

March 9, 2020

Via E-Mail

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 20-02
FINRA Requests Comment on the Effectiveness and Efficiency of Its Reporting
Requirements Rule**

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to FINRA Regulatory Notice 20-02 *FINRA Requests Comment on the Effectiveness and Efficiency of Its Reporting Requirements Rule* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on January 9, 2020.² The Notice solicits comment on the effectiveness and efficiency of FINRA's reporting requirement rule, including related administrative processes, and whether additional tools, guidance, or modifications are appropriate to address potential gaps in the regulatory framework.

BACKGROUND

FINRA Rule 4530 requires member firms to report to FINRA specified events; internal conclusions of violations of laws, rules, regulations or standards of conduct; and quarterly statistical and summary information regarding written customer complaints. The rule also requires member firms to file copies of specified criminal actions, civil complaints, and arbitration claims. In turn, FINRA uses this information for regulatory purposes, including to initiate investigations, where appropriate, of firms, offices, and associated persons that may pose a risk to investors.

In addition to filing and reporting requirements, Rule 4530 contains provisions governing how and when member firms must make the required reports and filings, establishing certain exceptions to the reporting and filing requirements, and obligating associated persons to promptly report to their member firms the existence of certain reportable events. Rule 4530 also contains Suppression Material that, among other things, defines certain terms, explains how to calculate monetary thresholds used in the rule, and explains the scope of some of the reporting requirements.

¹ The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 32 member companies represent more than 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is attached as Appendix A.

² The Notice is posted at <https://www.finra.org/rules-guidance/notices/20-02>.

Member firms must report certain specified events, internal conclusions of violations, and customer complaint information electronically via the Firm Gateway. When reporting the specified events and internal conclusions of violations, member firms must submit a disclosure event report. To satisfy Rule 4530 reporting obligations pursuant to the Form U4 exception in Rule 4530(e), member firms are required to indicate affirmatively (through checkboxes) that the data reported on a Form U4 Disclosure Reporting Page through the Central Registration Depository (CRD) also be applied to satisfy their corresponding Rule 4530 reporting obligation. When making quarterly customer complaint reports, member firms must submit a Complaints Reporting Form, which requires information about, among other things, 4530 Product Codes and 4530 Problem Codes. For large-volume reporting of disclosure events and customer complaints, FINRA offers a file batch upload method. To file copies of specified criminal actions, civil complaints and arbitration claims, member firms may file the required documents either electronically or in paper form.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit comments in response to the Notice. The Committee is very pleased that FINRA has undertaken a retrospective review of the effectiveness and efficiency of FINRA's reporting requirements rule, including the related administrative processes. The Committee offers the following comments in response to the Notice.

Implementation of the Rule. The Notice requests comment regarding member firms' experience with implementation of the rule, including any ambiguities in interpreting the rule (*e.g.*, provisions concerning what must be reported and filed, and how to do so) or challenges in complying with the rule.³

The Committee has encountered ambiguity with respect to the definition of "widespread or potential widespread impact" in Supplementary Material .01. Therefore, the Committee requests that FINRA provide clarification as to what rises to the level of "widespread or potential widespread impact" with respect to the reporting requirements of Rule 4530(b).

Relatedly, the Committee also requests that FINRA provide guidance on the circumstances under which cybersecurity and phishing schemes involving forgery and misappropriation of customer assets give rise to reportable events under Rule 4530 in general, and specifically, whether a registered representative's failure to verify a customer's information (leading to a successful phishing and misappropriation scheme) is a reportable event under Rule 4530.

Scope of the Rule. The Notice requests comment regarding whether there are categories of information or documents that should be added, removed, clarified, or modified within the scope of the rule.⁴

As noted above, the Committee requests that FINRA provide guidance on the circumstances under which cybersecurity and phishing schemes involving forgery and misappropriation of customer assets give rise to reportable events under Rule 4530 in general.

Committee members have encountered instances in which significant resources have been deployed to comply with the settlement reporting requirements related to insurance products that are not registered with the U.S. Securities and Exchange Commission. Thus, the Committee requests that FINRA modify the reporting threshold amount for settlements related to non-registered insurance products, or alternatively, eliminate the requirement altogether for non-registered insurance products. By increasing or eliminating this reporting requirement for non-registered insurance products, the Committee believes that resources may be better allocated to other areas of higher risk involving registered products.

³ See the Notice at Question #2.

⁴ See the Notice at Question #3.

Economic Impacts of the Rule. The Notice requests comment regarding the economic impacts, including costs and benefits, arising from the rule, and the extent to which the costs and benefits have a disproportionate impact on firms based on size and business model.⁵

While it is hard to quantify the economic impacts arising from Rule 4530, the Committee notes that 4530 quarterly complaint filings often result in numerous follow-up inquiries from FINRA that require significant amounts of time and resources to address. Additionally, as noted above, the Committee requests that FINRA modify the reporting threshold amount for settlements related to non-registered insurance products or alternatively, eliminate the requirement altogether for non-registered insurance products because of the significant resources required to comply with the reporting requirement.

Functionality of the Firm Gateway. The Notice requests comment regarding ways FINRA can make the rule, guidance, or attendant administrative processes more efficient and effective.⁶

The Committee believes that the FINRA Gateway's search functionality with respect to previous quarterly complaint filings should be improved, as Committee members have encountered circumstances in which the search functionality does not turn up search results associated with certain key words. Additionally, the Committee requests that FINRA create a function or link that would return the user to the most recently saved draft Complaints Reporting Form, as the current method to retrieve previously saved filings has increased the time to complete such filings.

In addition, the Committee believes that FINRA should allow firms to associate multiple registered representatives with a complaint (if applicable), rather than requiring firms to prepare multiple complaint filings even though they relate to the same underlying complaint. Along the same lines, the Committee believes that FINRA should allow firms to associate multiple registered representatives with a filing related to annual required training suspensions, rather than requiring firms to prepare multiple training suspension filings. Similarly, the Committee believes that FINRA should allow firms to associate multiple customer names (e.g., joint parties or non-familial individuals who share a product or account) with a complaint (if applicable), rather than requiring firms to prepare multiple complaint filings for a single complaint.

Functionality of Disclosure Event Reports or the Complaints Reporting Form. The Notice requests comment on whether there are any ambiguities or challenges when completing disclosure event reports or the Complaints Reporting Form (e.g., ones relating to data fields on these reports and forms, or the 4530 Product or Problem Codes) or when using the checkbox functionality in Web CRD to satisfy a Rule 4530 reporting requirement, and whether FINRA should consider modifying the Rule 4530 Product and Problem Codes or the data fields on the disclosure event report or the Complaints Reporting Form.⁷

The Committee requests the addition of an overarching code distinguishing between "sales" and "non-sales" related complaints. The Committee believes that adding such overarching codes would allow for both firms and FINRA to more efficiently analyze and determine the need for follow-up on reported complaints. The Committee also notes that the Security Information portion of the Complaints Reporting Form presumes a symbol for each security involved in a particular complaint. However, this symbol is not applicable to variable products and may create confusion on the part of the user. The Committee suggests that FINRA consider creating an additional field that allows for "Product Type" to avoid confusion.

In addition, the Committee notes that the drop-down menu format in the Complaints Reporting Form does not allow the user to use the copy-paste functionality when completing 4530 filings (e.g., to repeat the date across multiple forms), resulting in increased time required to complete

⁵ See the Notice at Question #4.

⁶ See the Notice at Question #5.

⁷ See the Notice at Question #6.

filings. The Committee believes FINRA should consider modifying those drop-down fields to allow for a user to copy-paste information into those fields.

Impediments to Compliance. The Notice requests comment on whether there are other rules or regulatory requirements that conflict or impede compliance with the rule, and whether Rule 4530, the guidance concerning Rule 4530, or attendant administrative processes be changed in any ways to help firms comply with other rules and regulatory requirements.⁸

The Committee has found that the meaning of "investment-related" as used in Form U4 and Rule 4530 are inconsistent. In particular, FINRA's 2014 Form U4 Explanation of Terms (the "Explanation of Terms") defines "investment-related" as "pertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association)." In contrast, Rule 4530(a)(1)(A) lists "investment-related" *alongside* other terms like securities and insurance. Specifically, Rule 4530(a)(1)(A) requires a member to report to FINRA after the member knows the member or an associated person "[h]as been found to have violated any securities-, insurance-, commodities-, financial- or investment-related laws...."

The Committee notes that the phrasing of Rule 4530(a)(1)(A) suggests that "investment-related" has a different meaning than the meaning in the Explanation of Terms. Accordingly, the Committee requests that FINRA reconcile these definitions for consistency, or to the extent FINRA intended the definition of "investment-related" to be different in these contexts, clarify the reasoning behind the definitions.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: Clifford Kirsch AS

Clifford Kirsch

BY: Eric Arnold AS

Eric Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS

⁸ See the Notice at Question #9.

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Brighthouse Financial, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Financial Group
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Metropolitan Life Insurance Company
National Life Group
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sammons Financial Group
Security Benefit Life Insurance Company
Symetra Financial Corporation
Talcott Life Insurance Company
The Transamerica companies
TIAA
USAA Life Insurance Company