

September 30, 2008

VIA E-MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington DC, 20006-1500

Re: **Regulatory Notice 08-39: Variable Insurance Products: FINRA
Requests Comments on Proposed New Rules Governing
Communications About Variable Insurance Products**

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to Regulatory Notice 08-39, "FINRA Requests Comments on Proposed New Rules Governing Communications About Variable Insurance Products" (the "Proposal Notice"). The Proposal Notice proposes a number of changes (the "Proposal") to current IM-2210-2 ("Proposed IM-2210-2") including:

- shortening and simplifying existing provisions regarding product identification, liquidity and guarantee claims;
- consolidating previous FINRA staff guidance concerning variable insurance product communications; and
- addressing changes in variable insurance products and the manner in which they are advertised, particularly with regard to riders, hypothetical illustrations and investment analysis tools.

¹ The Committee of Annuity Insurers is a coalition of 33 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

In addition, the Proposal would revise IM-2210-1 ("Proposed IM-2210-1") to codify FINRA staff guidance concerning comparative illustrations of the mathematical principle of tax-deferred versus taxable compounding.

The Committee commends FINRA for undertaking to modernize and formalize its interpretive material governing communications about variable insurance products. Of particular interest to the Committee, and a primary focus of this letter, are those aspects of the Proposal relating to variable annuity contracts, such as those provisions applicable to communications discussing variable insurance product guarantees or riders or providing variable insurance product illustrations. This letter first provides our comments on provisions of the Proposal relating to guarantee claims and riders, variable insurance product historical performance illustrations and variable insurance product illustrations: matters addressed in paragraphs (d), (f) and (g), respectively, of Proposed IM-2210-2. We then provide our comments with respect to the Proposal's requirements that maximum guaranteed charges be reflected in historical and hypothetical illustrations. This letter concludes with comments concerning other provisions of the Proposal.

Paragraph (d) – Guarantee Claims and Riders

Proposal. Paragraph (d) of Proposed IM-2210-2 would apply to communications discussing guarantee claims or riders for variable insurance products. This paragraph would impose four standards for such communications. The Committee is primarily concerned about the standards in the following clauses:

- Clause (d)(3), which would mandate that any such communication be "fair and balanced considering the circumstances under which the guarantee or rider will *not* benefit the customer." (Emphasis supplied.)
- Clause (d)(4), which would require the communication to explain the nature of the rider, its cost limitations and the fact that it is an optional feature of the contract.

Comments on Clause (d)(3) – "Fair and Balanced" Standard. The Committee is concerned about the import of the "fair and balanced" disclosure standard in light of the qualifier that it be applied "considering the circumstances under which the guarantee or rider will *not* benefit the customer." (Emphasis supplied.) The Committee believes that this standard is unworkable in its current form. As proposed, this clause would require a member to consider all possible customer scenarios in which a rider might not be beneficial. Even though the Proposal Notice indicates that this provision would "not require exhaustive disclosure of every circumstance in which a rider would not benefit a customer," the Committee is concerned that the import of the clause would require a member to undertake an exhaustive analysis of possible investor situations. More importantly, the Committee is concerned that enforcement of this standard in the course of FINRA staff review of communications would lead to the inclusion of a laundry list of

disclosure items in a communication discussing a rider that would overshadow and distract from the core information of importance to investors. Instead, we believe that the standard for communications discussing a guarantee or rider should be the same standard that applies to other communications: that the communication be fair and balanced. Accordingly, the Committee urges that clause (3) be revised as follow:

Communications that discuss the circumstances under which a guarantee or rider will benefit the customer must be fair and balanced.

The Committee intends, at a later date, to submit a draft communication that we believe provides a fair and balanced description of a Guaranteed Minimum Withdrawal Benefit. As part of this rulemaking process, we would seek FINRA confirmation that this communication provides the type of “balanced” disclosure that the Proposal would mandate. You will note that this sample will emphasize the type of investment situation for which the rider would be appropriate, rather than that for which it would not be appropriate. We believe that a dialogue with FINRA staff regarding this draft communication will advance this aspect of the rule’s provisions.

Comments on Clause (d)(4) – Explanation. For similar reasons, the Committee believes that proposed clause (d)(4) is unnecessary: a “fair and balanced” standard encompasses the requirement to explain a guarantee or rider, its costs and limitations. The Committee also requests FINRA to consider whether inclusion of a “fair and balanced” standard in Proposed IM-2210-2 is redundant of the “fair and balanced” standard included in Rule 2210(d)(1).

Comments on Scope of Paragraph (d). As proposed, paragraph (d) would apply to all riders for variable insurance products. The Committee recommends that paragraph (d) be revised to distinguish between riders of an investment nature and those of an insurance nature. For example, some contract riders are of a purely insurance nature, such as those providing nursing home benefits. Communications about these types of riders are regulated as a matter of state insurance law and application of Proposed IM-2210-2(d) is unnecessary.

Paragraph (f) – Historical Performance Information

Proposal. Paragraph (f) of Proposed IM-2210-2 would set forth standards for the presentation of historical performance information for variable insurance products. This paragraph addresses six types of historical performance illustrations. The Committee would like to offer comments on the following clauses:

- Clause (f)(1), which is the general provision applicable to variable annuity historical performance and references rules adopted by the Securities and Exchange Commission (the “SEC”).

- Clause (f)(3), which addresses investment option performance predating availability through a separate account.
- Clause (f)(4), which deals with combined historical performance.
- Clause (f)(5), which addresses illustrations based on historical performance of individual investment options, or combinations of investment options.

Comments on Clause (f)(1) – Reference to SEC Rules. This clause states that members may present performance for variable annuities only in accordance with Rule 482 under the Securities Act of 1933 (the “1933 Act”) or Rule 34b-1 under the Investment Company Act of 1940 (the “1940 Act”). (These rules require, in part, that any presentation of performance information for variable annuity separate accounts include performance calculated in accordance with “standard performance” requirements.) The Committee notes that Proposed IM-2210-2 would apply to variable annuities that are not registered with the SEC. (Unregistered variable annuities include group contracts, qualifying as exempted securities under Section 3(a)(12) of the 1934 Act, as well as variable annuities offered in reliance on private placement exemptions under the 1933 Act and the 1940 Act.) Unregistered variable annuities are not subject to Rule 482 under the 1933 Act or Rule 34b-1 under the 1940 Act, nor has the SEC taken the position that those rules apply to unregistered variable annuities. The Committee recommends that clause (f)(1) be modified to clarify that it applies to variable annuities only if they are registered with the SEC.²

Comments on Clause (f)(3)(A) – Predated Investment Option Performance. This clause would require that, where the investment option has been available through the separate account for more than one year, a presentation of predated performance include performance of the investment option “for the period commencing on the date the investment option became available through the separate account.” The Committee believes that specifying this particular requirement is unnecessary. Rule 482 and Rule 34b-1 effectively require that a presentation of predated performance for an investment option include performance for the subaccount investing in the investment option for the “standard” period. Clause (f)(3)(A) already references the requirements of Rule 482 and

² Please note that below we recommend that FINRA consider excluding unregistered variable annuities from the scope of the Proposal.

Rule 34b-1 and the Committee does not see any value to the inclusion of this specific requirement in (f)(3)(A) itself.³

Comments on Clause (f)(3)(C) – Significant Change in Investment Option.

This clause would permit communications to present the performance of an investment option predating its availability through the separate account of a variable insurance product only if there had been no significant change to the investment objectives, strategies or policies of the investment option during the period for which performance is shown. The Committee believes that this condition – that there be no significant change to an investment option's investment objectives, strategies, or policies during the period – is inappropriate and inconsistent with SEC staff guidance. In this regard, the SEC staff has not viewed changes in investment objectives as a sufficient basis for eliminating past performance.⁴ Rather, SEC staff guidance expects that the performance will be accompanied by narrative disclosures concerning any significant changes.

Comments on Clause (f)(3)(D) – Availability of Fund. This clause would prohibit including the performance of a fund that is not available as an investment option through the separate account. The Committee requests clarification that this prohibition does not cover master-feeder arrangements in which a feeder fund is made available as an investment option and such feeder invests in a master fund. In such a case, although the feeder may be characterized as the investment option available through the separate account, it would be entirely appropriate to reflect master fund performance (adjusted to account for any charges at the feeder level).

Comments on Clause (f)(4) – Combined Historical Performance. This clause would permit the presentation of combined historical performance of multiple investment options under certain circumstances. The Committee seeks clarification that the paragraph is not calling for standard performance of combined historical performance. In this regard, we note that the SEC's standard performance rules do not contemplate "standard performance" for a combination of investment portfolios. Further, we note that combined performance is often presented in connection with asset allocation models. If the models are presented by an investment adviser registered with the SEC, the performance presentation would be subject to standards developed under the Investment Advisers Act, and not the "standard performance" rules. The Committee believes it should be sufficient to present standard performance information for each investment option included within the combined presentation performance.

³ In addition, the Committee notes that this proposal makes less sense for the presentation of predated performance for variable life insurance, given that there are no "standard performance" rules for such products.

⁴ See, e.g., The Fairmount Fund Trust, SEC No-Action letter (Dec 9, 1988).

Comments on Clause (f)(5)(B) – Tabular or Bar-Chart Presentation. This clause would require that illustrations based on historical performance be presented in tabular or bar-chart format. The Committee questions the purpose of such a requirement for historical performance presentations. The Committee observes that such a requirement is not included in paragraph (g), for illustrations based on assumed rates of return. Further, the Committee is concerned that such a requirement may limit flexibility in the presentation of historical performance information.

Paragraph (g) – Variable Annuity Illustrations

Proposal. Paragraph (g) of Proposed IM-2210-2 would set forth standards for illustrations based on assumed rates of return. The Committee would like to offer comments on the following clauses:

- Clause (g)(2), which would limit the maximum annual gross rate of return to 10% (the “10% limit”).
- Clause (g)(3), which would permit the use of illustrations reflecting negative annual gross rates of return but would require that the illustrations also reflect a 0% gross annual rate of return as well as an additional gross annual rate of return in the range of 5% to 10%.
- Clause (g)(4), which would permit the use of illustrations based on the historical performance of a broad-based securities market index for the period shown by the illustration.
- Clause (g)(5), which would require that any illustration depict at a minimum year-by-year account values.
- Clause (g)(7), which would specify the manner in which investment option expenses are to be taken into account.
- Clause (g)(8), which would require prominent disclosure that the purpose of the illustrations is to show how the performance of the investment accounts could affect the policy cash value and death benefit, that the illustration is hypothetical and that it does not project or predict future performance.

Comments on Clause (g)(2) – the 10% Limit. This clause would impose a 10% limit on assumed gross annual rates of return used in illustrations. Currently, FINRA allows the use of assumed gross annual rates of return up to 12% in illustrations for variable insurance products as long as they are accompanied by illustrations showing a 0% gross annual rate of return. The Proposal would prohibit illustrations showing returns

above a gross annual rate of return in excess of 10%. We note that the Proposal Notice does not articulate any concerns with the current limit of a 12% gross annual rate of return. Committee members are particularly mindful of the fact that variable insurance products are intended to be long-term investments, and for that reason it is important for investors to be provided with illustrations showing the long-term effects of fees and charges on assumed rates of return. Further, the Committee recognizes that, looking at historical returns, a rate of return may fluctuate during any given 5-, 10- or even 20-year period. While Committee members have not reached a consensus whether 10% is an appropriate maximum limit, the Committee is concerned that this limit will be subject to modification by FINRA staff on a periodic basis. It is critical that any maximum limit that is advanced be set with a long-term view in mind. In this regard, it would be helpful for FINRA to expound upon its reasoning for proposing a reduction in the maximum gross annual rate of return to 10% and indicate under what circumstances the staff would seek to revise any new maximum limit that is adopted.

The Committee notes that, currently, FINRA permits members to provide illustrations that reflect assumed rates of return that vary over time. For example, an illustration may assume more conservative investments resulting in a lower rate of return as a contract owner ages. By way of example, an illustration may reflect a fixed rate of 10% during the contract's first 15 years, and 6% thereafter. Some Committee members have found that illustrations of this type may be of real value to investors. It is unclear, however, whether this current practice would be permitted under the Proposal. The Committee urges that this current practice continue to be permitted.

Comments on Clause (g)(3) – Negative Rates of Return. The Committee supports the proposal reflected in clause (g)(3), which would permit the use of illustrations reflecting assumed negative rates of return. However, the Committee urges that the Proposal not require that any illustration at a negative rate of return be accompanied by an illustration at a 0% annual rate of return. As noted above, clause (g)(3) would require that illustrations reflecting a negative assumed annual rate of return would also need to be accompanied by an illustration at a rate of at least 5% and not more than 10%. The Committee believes that, if an illustration at a negative annual rate of return is accompanied by an illustration reflecting an annual rate of return in the range of 5% to 10%, inclusion of a *third* illustration based on a 0% annual rate of return is unnecessary.

Comments on Clause (g)(4) – Benchmark Performance. The Committee supports the proposal reflected in clause (g)(4), which would permit the use of illustrations based on the performance of a broad-based market index. The Committee believes that the Proposal is a positive development that will allow members to illustrate variable insurance products more effectively while providing investors with information about market fluctuations. The Committee seeks clarification that blended index rates would be permitted under the Proposal. By way of example, a blended rate could be based 50% on the S&P 500 index performance and 50% on the NASDAQ index

performance, or other blends that align with the investment options selected by the investor.

Comments on Clause (g)(5) – Illustrations Format. As noted above, this clause would require that illustrations be presented in a format that depicts, at a minimum, year-by-year account values. Given that illustrations for variable annuities may cover periods in excess of 20 years, the Committee suggest that members be allowed flexibility to choose which years (after a minimum number of the first 10 years) to be illustrated as long as such years are clearly disclosed.

Comments on Clause (g)(7) – Reflecting Fund Expenses in Illustrations. This clause would require that illustrations either reflect an arithmetic average of all investment option expenses or reflect a weighted average of investment option expenses provided that the illustration identifies investment options used and amounts allocated to each option. Under the Proposal, if the illustration is used with more than one customer, it must reflect the current actual weighted average of investment options held by all investors through the separate account.

Under the Proposal, the current actual weighted average is determined by reference to the investment options “held by all investors through the *separate account*.” (Emphasis added.) While this standard would seem to be generally appropriate, circumstances may warrant basing weighted average by reference to the investment options held by all investors of the *particular product* being illustrated. For example, where a separate account funds a large number of products, a member may believe it is more appropriate to base weighted average by reference to holdings of investors of a particular product instead of all investor holdings in the separate account. In any event, the rule should provide flexibility to base weighted average on either methodology, provided doing so is reasonable under the circumstances.

The Committee also seeks clarification for requirements in cases in which a customer requests illustrations of a specific fund or funds. In this regard, the Committee believes that it should be permissible to reflect expenses for that particular fund or funds without reference to an arithmetic or weighted average.

In addition, the Committee seeks confirmation that the Proposal eliminates the current requirement that members accompany illustrations based on weighted averages with prospectus illustrations or standalone communications reflecting arithmetic averages.

Further, the Committee seeks confirmation that FINRA is not seeking to reverse its longstanding position that fund expenses may be reflected taking into account applicable expense fee waivers or reimbursements at the fund level. Along these lines, we believe that it is appropriate to define “Maximum guaranteed charges” in IM-2210-2(a)(4) to clarify that such fees may reflect such expense waivers or reimbursements.

Finally, the Committee requests FINRA confirmation that there are other permissible ways to reflect fund level charges, as long as any alternate methodology does not result in charges lower than those under a simple or weighted average. For instance, some Committee members have expressed an interest in basing such charges on the fund with the highest charge. These Committee members have indicated that this standard would be easier to implement and would not run counter to investor protection. In any event, the Committee would expect that the illustration would identify the methodology being used.

Comment on Clause (g)(8) – Purpose Disclosure. This clause would require disclosure that the purpose of an illustration is to show how performance could affect cash value and death benefits. The clause, however, is silent on living benefits. The Committee requests clarification that under the Proposal, illustrations may also show the impact of performance on living benefits. Further, the Committee requests confirmation that illustrations of living benefits and death benefits are permitted at a member's option, but is not required in all cases.

Delivery of Fund Prospectus. It appears that the Proposal would eliminate any requirement to deliver a fund prospectus in conjunction with delivering an illustration. The Committee requests clarification of this point.

Implementation of Proposal. As indicated above, the Committee supports the adoption of clause (g)(4), which would allow illustrations based on the historical performance of benchmark indices. The Committee observes that the Proposal is silent on the continued use of illustrations based on the use of "random rates," an approach allowed under current practices. Committee members prefer the use of indices rather than random rates to illustrate the impact of market fluctuations and volatility. However, Committee members expect that the necessary systems modifications to convert illustrations from "random rate" illustrations to "index benchmark" illustrations may take considerable time and effort. Accordingly, the Committee urges FINRA to consider a substantial transition period for member firms seeking to make the conversion.

Reflecting Guaranteed Charges in Historical and Hypothetical Illustrations

Clause (a)(4) of proposed IM-2210-2 would add a definition of "maximum guaranteed charges," a term that is referenced in provisions of the Proposal applicable to historical and hypothetical illustrations. The Committee offers the following comments with respect to maximum guaranteed charges. The Committee believes that its recommended approach would provide investors with important information about guaranteed charges while at the same time allowing investors to be provided with illustrations that most effectively present how a contract operates.

Definition of Maximum Guaranteed Charges. Greater clarity is needed with respect to the definition of "maximum guaranteed charges." The Proposal Notice (at

footnote 11) notes that the definition does not include charges for optional riders. The Committee believes that it would be helpful to specify the circumstances under which charges for optional riders need to be reflected and when such charges need to be reflected at guaranteed levels.

Reflecting Maximum Guaranteed Charges in Historical Illustrations. The Committee notes that clauses (f)(3)(B) and (f)(5)(A) of Proposed IM-2210-2 require historical performance illustrations to be “net of maximum guaranteed charges.” We submit that this requirement is inconsistent – indeed totally at odds – with the concept of historical performance. Historical performance at its core is supposed to present information that takes into account actual performance history. Maximum guaranteed charges are not reflective of actual performance history.

Reflecting Maximum Charges in Hypothetical Illustrations. The Committee notes that paragraph (g) of Proposed IM-2210-2 would mandate that any hypothetical illustrations provided in compliance with any of the clauses of the paragraph “reflect the deduction of the maximum guaranteed charges.” The Committee urges FINRA to reconsider the requirement to reflect the deduction of “maximum guaranteed charges” in hypothetical illustrations. Committee members believe that illustrations reflecting deductions of maximum guaranteed charges are not helpful to investors because maximum guaranteed charges are unlikely to apply to an investment in a variable annuity product and may differ significantly from current charges – the actual charges an investor incurs. We believe that FINRA rules should call for narrative disclosure regarding the deduction of guaranteed charges that could be assessed under a variable insurance product. However, requiring an additional set of illustrations that reflect guaranteed charges is unnecessary and in some instances may lead to customer confusion. In this regard, the Committee believes that variable annuity products and variable life insurance products should be treated the same.

Reflecting Current Charges in Hypothetical Illustrations. While, as discussed above, the Proposal mandates the use of guaranteed charges, it is silent on the permissibility of presenting illustrations based on current charges. We believe that the Proposal should explicitly acknowledge the permissibility of illustrations based on current charges.

Comments on Other Provisions

Preamble. The introductory sentence of Proposed IM-2210-2 indicates that it would apply “to all communications with the public about variable insurance products other than institutional sales material.” The Committee notes that the current version of IM-2210-2 applies only to advertisements and sales literature, and not to correspondence or institutional sales material. The Proposal Notice does not explain why FINRA is proposing to extend the interpretive material to correspondence. Committee members believe that Proposed IM-2210-2 should be limited to advertisements and sales literature.

The Committee also urges FINRA to consider clarifying the extent to which Proposed IM-2210-2 would apply to group variable annuity contracts that are “exempted securities” within the meaning of Section 3(a)(12) of the 1934 Act. While Rule 0116 generally makes the current version of IM-2210-2 applicable to unregistered group annuity contracts, the Proposed IM-2210-2 contains a number of provisions that are inapplicable to unregistered group annuity contracts. For example, a number of definitional and substantive provisions refer to a “prospectus” or to SEC rules, none of which are relevant to unregistered group annuity contracts. More particularly, clause (f)(1) of Proposed IM-2210-2 would mandate that historical performance information could be presented only in accordance with Rule 482 or Rule 34b-1, neither of which applies to unregistered group annuity contracts. In addition, the charge structure for unregistered group annuity contracts may differ from the registered variable insurance products contemplated by the Proposal. Similar issues apply to variable annuities offered on a private placement basis.

Finally, the Committee requests that Rule 2211(d)(1) be amended to conform to Proposed IM-2210-2 and clarify that institutional sales material are not subject to the interpretive materials under Rule 2210.

Paragraph (a) – Definitions. Paragraph (a) of Proposed IM-2210-2 would add a “Definitions” section to the interpretive material. The Committee generally supports the proposal to add a section defining key terms used in Proposed IM-2210-2. The Committee, however, offers the following comments on certain definitions and terms.

Arithmetic Average of Investment Option Expenses and Weighted Average of Investment Option Expenses. The Committee recommends that FINRA clarify that the terms “Arithmetic Average of Investment Option Expenses” and “Weighted Average of Investment Options Expenses” refer to expenses after reimbursement of fund expenses.

Rider. The Committee recommends that the term “Rider” be defined more precisely so as to clarify that riders are not generally additional provisions to a contract for a variable insurance product but rather entirely separate from the contract. In addition, we request confirmation that the staff intends for members to be provided with flexibility with respect to use of the term “Rider” (e.g., such features may be referred to as an optional benefit and not necessarily as a rider).

Finally, the Committee suggests that the term “Guarantee” be defined.

Paragraph (b) – Product Identification. Paragraph (b) of Proposed IM-2210-2 would mandate that all communications clearly identify the type of product discussed. The Committee supports proposed paragraph (b) of IM-2210-2 to the extent that the paragraph codifies current regulatory requirements. However, the Committee seeks clarification that the paragraph does not expand current requirements and merely codifies existing practice relating to product identification in variable insurance product

communications. The Committee agrees that communications should not imply that variable insurance products are mutual funds. However, the Committee proposes that the term “mutual fund” be permitted to be included in variable insurance product communications with the public when accurately describing an underlying fund that is, in fact, a mutual fund. In such instances, the use of the term “mutual fund” increases customer understanding of a variable product. Failure to use the term may confuse and mislead customers as to the true nature of the underlying investment option.

Paragraph (e) – Qualified Plans. Paragraph (e) of Proposed IM-2210-2 provides that that any member communication concerning a variable insurance product offered within a tax-qualified retirement plan: (1) must not indicate that tax-deferred treatment of earnings is available only through investment in the contract; and (2) must disclose that the contract does not provide any additional tax-deferred treatment of earnings beyond the treatment of earnings provided by the tax-qualified retirement plan. The Committee agrees that communications concerning a variable insurance product offered within a tax-qualified plan should not falsely imply that a contract provides additional tax-deferred treatment beyond the treatment of earnings provided by the tax-qualified plan where no such benefit exists. However, the Committee believes that this is a suitability issue and is covered by current suitability rules. In addition, the Committee requests clarification that the proposed paragraph applies only to communications that refer specifically to tax-qualified retirement plans. Finally, the Committee believes that this provision is not relevant in the case of an unregistered group annuity contract.

Paragraph (i) – Investment Analysis Tools. Paragraph (i) of Proposed IM-2210-2 would allow the use of investment analysis tools in connection with variable insurance products provided that the member complied with IM-2210-6 and further provided that the tool either produces result that reflect the deduction of maximum guaranteed charges or provides the user with a personalized hypothetical illustration that reflects the deduction of these charges. As we discuss above, we believe it is unnecessary to reflect the deduction of maximum guaranteed charges; current charges should be sufficient. Rather, it is sufficient to provide disclosure about the amount of these charges.

Coordination with State Insurance Regulators. Given the comprehensive nature of the Proposal, we believe that it is critical that FINRA coordinate the Proposal with state insurance regulators to avoid areas of inconsistency and overlap.

Title. We believe that the title of the Proposal should be revised to read as follows: “Specific Standards Applicable to Variable Life and Variable Annuity Products.” This is the current title of IM-2210-2 and we believe it is clearer as to scope of the interpretive material.

Implementation. The Committee urges the staff to set a compliance date which takes into account the significant time, cost and resources that will be required to comply

with any new requirements. Any compliance date should be set with a view to not requiring members to discard large volumes of existing materials.

IM-2210-1 Tax-Deferred Illustrations

Proposal. The Proposal would consolidate previously issued FINRA guidance by adding new language to IM-2210-1 concerning comparative illustrations of the mathematical principle of tax-deferred versus taxable compounding contained in communications. These standards would apply to any illustration of tax-deferred versus taxable compounding regardless of whether it appears in a communication promoting variable insurance products or some other investment. Communications relating to comparative illustrations would need to meet the following requirements: (1) illustrations would need to depict both taxable and tax-deferred investments using identical investment amounts and identical assumed gross rates of return of ten percent or less; (2) illustrations would have to use and identify actual federal income tax rates; (3) illustrations could reflect an actual state income tax rate if used only with investors in that state; (4) tax rates for target audiences would have to reasonably reflect its tax bracket; (5) if illustrations covered the payout period for an investment, the illustration would have to reflect the impact of taxes during that period; (6) illustrations could not assume an unreasonable period of tax deferral; and (7) illustrations would need to disclose, if applicable, the extent to which tax rates on capital gains and dividends would affect the taxable investment's return, underlying assumptions and potential tax impact from early withdrawals.

Comments. The Committee urges that the framework for tax-deferred illustrations be amended to provide flexibility to depict product-specific comparisons. We believe that product-specific comparisons could be presented in a fair and balanced manner and could serve as helpful information for investors. The Committee would be pleased to provide sample product-specific comparisons to help advance the staff's consideration of this comment.

We also believe that such illustrations should be permissible where it references the fact that a variable annuity product in contrast to other products offers tax-deferral. We believe that such a reference could be accomplished without running afoul of FINRA concerns regarding comparisons.

Finally, the Committee believes that certain aspects of IM-2210-1 may be difficult to administer. In particular, the requirement that targeted illustrations reasonably reflect the audience's tax rate is very difficult to implement. Instead, this requirement should be limited to those communications that are of an individualized nature.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposal. We would look forward to a meeting with FINRA staff in order to provide more specific input on the issues raised in this letter and answer any questions the staff may have.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford Kirsch /s/

BY: Susan Kraway

FOR THE COMMITTEE OF ANNUITY
INSURERS

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

AEGON USA, Inc.
Allstate Financial
AIG Life Insurance Companies
AmerUs Annuity Group Co.
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Merrill Lynch Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
OM Financial Life Insurance Company
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
USAA Life Insurance Company