

April 4, 2016

**VIA ELECTRONIC MAIL**

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority, Inc.  
1735 K Street NW  
Washington, DC 20006

**Re: FINRA Regulatory Notice 16-09: Shortening the Settlement Cycle for Securities to T + 2**

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> in response to Financial Industry Regulatory Authority, Inc. ("FINRA") Regulatory Notice 16-09. An industry-led initiative proposes to shorten the settlement cycle from the current trade date plus three business days (T+3) to trade date plus two business days (T+2) for U.S. secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments composed of these products. In the Notice, FINRA seeks comment on proposed amendments to certain FINRA rules relating to the settlement cycle. The Committee appreciates the opportunity to submit these comments.

The Committee is not commenting on the specific rule amendments proposed by FINRA. Rather, as explained below, the Committee merely requests FINRA's acknowledgment and confirmation that insurance securities products, which are currently exempt from the T+3 settlement cycle requirements, will continue to be exempt from the settlement cycle requirements after the timetable is shortened to T+2.

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<sup>1</sup> The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the Securities and Exchange Commission, FINRA, CFTC, IRS, Treasury, Department of Labor, as well as the National Association of Insurance Commissioners (NAIC) and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies 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.

## Discussion

Variable annuity contracts and variable life insurance policies generally are ‘securities,’ as defined in the Securities Act of 1933 (the “1933 Act”). Certain other non-variable insurance policies (including, but not limited to, certain fixed dollar annuity contracts that include an unlimited market value adjustment feature) may also be securities under the 1933 Act (collectively, these variable and non-variable annuity and life insurance policies that are registered under the 1933 Act are referred to as “insurance securities products”).<sup>2</sup> As such, these insurance securities products may generally be subject to the Securities Exchange Act of 1934 (the “1934 Act”).<sup>3</sup>

FINRA Notice 16-09 does not make any reference to variable annuities or to insurance securities products at all, presumably because insurance securities products are exempt from the current T+3 settlement requirement.<sup>4</sup> The general T+3 standard is included in Rule 15c6-1 under the 1934 Act, which became effective June 7, 1995. Paragraph (b)(2) of Rule 15c6-1 provides that the settlement date requirement shall not apply to contracts that the Securities and Exchange Commission may exempt by order from that requirement; on June 6, 1995, the SEC issued an order (Release No. 33-7177, 34-35815, IC-21117, June 6, 1995) providing that variable annuity contracts, variable life insurance policies, and “any other insurance contract registered as a security under the Securities Act of 1933,” shall be exempt from the requirements of Rule 15c6-1. The new T+2 requirement presumably would be embodied in an amendment to Rule 15c6-1 (revising the T+3 standard), so absent some other regulatory revisions, insurance securities products should remain exempt from Rule 15c6-1 and the T+2 regulatory requirements. (The SEC has not yet proposed amendments to Rule 15c6-1, or any other rule proposals, to implement T+2.)

In issuing the order granting the exemption from the T+3 requirement, the SEC recognized that “the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlements.”<sup>5</sup> The SEC also noted its belief that “compliance with the unique requirements of state and federal law,

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<sup>2</sup> Even though these products are securities subject to the federal securities laws, they also are insurance products that are subject to detailed and comprehensive regulation under applicable state insurance laws.

<sup>3</sup> Certain exceptions may be applicable. *See, e.g.*, Rule 12h-7 under the Securities Exchange Act of 1934.

<sup>4</sup> The financial services industry and the Depository Trust & Clearing Corporation (DTCC) formed an Industry Steering Committee (ISC) that published a white paper (titled “Shortening the Settlement Cycle: The Move to T+2”) in June 2015, and a “T+2 Playbook” in December 2015. These documents propose timeframes that include regulators and SROs (*e.g.*, FINRA) finalizing their rule amendments by the second quarter of 2016, and developing and testing market infrastructure in 2017 with final implementation of T+2 by the third quarter of 2017. Like FINRA Regulatory Notice 16-09, these documents do not address insurance securities products.

<sup>5</sup> SEC Release No. 33-7177 (June 6, 1995).

as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process.”<sup>6</sup> Clearly, these considerations apply even more so to T+2 than to T+3. In any event, the SEC order is an exemption “from the requirements of Rule 15c6-1.” The SEC exemption is not dependent on whether Rule 15c6-1 mandates a two day or a three day settlement.

### **The Committee’s Request**

Accordingly, the Committee respectfully requests and recommends that when FINRA next proposes or adopts rule amendments related to T+2 settlement requirements, or otherwise issues a public statement regarding settlement procedure requirements, that it clarify or acknowledge that the adoption of the FINRA rule amendments proposed in Notice 16-09 (and any other amendments implementing T+2 settlement requirements) is not intended to and will not affect the SEC order issued in SEC Release 33-7177, and that FINRA recognizes that such order, unless acted upon by the SEC, will continue to apply to insurance securities products after the adoption of T+2 settlement requirements for other securities. A statement to that effect by FINRA would not change existing law, but would preclude any possible uncertainty and confusion on the part of member firms, and it would avoid any inconsistency between the SEC order granting the exemption from Rule 15c6-1 for insurance securities products and FINRA rules relating to the settlement cycle.<sup>7</sup> Eliminating any questions in this regard would facilitate FINRA members’ focus on the changes necessary to achieve compliance with the T+2 goal with respect to securities that are currently subject to the T+3 settlement cycle.

### **Conclusion**

The Committee appreciates the opportunity to provide these comments to FINRA. We stand ready to provide whatever additional analysis or information we can and to answer any questions at your convenience. Please do not hesitate to contact Steve Roth (202.383.0158 or [steve.roth@sutherland.com](mailto:steve.roth@sutherland.com)), Fred Bellamy (202.383.0126 or [fred.bellamy@sutherland.com](mailto:fred.bellamy@sutherland.com)), or Holly Smith (202.383.0245 or [holly.smith@sutherland.com](mailto:holly.smith@sutherland.com)) if you have any questions regarding these comments.

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<sup>6</sup> *Id.*

<sup>7</sup> The exemption in Release 33-7177 for insurance securities products (transactions by contract owners), on its face, does not apply to a separate account’s purchase or redemption of shares of an underlying mutual fund. However, those purchases and redemptions typically are governed by individually negotiated participation agreements between the insurance company and the fund (and/or the fund’s underwriter), and those agreements generally require that policy owner transactions be processed (and netted) on an overnight basis, with settlement (between the insurance company and the underlying fund) due the next business day. These participation agreements have already put in place what amounts to a T+1 procedure for transactions in fund shares between the insurance company and the underlying fund. Accordingly, the move to T+2 should not impact these transactions between separate accounts and underlying funds.

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Respectfully submitted,

**SUTHERLAND ASBILL & BRENNAN LLP**

BY:   
Stephen E. Roth

**FOR THE COMMITTEE OF ANNUITY INSURERS**

CC: Koshi Dalal  
Associate Vice President and Associate General Counsel  
Office of General Counsel (FINRA)

Sarah Kwak  
Counsel  
Office of General Counsel (FINRA)

**Appendix A**

**THE COMMITTEE OF ANNUITY INSURERS**

AIG Life & Retirement  
Allianz Life  
Allstate Financial  
Ameriprise Financial  
Athene USA  
AXA Equitable Life Insurance Company  
Fidelity Investments Life Insurance Company  
Genworth Financial  
Global Atlantic Life and Annuity Companies  
Great American Life Insurance Co.  
Guardian Insurance & Annuity Co., Inc.  
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  
Symetra Financial Corporation  
The Transamerica companies  
TIAA  
USAA Life Insurance Company  
Voya Financial, Inc.