compensation, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan’s account(s) or investments. Additionally, the regulation requires a description of the arrangement between the payer and the covered service provider, an affiliate, or a subcontractor as applicable pursuant to which the indirect compensation is paid. According to the preamble to the regulation, the covered service provider “… must disclose its arrangement with the payer of indirect compensation so that the responsible plan fiduciary can analyze why the payer, generally an unrelated third party, is compensating the covered service provider in connection with the covered service provider’s contract or arrangement with the covered plan.”

The description of the compensation paid must also identify (1) the services for which the compensation will be paid and (2) the payers and recipients of the compensation, including the status of a payer or recipient as an affiliate or a subcontractor.

The regulation defines “affiliate” as follows: “[a] person’s or entity’s ‘affiliate’ directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity.” For purposes of the Sample Agreement, it is assumed that the Broker has no “affiliates.”

“Subcontractor” is defined as “… any person or entity (or an affiliate or such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more [covered services].”

Since §408(b)(2) is an exception to the general rule prohibiting transactions between
covered plans and service providers, the burden rests with covered service providers to demonstrate that the arrangement is reasonable. Covered service providers should therefore err on the side of providing greater, rather than less, detail in their descriptions of services and compensation.

When The Required Disclosures Must Be Made

The regulation takes effect July 1, 2012. Brokers will need to be in compliance with the regulation with respect to all “transition” clients with whom they have already entered into a contract or arrangement before that effective date. It is recommended that Brokers come into compliance, as to those then-existing clients, prior to the regulation’s effective date.

With respect to new clients (i.e., clients who enter into contracts or arrangements with the Broker on or after July 1, 2012), Brokers will need to provide the disclosures required by the regulation “reasonably in advance” of entering into the contract or arrangement. The regulation does not specify a time period to satisfy the “reasonably in advance” requirement. However, the disclosures need to be provided prior to the responsible plan fiduciary being committed to engage the Broker.

The Method of Disclosure

The regulation does not require a written agreement with the covered plan. However, we believe that a written, signed agreement with the plan client is preferable to a disclosure without a signed agreement since, among other things, the signature by the client’s representative is evidence that a responsible plan fiduciary received the required disclosures. Moreover, written agreements reflecting the scope of a Broker’s services are helpful in managing risk and limiting liability. However, for transition clients, many Brokers may opt to satisfy the new requirements by disclosure notices because of the practical issues involved in converting hundreds or even thousands of plan clients to the new system within a limited period of time.

Brokers can make the required disclosures either through written disclosure notices (which may be delivered via electronic means) or by having their clients sign updated service agreements that incorporate the disclosures. Brokers may opt to use one form of written disclosure for their “transition” clients and another form of disclosure for new clients who are signed up after the effective date of the regulation. For example, as to “transition” clients with whom the Broker has an existing service agreement, the Broker may wish to use a more abbreviated “disclosure” document describing the indirect compensation it receives. A separate sample Insurance Broker Service Agreement will be made available to assist Brokers in complying with the regulation with respect to new client relationships entered into after the effective date of the regulation.

Information To Be Provided Upon Request, Changes In The Information To Be Disclosed And Correction of Errors In Information Disclosed

The regulation requires that upon the written request of the responsible plan...
fiduciary or covered plan administrator, covered service providers must furnish any other information relating to the compensation received in connection with the contract or arrangement that is required to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder. This disclosure must be made reasonably in advance of the date when the responsible plan fiduciary or plan administrator states that it must comply with its reporting and disclosure obligation. If disclosing the requested information is precluded due to extraordinary circumstances beyond the covered service provider’s control, the information must be disclosed as soon as practicable.

Under the regulation, covered service providers – including Brokers -- must disclose any change in the information required to be disclosed no later than 60 days from the date the service provider is informed of the change. There is an exception if disclosure is precluded due to extraordinary circumstances beyond the service provider’s control, in which case the change of information must be disclosed as soon as practicable. Changes regarding investment related information must be disclosed at least annually.

The regulation includes provisions requiring covered service providers to correct errors or omissions in the disclosed information. Specifically, the regulation provides that no contract or arrangement will fail to be reasonable solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required to be provided, so long as the covered service provider discloses the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of the error or omission.

Use and Assumptions

This Sample Disclosure and the Sample Agreement are not appropriate for use in connection with covered plans that use investment products other than group annuity contracts issued by John Hancock Life Insurance Company (U.S.A.) or John Hancock Life Insurance Company of New York.

This Sample Disclosure and the Sample Agreement assume that the Broker has no “affiliates.” The regulation states that “[a] person’s or entity’s ‘affiliate’ directly or indirectly (through one or more intermediaries), controls, is controlled by, or under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity.” This is a critical assumption, since the regulation also requires covered service providers to describe any compensation that will be paid among the covered service provider, an affiliate, or a subcontractor, in connection with covered services, if the compensation is set on a transaction basis (e.g., commissions, soft dollars, finder’s fees or other similar incentive compensation based on business placed or retained) or is charged directly against the covered plan’s investment and reflected in the net value of the investment (e.g., Rule 12b-1 fees).

The Sample Disclosure and the Sample Agreement are not appropriate for use by Brokers who intend to serve the covered plan as an investment adviser under either the Investment Advisers Act of 1940 or the law of any State. Nor are they appropriate for use by Brokers who exercise control over plan assets, provide
fiduciary investment advice, have discretionary authority or control over administration of 401(k) plans, or otherwise perform functions that may cause them to be considered a “fiduciary” to covered plans or their participants or beneficiaries as that term is defined by ERISA §3(21). If any of those assumptions do not apply to a Broker’s particular situation, the Sample Disclosure should not be used. Separate Sample Service Agreements are available for use by Registered Investment Advisers, Broker-Dealers and Insurance Agents.

The regulation requires covered service providers to identify their indirect compensation, the services for which it will be received and the payer of the indirect compensation. The Sample Disclosure is not intended to be a means of disclosing any compensation that may be received by Brokers other than the indirect compensation expected to be received from John Hancock. Nor is the Sample Disclosure intended to describe the services the Broker will provide. In that regard, use of the Sample Disclosure, by itself and in the absence of other written disclosures, may not be sufficient to comply with all of the requirements of the regulation. Rather, the Sample Disclosure is to be used only by Brokers relative to clients with whom the Broker already has in place a service agreement or other document that discloses in writing all services provided and all other compensation that the Broker receives in exchange for its services, and which complies with all other aspects of the regulation. For Brokers who do not have in place a service agreement or other written disclosure of their services and compensation, a Sample Insurance Broker Service Agreement is available that is designed to assist Brokers in formulating more comprehensive disclosures of services, direct and indirect compensation and status as a fiduciary and/or a registered investment adviser as required by the regulation. As to clients with whom the Broker does not currently have a service agreement in place, the Broker should consider adapting the Sample Insurance Broker Service Agreement to its own use, or should formulate its own service agreement that makes all of the disclosures required by the regulation.

The Sample Disclosure has been tailored for use by Brokers with respect to clients who sponsor 401(k) plans. However, the Sample Disclosure could be modified for use in dealing with sponsors of other types of qualified plans.

This document is based on information available and relevant DOL guidance issued as of February 27, 2012, and does not incorporate any changes or revisions to the law or applicable regulations that may arise after that date.

This Sample Disclosure has been prepared without regard to the laws of any state. Brokers should consult with their own attorney before incorporating any of the provisions in this sample agreement into their own service agreement with their clients, or adopting or otherwise relying upon this sample agreement for use in the Broker’s practice.
SAMPLE INSURANCE BROKER
COMPENSATION DISCLOSURE

In this document, the Broker should describe all compensation that the Broker (or an
affiliate of subcontractor) may receive in connection with the services described in the
Agreement. One form of compensation that the Broker will receive is commissions.

All commissions are calculated with reference to the concept of “basis points.”
Accordingly, the Agreement should explain the concept of “basis points.” Language
explaining that concept is set forth below for illustrative purposes.

Depending upon the arrangement between the Broker and its client, the Broker may
receive “asset based” commissions, “deposit based” commissions, or a combination of
the two. Asset based commissions are calculated as a percentage of assets under
management. Deposit based commissions are calculated (1) as a percentage of the
amount of assets transferred to the John Hancock group annuity contract in the first year
of the contract, (2) as a percentage of recurring contributions made in the first year of the
contract, and (3) as a percentage of recurring contributions made in the renewal years
following the first year of the contract. The language below assumes that the Broker may
receive commissions in all of these forms. However, that assumption will not apply to all
Brokers. The Broker should tailor the Agreement to reflect the specific types of
compensation it expects to receive and should omit those types of compensation that it
does not expect to receive.

Commissions are paid by John Hancock from its general assets. Asset based commissions
are calculated and paid monthly. Deposit based commissions are calculated and paid
weekly.

Exhibit A also includes language designed for use in disclosing compensation paid to any
“subcontractor” that is in an independent contractor relationship with the Broker, relative
to providing covered services to the covered plan. That language should be modified to
reflect the formula used for compensating any such subcontractor. If the Broker does not
intend to pay any compensation to a subcontractor, that language should be omitted.

COMMISSIONS

Broker will receive commissions in connection with the services provided to the Plan.
John Hancock pays those commissions from its general assets. The formula for determining
the amount of those commissions and the manner of payment are described below. All commissions
are calculated with reference to “basis points” (or “bps”). One basis point is equal to .01% of the
amount at issue. Thus, for example, 50 basis points is equal to .50%.

Broker expects to receive the following compensation:

Deposit-based compensation
- An amount equal to ___% of amounts transferred to John Hancock group annuity
  contract in the first year of the contract;
- An amount equal to ___% of recurring contributions made in the first year of the John Hancock group annuity contract;
- An amount equal to ___% of recurring contributions made in renewal years (after the first year) of the John Hancock group annuity contract.

Deposit based commissions are calculated and paid weekly.

Asset-based compensation

- An amount equal to ___% of the assets invested in the John Hancock group annuity contract during the first year of the contract;
- An amount equal to ___% of the assets invested in the John Hancock group annuity contract during the renewal years (following the first year) of the contract.

Asset based commissions are calculated on the last Friday of each calendar month and paid monthly.

If Fiduciary approves and accepts the terms of this Agreement and this Exhibit A, Fiduciary shall have approved of the compensation to be paid to Broker.

Compensation Paid to Subcontractor

Broker anticipates paying a portion of the compensation received from John Hancock to ______________ (“Representative”), an independent contractor of Broker who, along with Broker, is responsible for providing the services described in this Agreement. Broker anticipates paying Representative ____% of the commissions received by Broker from John Hancock in connection with services for the Plan as described in this Agreement.
OTHER COMPENSATION

In some cases, the Broker may be entitled to “price credit” compensation. John Hancock anticipates that the Broker will be aware, at the time of a formal proposal to the Client, of the rate of price credit compensation to which it may be entitled. All price credit compensation is determined and calculated on the basis of the covered plan’s assets. It is calculated monthly based on the plan assets as of the last business day of the prior month and paid quarterly out of John Hancock’s general assets. At the end of the first contract year, John Hancock reviews the plan to determine whether the assumptions upon which the rate of price credit compensation was based have been met. If so, the rate of price credit compensation to be paid to the Broker will remain intact during all years in which the Client’s contract with John Hancock is in place. (If, at any point, there is a change in the Broker’s compensation – including an increase or decrease in price credit compensation – the Broker should comply with the 60-day notice provision set forth above.) Moreover, if the Broker’s compensation is increased without first obtaining the express approval of a responsible plan fiduciary, the Broker could be at risk of being found to be a fiduciary of the plan for the purpose of setting its own compensation (which could implicate ERISA’s prohibited transaction rules). Accordingly, the Broker should obtain the approval of a responsible plan fiduciary before increasing any compensation paid to it. The formula by which any price credit compensation that the Broker receives is calculated and the timing of payment of any price credit compensation should be disclosed in this section.

In addition, to the extent anticipated price credit compensation will offset any commission compensation that the Broker may receive, the Broker would benefit from disclosing that offset. Sample language to disclose the manner in which price credit compensation may offset other compensation is included below for illustrative purposes. The Broker should omit or modify the proposed language if price credit compensation will not offset other compensation or if the manner in which price credit compensation will offset other compensation will be different than as described below.

The Broker should also disclose in this section any other compensation (including, for example, the monetary value of trips to attend products training and education meetings, conferences and seminars or any additional compensation offered to Brokers pursuant to any type of incentive program that may be offered from time to time by John Hancock) that it may directly or indirectly receive in connection with the services to be provided under the Agreement (that is, where the eligibility or amount of the payments are based, partially or entirely, on the Plan or the combined plans or assets placed with John Hancock). In this regard, the preamble to the regulation discusses a fact pattern in which financial institutions subsidized the cost of attendance at a conference that a service provider offered for its clients. The preamble states the view of the Department of Labor that “… when a covered service provider is engaged to provide consulting services to a covered plan (or plans) and receives subsidies or other remuneration from financial institutions or other parties with respect to whom the service provider may be making recommendations to attending plan sponsors or representatives, such subsidies or
remuneration would be compensation received ‘in connection with’ the service provider’s contract or arrangement with the covered plan.” Accordingly, the service provider should disclose any such subsidies that it reasonably expects to receive. If the Broker anticipates receiving no compensation other than the commissions described above (under the heading “Commissions”) in connection with the services to be provided regarding the Plan, this section may be omitted.

In addition to the commissions described above, Broker anticipates that it will receive “price credit” compensation from John Hancock. Price credit compensation is paid out of John Hancock’s general assets and not from the group annuity contract held by the Plan. It is determined on the basis of Plan assets, calculated monthly as of the last business day of the month preceding the calculation and paid quarterly to Broker. The rate of the price credit compensation to be received by Broker is ____%. [Any price credit compensation that Broker receives will offset commissions that Broker will receive on a dollar for dollar basis.]

In addition, Broker anticipates receiving the following additional compensation [SET FORTH ANY ADDITIONAL COMPENSATION REASONABLY EXPECTED TO BE RECEIVED IN CONNECTION WITH THE SERVICES TO BE PROVIDED TO THE PLAN HERE]