

April 9, 2007

**VIA EMAIL**

Barbara Z. Sweeney  
NASD  
Office of the Corporate Secretary  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Notice To Members 07-12, Proposed Amendments to Rules 3010(g) and 2711 in connection with the Rule Harmonization Project with the NYSE**

Dear Ms. Sweeney:

The Committee of Annuity Insurers ("CAI")<sup>1</sup> submits this comment letter in response to the NASD's request for comment on the above-referenced proposal. Our comments focus on the proposed amendments to Rule 3010(g).

**Background on Proposed Amendments**

The proposed amendments to Rule 3010(g) would eliminate the definition of "Office of Supervisory Jurisdiction" ("OSJ") and would adopt definitions for "supervisory branch office," "limited supervisory branch office," "non-supervisory branch office" and a "non-branch office." These changes seek to reclassify office designations in line with New York Stock Exchange ("NYSE") rules.

The functions that currently make a location an OSJ would generally be captured in a new definition of "**supervisory branch office**." Consistent with NYSE rules, locations at which the only activity being conducted is the final review of research reports would not be covered by the definition. Like the current system for OSJs, an appropriately registered principal must be on-site at a supervisory branch as provided in Rule 3010(a)(4) and such location would be subject to an annual inspection cycle as provided in Rule 3010(c)(1)(A).

A "**limited supervisory branch office**" would be any location of the member that supervises one or more non-branch locations and does not supervise any supervisory branches or any other

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<sup>1</sup> The CAI is a coalition of 30 life insurance companies that issue fixed and variable annuities. The CAI was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies represent over half of the annuity business in the United States. A list of the Committee members is attached at Appendix A.

limited supervisory branch offices. Such location would be subject to branch office registration and would be subject to an annual inspection cycle as provided in Rule 3010(c)(1)(A). The office would not be required to be staffed with an appropriately registered principal on-site as provided in Rule 3010(a)(4).

A "**non-supervisory branch office**" would be any location of the member that satisfies the definition of branch office, but does not qualify as a supervisory branch office or limited supervisory branch office. Like the current system for non-OSJ branch offices, a non-supervisory branch office would be subject to branch office registration. Such an office would not be required to have a registered principal on-site but instead would be required to have one or more registered representatives or principals on site to carry out supervisory responsibilities as provided in Rule 3010(a)(4), and such location would be subject to inspection at least every three years as provided in Rule 3010(c)(1)(B).

The fourth and final classification would be a "**non-branch location**" which would be any location of the member, including but not limited to a main office, that does not qualify as any of the other three office classifications. In addition, a non-branch location would include a location that qualifies for an exclusion from the definition of "branch office" pursuant to Rule 3010(g)(2), provided such locations do not engage in any other activities that would require branch office registration. A non-branch location would also include certain locations that engage in certain types of activities (e.g., final approval of research reports, investment banking services, or proprietary trading or securities lending ).

## **Comments**

Notice to Members ("NTM") 07-12 explains that the proposal to amend Rule 3010(g) grows out of the NASD/NYSE Rule Harmonization initiative. This initiative dates back to early 2006 when the NASD and the NYSE announced that they would be working together to harmonize their rulebooks in order to achieve consistency where possible. The NTM further explains that the driving force for the proposed amendments is to treat offices whose only supervisory-related function is the principal review and approval of final research reports ("Research Report Offices") consistently under the NASD and NYSE rules.

The CAI appreciates and supports the goal of rule harmonization. However, we respectfully urge that such harmonization occur in a way that causes minimal disruption to NASD members. The proposal in its current form would cause widespread and significant changes to NASD members' supervisory systems, including:

- Each office will have to be reclassified;
- Related amendments to firms' policies and procedures will be necessary;
- Additional recordkeeping and examination will be necessary to assure that supervisory activities are captured in a manner to ensure the proper classification of branch offices; and

- Extensive training will need to be conducted to educate firm personnel on the new office classifications, and the implications related thereto.

In this instance, we are unclear why the NASD is proposing to eliminate an established regulatory framework upon which the majority of brokerage firms have designed their supervisory structures. It appears that much of what the NASD is seeking can be accomplished simply by amending the definition of OSJ to create an exception for Research Report Offices.

Further, the proposed rules are written with a view to NYSE-members. As a result, while there are carve-outs for activity engaged in by certain NYSE member firms, it appears that consideration has not been given regarding whether similar carve-outs should be afforded to member firms engaging in certain activity conducted with respect to the wholesaling and distribution of variable annuities. We believe that such carve outs are warranted.

For example, the definition of “non-branch location” as proposed would include locations that engage solely in investment banking services, proprietary trading or securities lending. However, there is no similar treatment afforded to locations where limited activity related to variable annuity wholesaling and distribution (e.g. the review and approval of advertisements and providing training and product support to registered representatives engaged in retail sale activity) is conducted.

If the NASD decides to advance this proposal, we urge that the NASD consider providing carve-outs from the branch office designations for locations where limited activity related to variable annuity wholesaling and distribution is conducted.

Additionally, we further urge that the NASD takes into account the full impact of the proposed amendments on all members firms. In this regard, we offer the following questions for consideration by the NASD staff:

- What costs will member firms incur in reclassifying OSJs and other registered branch offices?
- What steps will the NASD take to ensure that WebCRD can be updated by members to reflect any new classifications in a way that is not unduly burdensome and costly to members?
- What impact will the proposed changes have in those states that incorporate OSJ and branch office definitions into their rules?

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We appreciate the NASD's consideration of the CAI's comments.

Sincerely,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford E. Kirsch  
Clifford E. Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

Members of The Committee of Annuity Insurers

AEGON USA, Inc.  
AIG American General  
Allstate Financial  
AmerUs Annuity Group Co.  
AXA Equitable Life Insurance Company  
Commonwealth Annuity and Life Insurance Company (a Goldman Sachs 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 American Insurance Corporation  
Jackson National Life Insurance Company  
John Hancock Life Insurance Company  
Life Insurance Company of the Southwest  
Lincoln Financial Group  
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  
The Phoenix Life Insurance Company  
Protective Life Insurance Company  
Prudential Insurance Company of America  
Sun Life of Canada  
USAA Life Insurance Company