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June 5, 2009

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: Regulatory Notice 09-22: Personal Securities Transactions, FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons

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 09-22, "FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons" (the "Proposal Notice"). The Proposal Notice proposes a new FINRA Rule, Rule 3210, along with Supplementary Material (the "Proposed Rule"). The Proposed Rule would replace NASD Conduct Rule 3050 and Incorporated NYSE Rule 407.

The Committee commends FINRA for maintaining many of the provisions of NASD Conduct Rule 3050 ("Rule 3050") in the Proposed Rule. However, the Committee is concerned about five aspects of the Proposed Rule that impose additional requirements, primarily impacting employer members (as defined in the Proposed Rule). These five aspects are: (1) the scope of the term "personal financial interest" as the standard for determining which outside brokerage accounts are subject to the Proposed Rule; (2) the mandatory requirement that the employer member obtain duplicate confirmations and account statements for all outside brokerage accounts (as defined below); (3) the fifteen business day time limit for obtaining employer

[1] The Committee of Annuity Insurers is a coalition of 30 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's member companies is attached as Appendix A.

consent to an associated person's outside brokerage account(s); (4) the requirement for employer member consent to outside brokerage accounts for investment company securities and variable contracts; and (5) the requirement that the employer member confirm the closing of an associated person's account after the employer member has revoked consent. The Committee also urges FINRA to consider an extended notice period for the compliance effective date of the Proposed Rule, if approved as proposed.

Scope of the Phrase "Personal Financial Interest"

Proposal. Paragraph (a) of the Proposed Rule would require an employer member to obtain account records for any account in which an associated person has a "personal financial interest." The Proposal Notice states that, as a general matter, an associated person would have a "personal financial interest" in a spouse's account.

Comment. The Committee notes that longstanding guidance issued by the NASD in connection with Rule 3050 has limited Rule 3050's application to accounts where an associated person has a "financial interest in" or exercises "discretion" over the account. In particular, the NASD has explained that accounts held by a relative (such as a spouse) would be subject to the reporting requirement if the registered representative "places the orders for the account."[2] The Committee requests that FINRA confirm that such guidance, which has informed and shaped existing policies and procedures, would apply to the phrase "personal financial interest." If FINRA intends to expand the scope of this phrase to cover accounts other than those where the associated person is authorized to place orders, or in other ways exercises discretion over the account, the Committee requests that FINRA explain the regulatory concern warranting a departure from this longstanding guidance.

Mandatory Requirement to Obtain Duplicate Account Statements and Confirmations

Proposal. Paragraph (a) of the Proposed Rule would mandate that, as a condition to consenting to an associated person's request to open an account (an "outside brokerage account') with another firm ("executing member"), the associated person's employing member firm ("employer member") instruct its associated person to have the executing member provide the employer member with duplicate account statements and confirmations (together "account records") for the outside brokerage account. The Proposed Rule also would mandate that the executing member implement an instruction from the associated person to provide account records for the outside brokerage account to the employer member. The Committee notes that the Proposed Rule is silent on the methods or procedures for providing such account records.

[2] *See* NASD Notice to Members 83-17, Amendments to Rules Governing Transactions Executed for Persons Associated with Another Member (May 1, 1983) (announcing amendments to Article III, Section 28 of the NASD Rules of Fair Practice to extend the rule's requirements to accounts over which associated persons exercised discretion or had a financial interest).

Comment. Committee members are concerned with the Proposed Rule's mandatory requirement that employer members obtain account records for all outside brokerage accounts. The Committee observes that a mandatory requirement is inconsistent with the historical policies and purposes of Rule 3050. Committee members note that Rule 3050 has long permitted employer firms to utilize a risk-based approach in obtaining account records for outside brokerage accounts, in recognition of the diverse nature of the business operations of FINRA members. The Committee submits that employer members whose activities are limited to those of a wholesaling or introducing firm and who do not engage in the solicitation of equity trades, research or market-making – as is the case for many of the FINRA member firms affiliated with Committee members – are not engaging in business activities warranting the collection and close review of account records for outside brokerage account transactions. Committee members whose business activities are so limited believe that the risk-based procedures already in place pursuant to Rule 3050 are more than sufficient to address any underlying regulatory concerns. Adopting a one-size-fits-all approach that applies equally to all employer members and all outside brokerage accounts would result in an inefficient use of increasingly scarce resources, and is inconsistent with regulator and industry preferences for risk-based compliance programs. Further, Committee members believe that the Proposed Rule's mandatory approach, requiring receipt of account records for every outside brokerage account, without regard to reliance on a risk-based analysis, would provide little, if any, real benefit and would be very costly to implement.

Committee members also note that compliance with the Proposed Rule would entail significant costs for executing members as well as employer members. Compliance with the Proposed Rule would likely force both employer members and executing members to develop extensive monitoring and verification systems simply to verify and confirm that all account records that should have been sent and obtained were in fact sent and obtained. Moreover, Committee members note also the additional costs for firms that have already invested significantly in effective monitoring systems consistent with Rule 3050.

To address these concerns, the Committee suggests maintaining Rule 3050's flexible, risk-based approach, which allows (rather than requires) employer members to request account records as they determine necessary and appropriate. Committee members view a flexible, risk-based approach as a more effective regulatory tool in light of the diverse nature and business operations of FINRA members.

However, if FINRA proceeds with adopting the mandatory requirement reflected in the Proposed Rule, the Committee recommends that FINRA give serious consideration to conditions that would assist member firms with limiting implementation and maintenance costs. First, the Committee recommends that executing members be required to transmit account records to employer members electronically upon the employer member's request. Further, in recognition that employer members may be most interested in the trade details reflected on account records,

particularly in a format suitable for generating activity and exception reports, the Committee recommends replacing the terms "account statements and confirmations" in the Proposed Rule with the terms "account statements and confirmations or the transaction information reported therein, in paper or compatible electronic format, as requested by the employer member."

Also, the Committee notes that the Proposal Notice does not provide guidance on the nature and scope of review of account records FINRA expects members to undertake as a matter of oversight. In this regard, the Committee notes that guidance issued in connection with Rule 3050 has recognized that the purpose for a review process is to assess whether a transaction in an outside brokerage account is "adverse" to the financial interest of the employer member.[3] The Committee wishes to point out that employer members have developed review and surveillance processes based on that determination. The Committee requests confirmation that this principle can continue to guide employer member reviews of account records for outside brokerage accounts.

Fifteen Business Day Time Limit for Obtaining Employer Consent to an Associated Person's Outside Account(s)

Proposal. Supplementary Material .01 to the Proposed Rule ("Proposed SM .01) would require an associated person to obtain the employer member's written consent to an account opened prior to his/her association with the employer member. Proposed SM .01 would apply a hard deadline of fifteen business days to this process.

Comment. The Committee notes that the Proposed Rule's other provisions imposing a time frame for compliance actions utilize a "prompt" standard.[4] The Proposal Notice does not explain why Proposed SM .01 imposes a time frame for obtaining the employer's written consent to an account opened prior to his/her association with the employer member measured in days. The Committee suggests that FINRA revise SM .01 to require associated persons to "promptly obtain" the written consent of the employer member. This approach would align Proposed SM .01's language with the rest of the Proposed Rule. It could also afford associated persons and employer members flexibility when dealing with unique employment situations.

Narrowed Scope of Exemption for Investment Company Securities Accounts

Proposal. Supplementary Material .03 to the Proposed Rule ("Proposed SM .03") explains that "the requirement to provide to the employer member duplicate account statements

[3] *See Id.* (noting that the rule "addresses the responsibilities of members to avoid adversely affecting the interests of other members when executing transactions for persons associated with such other members").

[4] *See, e.g.*, Proposed Rule 3210(c); Supplementary Material .04 to the Proposed Rule.

and confirmations shall not be applicable to accounts for or transactions in unit investment trusts, variable contracts or redeemable investment company securities, unless the employer member requests receipt."

Comment. The Committee notes that Proposed SM .03 is rooted in Rule 3050. However, Proposed SM .03 would provide a far more limited exemption than the current provision in Rule 3050. More particularly, Rule 3050 provides a complete exemption from its provisions, for both employer members and executing members, for outside brokerage accounts limited to transactions in unit investment trusts, variable contracts, and redeemable securities of registered investment companies (collectively, "investment company securities"). In other words, there is no prior consent requirement for any such accounts. Proposed SM .03 would effectively subject outside brokerage accounts limited to investment company securities to the requirement that an employer member maintain a process for the internal review and consent, on an account-by-account basis, for such accounts. The Committee questions why FINRA is subjecting outside brokerage accounts for investment company securities to this requirement, when for more than 25 years no such requirement has applied. When this exemption was first adopted, the NASD correctly noted that transactions in investment company securities do "not appear . . . to present the same potential for adverse impact on an employer member as might exist with respect to other transactions and the notification requirement appears to be unnecessarily burdensome with respect to such transactions."[5] The Proposal Notice neither explains what new potential for adverse impact has been identified, nor offers any other regulatory or compliance issues potentially necessitating an internal account-by-account review and consent process. The Committee submits that the burdens to be placed on employer members by Proposed SM .03 seem unsupported by the record.

Furthermore, the Committee notes that neither the Proposal Notice nor the Proposed Rule addresses what action an employer member should take with regard to all existing outside brokerage accounts of associated persons limited to investment company securities. Given how long the current exemption has been in place, the Committee believes that many member firms in the aggregate have tens of thousands of associated persons who have outside brokerage accounts opened for the purpose of investing in investment company securities. Committee members are especially aware that in many cases a variable contract can be purchased by an associated person only through opening an outside brokerage account with another member authorized to offer that variable contract. Implementing a process for the retroactive review and consent of all of these accounts could be an extensive and very costly process, with little or no resulting benefit. Again, the Committee encourages FINRA to expand the exemption in Proposed SM .03 to match the scope of the current exemption in Rule 3050.

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[5] *See* NASD Notice to Members 83-17, Amendments to Rules Governing Transactions Executed for Persons Associated with Another Member (May 1, 1983).

Finally, the Committee notes that, since the original adoption of Rule 3050, the financial services industry has introduced a number of investments that are substantially similar to investment company securities in terms of their structure and operation, and in terms of the absence of any potential for adverse impact on employer members. Such investments include 529 plans, exchange-traded funds and other kinds of registered insurance products. The Committee recommends that the exemption for investment company securities be expanded to cover all such similar investments. Doing so would serve the same policy purposes behind the original exemption, lessen the burden placed on member firms to comply with the Proposed Rule, and allow members to focus their supervisory efforts on accounts that pose the greatest risk.

Requirement to Confirm the Closing of Certain Accounts

Proposal. Supplementary Material .04 to the Proposed Rule ("Proposed SM .04") would require an employer member to "promptly obtain records" from an executing member that an associated person's outside brokerage account was closed if the employer member revokes its consent to the account.

Comment. The Committee notes that Proposed SM .04 does not compel the executing member to close the account upon receipt of revocation of consent, or to provide records of account closing to the employer member. Thus, this new mandate imposes a burden on employer members without placing a parallel responsibility on executing members. More particularly, employer members have no assurance that an executing member will in fact close an account upon its receipt of notice of an employer member's revocation of its consent, or provide any evidence of the closing to the employer member. The Committee is concerned that employer members would be burdened needlessly with extra administrative costs associated with the inevitable follow-up activity to obtain records of account closings from executing members. Furthermore, requiring an executing member to "promptly" obtain records of the account closing – when not requiring an executing member to promptly provide such records – may allow a noncompliant executing member to place the employer member in violation of the Proposed Rule.

The Committee recommends that FINRA eliminate the requirement that an employer member obtain evidence of account closing. Once an employer member has revoked its consent to an account, it has no control over the executing member's internal processes, and it is unclear what benefit would be derived from this requirement. Alternatively, the Committee recommends that FINRA require an executing member to promptly provide the employer member with records of the account closing. Placing this burden on the executing member, which controls the account closing process, makes far more sense than essentially holding the employer member (who has no control) responsible for the executing member's actions.

Need for an Extended Implementation Period

Proposal. The Proposal Notice does not discuss any plans regarding the length of the period of advance notice for the compliance effective date of the Proposed Rule, if approved.

Comment. The Committee recommends that FINRA allow no less than 12 months advance notice for the compliance effective date of the Proposed Rule after it has been approved. The Committee believes that member firms will need at least that much time: to adopt new policies and procedures; to modify or create computerized and/or other account record tracking systems; to develop training programs for their associated persons to inform them of the new requirements; to train and/or hire additional compliance personnel to carry out the processes mandated by the Proposed Rule; and to re-document all previous consents of existing outside brokerage accounts and requests for account records in order to comply with the Proposed Rule's provisions.

The Committee appreciates this opportunity to comment on the Proposal Notice. We would be happy to answer any questions you may have about the views expressed herein.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford Kirsch (DGA)

BY: Susan Krawczyk (DGA)

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
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
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)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company