

**VIA EMAIL**

June 13, 2008

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

**Re: Regulatory Notice 08-23, Proposed Consolidated FINRA Rules Governing  
Financial Responsibility**

Dear Ms. Asquith:

The Committee of Annuity Insurers (“Committee”)<sup>1</sup> submits this comment letter in response to FINRA’s request for comment on the above-referenced proposal.

**BACKGROUND ON PROPOSED AMENDMENTS**

As described in Regulatory Notice 08-23, FINRA is proposing revised financial responsibility rules that “would be new, consolidated rules based in part on existing NASD and Incorporated NYSE Rules.” As described in Regulatory Notice 08-23, many of the rule proposals have been drafted to apply only to member firms that “clear or carry customer accounts or that operate pursuant to the exemptive provision” of Rule 15c3-3(k)(2)(i) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> Given the short period of time to develop comments and the sweeping nature of the proposed rules, the Committee is providing only general comments on the proposed revisions to the financial responsibility rules.

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<sup>1</sup> 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 members is attached at Appendix A.

<sup>2</sup> Member firms relying on that exemption are referred to herein as “k(2)(i)” firms or members.

**COMMENTS**

**Applicability to k(2)(i) Members.** In Regulatory Notice 08-23, FINRA states that it has used a “tiered” approach to the revised financial responsibility rules in that many of the proposed rules will apply only to carrying or clearing firms and k(2)(i) members. While the Committee lauds this risk-based approach with respect to the rules, the Committee believes that FINRA should reconsider whether all member firms that rely on the k(2)(i) exemption should be subject to the same rules that are applicable to carrying and clearing firms. In particular, the Committee believes that the profile of many k(2)(i) firms, and the financial risks generated by their activities and functions, can be significantly different from those of carrying and clearing firms.

In addition, if the proposed financial responsibility rules remain applicable to k(2)(i) members, the Committee requests further clarification with respect to when a firm might be deemed to be a k(2)(i) member. For example, some members may rely on the k(2)(i) exemption from the customer protection rule only for certain portions of their securities business. The Committee requests clarification on whether *all* the provisions of the new financial responsibility rules would apply to a firm relying on the k(2)(i) exemption for any aspect of its securities business, or whether the applicability of such provisions might be limited to the extent the firm relies on that exemption.

**Rules More Restrictive than Exchange Act.** The Committee notes that certain of the proposed rules are more onerous or restrictive than those currently proposed under existing Exchange Act regulations. For example, the proposed rules related to the withdrawal of capital (Rule 4110(c)(1), (2)) establish more exacting standards than those required under Rule 15c3-1(e) of the Exchange Act. Regulatory Notice 08-23 provides little insight into the rationale behind the proposed rule changes, stating only that it was designed to “further the goal of financial stability.” The Committee believes strongly that normal practice dictates that such changes to the financial responsibility rules should be conducted through SEC rulemaking rather than through revisions to FINRA rules.

**CONCLUSION**

The Committee appreciates the opportunity to comment on proposed financial responsibility rules. The Committee welcomes any questions you may have about the comments identified in this letter.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

By: Cliff E. Kirsch EAA  
Clifford E. Kirsch

By: Eric A. Arnold  
Eric A. Arnold

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  
MassMutual 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  
Old Mutual 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