

March 14, 2011

VIA ELECTRONIC MAIL

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 11-04: Private Placements of Securities:
FINRA Requests Comments on Proposed Amendments to FINRA Rule
5122 to Address Member Firm Participation in Private Placements**

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 11-04, "FINRA Requests Comments on Proposed Amendments to FINRA Rule 5122 to Address Member Firm Participation in Private Placements" (the "Proposal Notice"). The Proposal Notice proposes to amend current FINRA Rule 5122 (the "Current Rule") by extending the applicability of the Current Rule to *all* private placements in which a member firm participates – not just those as to which the member firm (or its control entity) is the issuer – subject to all but one of the exemptions that exists in the Rule today (the "Proposal").

This letter provides comments with respect to certain exemptions for offerings in proposed FINRA Rule 5122 (the "Proposed Rule") and on the continued importance of preserving such exemptions in any modification of the Current Rule. This letter then proposes consideration of an additional exemption for offerings of certain types of insurance contracts under the Proposed Rule.

¹ The Committee of Annuity Insurers is a coalition of 32 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.

IMPORTANCE OF RETAINING EXISTING INSURANCE CONTRACT EXEMPTIONS

Proposal. The Proposed Rule would preserve all but one of the exemptions in the Current Rule, including preserving exemptions for offerings involving:

- variable contracts, as defined in FINRA Rule 2320(b);
- modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in FINRA Rule 5110(b)(8)(E) (together, “modified contracts”); and
- exempted securities, as defined in Section 3(a)(12) of the Securities Exchange Act of 1934, which in turn includes any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with certain qualified plans (“exempted group contracts”).

For purposes of this comment letter, we refer to variable contracts, modified contracts and exempted group contracts, collectively, as “Contracts.”

Comment. The Committee is pleased that FINRA retained the existing exemptions for Contracts in the Proposed Rule. The Committee believes that the same reasons underlying FINRA’s original decision to include the exemptions in the Current Rule continue to be valid and relevant to the determination to retain them in the Proposed Rule. In this regard, the Committee notes that unregistered offerings of Contracts are carried out for very different purposes than the types of offerings targeted by the Proposal. More particularly, both the Current Rule and the Proposed Rule reflect FINRA’s concern about the use of proceeds raised in a private offering and seek to ensure that a minimum specified portion of the proceeds raised be applied to stated business purposes. However, such a concern is inapposite in the case of Contracts. Insurance companies do not issue Contracts in order to raise funds to finance their business operations; they issue Contracts because they are in the business of insuring risks for a fee, and the amounts paid by investors on their Contracts are simply the insurance premiums for that insurance coverage. Moreover, Contracts, as insurance contracts, and the activities of the insurance companies who issue those contracts, are substantively regulated under state insurance laws. In this regard, we note that state insurance laws and regulations impose a multitude of regulatory requirements on insurance companies in connection with the issuance of insurance contracts relating to such matters as licensing, accounting, investment, solvency, minimum capital, reporting and consumer protection. In short, unregistered offerings of Contracts do not raise the concerns FINRA seeks to address in the Current Rule and the Proposed Rule.

CONSIDERATION OF “CATCH-ALL” EXEMPTION FOR OTHER INSURANCE CONTRACTS

Comment. The Committee notes that the Proposed Rule does not propose to exempt any types of offerings in addition to those exempted in the Current Rule. However, the Committee believes it would be appropriate also to exempt other types of insurance contracts that may be developed by the insurance industry and that may be treated as securities under the federal securities laws but may not clearly fall within the existing exemptions in the Current Rule for

Marcia E. Asquith

March 14, 2011

Page 3

variable contracts, modified contracts and exempted group contracts. Such other insurance contracts could include (but would not be limited to) annuity and life insurance contracts using an indexed method for crediting interest, synthetic guaranteed withdrawal benefit products (also known as contingent annuities), and combination long-term care insurance with cash value annuities and life insurance products. Such other insurance contracts may not have all the features and benefits described or referenced in the existing exemptions for variable contracts, modified contracts and exempted group contracts, or may provide for alternative formulas or mechanisms for calculating benefit payments and determining the trigger for those payments (generally the basis for the distinctions drawn by the existing exemptions). However, these other insurance contracts would share all of the following features with Contracts:

- They would be issued by an insurance company;
- They would be treated as insurance contracts under applicable state insurance laws; and
- They would be subject to the same comprehensive regulatory scheme under state insurance laws and regulations that applies to all insurance contracts issued by an insurance company and all insurance companies issuing those contracts.

More importantly, like the Contracts covered by the existing exemptions, these other insurance contracts would simply represent alternative approaches for insuring various types of risks and determining the benefits payable thereunder. As in the case of Contracts, any offering of these insurance contracts would be conducted by an insurance company in its ordinary course of business of issuing insurance contracts in exchange for premium payments, and would not involve raising funds to finance business operations. The Committee sees no reason to draw distinctions between insurance contracts for purposes of the Proposed Rule solely on the basis of the formula for crediting returns or the trigger for making payments.

In order for the Proposed Rule to provide an exemption for such other insurance contracts, the Committee proposes that the following clause be added:

“(c)(14) offerings of insurance premium funding programs and any other types of insurance contracts issued by an insurance company (not otherwise covered in an exemption above), except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933.”

The text of the proposed exemption is derived from current NASD Rule 1022(d)(1)(A)(iii), which describes some of the types of investments for which a person registered as a “Limited Principal – Investment Company and Variable Contracts Products” (also referred to as a Series 26 registration) can act in a principal capacity. (This description is cross-referenced in NASD Rule 1032(b), which recognizes a registration category for a Limited Representative – Investment Company and Variable Contracts Products, also referred to as a Series 6 registration.) The Committee notes that, from a registration perspective, FINRA has determined that a Series

Marcia E. Asquith
March 14, 2011
Page 4

6/26 registered person is qualified to offer types of insurance contracts other than the three types of Contracts recognized in the existing exemptions.

The Committee believes that adding the proposed exemption to the Proposed Rule would put all insurance contracts on the same level playing field. Additionally, the Committee asks FINRA to consider adding the proposed exemption to the list of exempt offerings in FINRA Rule 5110 and to the description of exempt offerings provided in FINRA Rule 5121. Adding the text of the proposed exemption to these two rules, as well as to the Proposed Rule, would provide for a uniform treatment of insurance contracts under FINRA rules. Without the uniform adoption, or without some form of definitive guidance from FINRA on this issue, member firms will be left unsure as to these rules' applicability to insurance contracts whose terms may not fully conform to the descriptions of Contracts referenced in the applicable rules.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposal. We are happy to provide more specific input on the issues raised in this letter and answer any questions the staff may have regarding our comments.

Please do not hesitate to contact Stephen E. Roth (202.383.0158) or Susan Krawczyk (202.383.0197) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Stephen E. Roth
Stephen E. Roth

BY: Susan S. Krawczyk
Susan S. Krawczyk

**FOR THE COMMITTEE OF ANNUITY
INSURERS**

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
(*a Goldman Sachs company*)
CNO Financial Group, 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
MassMutual Financial Group
Metropolitan Life Insurance Company
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
RiverSource Life Insurance Company
(*an Ameriprise Financial company*)
SunAmerica Financial Group
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
TIAA-CREF
USAA Life Insurance Company