

July 7, 2017

VIA ELECTRONIC MAIL

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

**Re: FINRA Regulatory Notice 17-15
Corporate Financing: FINRA Requests Comment on Proposed Amendments to
the FINRA Corporate Financing 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 Regulatory Notice 17-15, *Corporate Financing: FINRA Requests Comment on Proposed Amendments to the FINRA Corporate Financing Rule* (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on April 11, 2017.² The Notice solicits comments on proposed amendments, subsequently revised on May 24, 2017 ("Proposed Amendments"),³ to FINRA Rule 5110 (the "Corporate Financing Rule"), as well as related Rule 5121 (the "QIU Rule"), which were developed as a result of a comprehensive review launched in April 2014.

BACKGROUND

The Corporate Financing Rule and the QIU Rule are of interest to Committee members because of the exemptions provided by the rules for certain types of insurance contracts issued by Committee members that are distributed by FINRA members. More particularly, since its adoption in 1970, the Corporate Financing Rule has provided exemptions for variable contracts,⁴ and group annuity contracts purchased by qualified plans ("exempted group contracts"),⁵ and

¹ 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 SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the 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](#).

² The Notice is posted at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-15.pdf.

³ The revisions to the initial version of the Proposed Amendments expanded the exemption in proposed paragraph (g)(2) to apply to the QIU Rule as well as the Corporate Financing Rule. The Proposed Amendments are accessible at <http://www.finra.org/industry/notices/17-15>.

⁴ See FINRA Rule 5110(b)(8)(D), which exempts variable contracts as defined in FINRA Rule 2320(b)(2).

⁵ See FINRA Rule 5110(b)(8)(B), which exempts securities that are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended, 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.

since 1995 has also exempted market value adjusted insurance contracts ("MVA contracts").⁶ These exemptions are currently provided by paragraph (b)(8) of the Corporate Financing Rule. Moreover, the introductory text for that paragraph also provides an exemption from the QIU Rule. While the QIU Rule itself contains a few exemptions of relevance to variable contracts and exempted group contracts, the exemptions do not encompass MVA contracts. Consequently, broker-dealer member firms participating in public offerings of MVA contracts historically have relied on the exemption from the QIU Rule provided by paragraph (b)(8) of the Corporate Financing Rule.

PROPOSED AMENDMENTS

The Proposed Amendments would substantially revise the Corporate Financing Rule with the intention of modernizing and simplifying its provisions, including revisions to filing requirements and exemptions, disclosure requirements, organization and terminology ("Revised Corporate Financing Rule"). Most relevant to the Committee, the Revised Corporate Financing Rule would retain the existing exemptions for variable contracts, exempted group contracts and MVA contracts (together, "Existing Exemptions"), relocated to paragraph (g)(2), and add a new exemption for "any insurance contracts not otherwise included" in the Revised Corporate Financing Rule (the "Other Contracts Exemption").⁷ MVA contracts and insurance contracts qualifying for the Other Contracts Exemption thus would be exempt from the filing requirements and substantive regulation of the Revised Corporate Financing Rule, as well as from the QIU Rule, under paragraph (g)(2) of the Corporate Financing Rule. With regard to the QIU Rule, the Proposed Amendments would not make any change relevant to insurance contracts.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit comments in response to the Notice. The Committee is very pleased that FINRA is proposing to add the Other Contracts Exemption to the Revised Corporate Financing Rule and fully supports the inclusion of the Other Contracts Exemption. Further, the Committee urges FINRA to pursue the addition of the Other Contracts Exemption regardless of whether FINRA proceeds with the other changes contemplated by the Proposed Amendments.

The Committee has been active for some time in proposing revisions to the Corporate Financing Rule to encompass other types of contracts developed by Committee members that are registered with the Securities and Exchange Commission (the "SEC") and may not qualify for the Existing Exemptions, such as SEC-registered indexed annuities and contingent deferred annuities. As insurance companies have introduced new types of insurance contracts, member firms have had to consider whether to pursue individual exemptions or interpretive relief to confirm that neither the Corporate Financing Rule nor the QIU Rule applies to the offerings of those insurance contracts. The Proposed Amendments would substantially resolve these critical questions faced by Committee members and other member firms regarding the status of such insurance contracts under FINRA rules.

⁶ See FINRA Rule 5110(b)(8)(E), which describes MVA contracts as deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specific periods, and the nonforfeiture value of which are based upon a market value adjustment formula for withdrawals made before the end of any specified period.


⁷ Proposed FINRA Rule 5110(g)(2)(I).


CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Susan Krawczyk (202.383.0197 or SusanKrawczyk@eversheds-sutherland.com) or Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com), if you have any questions regarding these comments.

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: 
Susan Krawczyk

BY: 
Clifford Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
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
Lincoln Financial Group
MassMutual Financial Group
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
Symetra Financial Corporation
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.