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March 1, 2010

VIA ELECTRONIC MAIL

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

**Re: Regulatory Notice 09-70: Registration and Qualification Requirements:  
FINRA Requests Comment on Proposed Consolidated FINRA Rules  
Governing Registration and Qualification Requirements**

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 Regulatory Notice 09-70, "Registration and Qualification Requirements: FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements" (the "Notice"). The Notice proposes new FINRA rules and supplementary material to amend the FINRA registration and qualification rules (the "Proposal").

The Committee commends FINRA for undertaking, as part of the FINRA Rulebook Consolidation, to consolidate FINRA's current registration and qualification rules. The Committee believes that the Proposal is a significant step in the right direction because of the flexibility of the registration requirements with respect to individuals who are part of large financial services complexes, such as those including insurance companies.

This letter provides comments with respect to certain provisions of two of the rules covered by the Proposal – proposed FINRA Rule 1210 ("Proposed Rule 1210"), and proposed FINRA Rule 1230 ("Proposed Rule 1230"). In particular, this letter provides comments on: Proposed Rule 1210's provisions concerning the 10-year tolling period for the Retained

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<sup>1</sup> The Committee of Annuity Insurers is a coalition of 31 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. 8989826.1

Associate registration category; Proposed Rule 1210's provisions concerning oversight of Retained Associates; Proposed Rule 1230's provisions concerning the functions requiring registration as a Principal Operations Officer; and Proposed Rule 1230's provisions concerning grandfathering of previously registered Chief Compliance Officer and the qualification requirements for a Chief Compliance Officer of a firm with a limited business model (e.g., only the sale of variable annuities).

The Committee then provides comments on two issues not addressed by the Proposal: updating FINRA's Central Registration Depository ("CRD") system such that it provides for indication of any registered representative who is Inactive or a Retained Associate; and limiting the applicability of FINRA's exam and investigation powers with respect to Retained Associates.

#### **PROPOSED 10-YEAR LIMIT ON REGISTRATION AS A RETAINED ASSOCIATE**

**10-Year Limit on Registration as a Retained Associate.** Proposed Rule 1210 calls for two new categories of non-active registration – Inactive<sup>2</sup> and Retained Associate. These categories of registration are "permissive," i.e. they allow for registration, but do not require registration.

An individual who is not engaged in a member's securities or investment banking business, but is instead engaged in a "bona fide business purpose of the member,"<sup>3</sup> may register as Inactive. On the other hand, an individual who is "engaged in the business of a financial services industry"<sup>4</sup> affiliate of a member that controls, is controlled by or is under common control with the member" may register as a Retained Associate. This aspect of the Proposal is designed to allow the registration of individuals who operate through a legally distinct affiliate of the broker-dealer but within the same financial services enterprise.

The Notice explains that Proposed Rule 1210 permits a person to be designated as a Retained Associate for ten consecutive years, but that under certain circumstances, the ten year period may be tolled. The Proposal includes complex rules to calculate the tolling for the ten year period.

The Notice also explains that a Retained Associate would be subject to substantially less FINRA regulation and member firm oversight than active registrants. However, a Retained Associate would be subject to, among other things, continuing education requirements, annual compliance meeting attendance, certain supervision requirements, and background investigations.

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<sup>2</sup> For ease of reference, we refer herein to those registered persons who are inactive and "engaged in a bona fide business purpose" as "Inactive."

<sup>3</sup> The Proposal does not define the phrase "bona fide business purpose of a member."

<sup>4</sup> Proposed Rule 1210(c)(6) defines "financial services industry" to be "any industry regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities."

**Comment.** The Committee recommends that the 10-year limit on registration as a Retained Associate should be eliminated from Proposed Rule 1210. The Committee believes that the process of determining eligibility for tolling is too complex, and compliance with the provision could be overly burdensome for member firms. Moreover, given that there are articulated supervisory requirements with respect to Retained Associates, and particular requirements to remain "current" with respect to securities-related issues (e.g., through meeting continuing education requirements and annual compliance meeting attendance), there appears to be no policy rationale for the 10-year limit on registration as a Retained Associate.

#### **PROPOSED OVERSIGHT OF INACTIVE AND RETAINED ASSOCIATES**

**Oversight of Inactive and Retained Associates.** As mentioned above, pursuant to Proposed Rule 1210, a Retained Associate would be subject to requirements concerning continuing education, attendance of annual compliance meetings, supervision, and personnel background investigation. Inactive registrants would be subject to the same requirements, and also any requirements that are applicable to an associated person. In addition to the requirements listed above, under Proposed Rule 1210 Retained Associates and Inactive registrants would be subject to oversight, such as FINRA fees and charges, Forms U4/U5 filings, and registration. Proposed Rule 1210 also indicates that both Inactive registrants and Retained Associates are subject to NASD Conduct Rule 3010(a)(5) which mandates that the individual be assigned to a supervisor who is responsible for supervising the activities of such individual. Proposed Rule 1210 further provides the following guidance with respect to these supervision obligations:

**Inactive Registrants:** oversight to ensure the that individual is not required to be an active registrant and compliance with the particular rules applicable to an Inactive registrant.

**Retained Associates:** oversight to ensure the that individual is not required to be an active registrant, or an Inactive registrant, and compliance with the particular rules applicable to Retained Associates.

**Comment.** With both Inactive registrants, and Retained Associates, it is very likely that such individuals will have significant activities that do not relate to the securities activities of the member firm. While the Committee recognizes the need for FINRA oversight of Retained Associates and Inactive registrants, it requests that FINRA clarify Proposed Rule 1210 to indicate that such oversight is limited to activities that directly involve the securities activities of a member firm or that are otherwise covered by Proposed Rule 1210.<sup>5</sup>

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<sup>5</sup> Given that individuals in the "Retained Associate" category would not be associated persons of the broker-dealer, it may avoid confusion to designate another title which does not include the term "associate." For example, it would appear that "Retained Person" may avoid confusion in this regard.

### **PROPOSED FUNCTIONS REQUIRING REGISTRATION AS A PRINCIPAL OPERATIONS OFFICER**

**Functions Requiring Registration as a Principal Operations Officer.** Proposed Rule 1230 requires member firms to designate a Principal Operations Officer. The Principal Operations Officer would be defined as the person primarily responsible for the day-to-day operation of the business, including receipt and delivery of funds and securities. More specifically, Proposed Rule 1230 delineates that a Principal Operations Officer would be responsible for: (i) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (ii) final preparation of such reports; (iii) supervision of individuals who assist in the preparation of such reports; (iv) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived; (v) supervision and performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the Exchange Act; (vi) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or (vii) any other matter involving the financial and operational management of the member.

**Comment.** The Committee believes that FINRA has taken a step in the right direction with respect to its delineation of activities for which a Principal Operations Officer would be responsible. However, the Committee recommends that FINRA clarify the activities that constitute "operations." More specifically, the rules should be clarified so that an individual should register as a Principal Operations Officer only when the individual is in some manner responsible for handling or processing customer funds or securities. Stated alternatively, the Committee believes that the activities described above should not be designed to cover the typical duties handled by an administrative officer who handles administrative and technical matters for a member firm but does not have responsibilities related to the handling or processing of customer funds or securities.

### **PROPOSED QUALIFICATION REQUIREMENTS FOR CHIEF COMPLIANCE OFFICERS**

**Qualification Requirements for Chief Compliance Officers.** Proposed Rule 1230 would create a stand-alone registration category for compliance officers, including Chief Compliance Officers. All Chief Compliance Officers designated as such on a member firm's Form BD would be required to pass a Compliance Officer exam and register as a Compliance Officer. Registration as a General Securities Representative would be a prerequisite to Compliance Officer registration, meaning that an individual would be required to hold a Series 7 qualification in order to register as a Compliance Officer. However, a person who, prior to the effective date of Proposed Rule 1230, has been designated as a Chief Compliance Officer on Schedule A of Form BD or has registered as a Compliance Official would be qualified to register as a Compliance Officer without being required to pass the Compliance Officer qualification examination.

**Comment.** The Committee believes that registration as (and appropriate qualification through examination for) a Compliance Officer is appropriate for such Compliance Officers at

member firms with a limited business model (e.g., only the sale of variable products or mutual funds). The Committee contemplates that such qualification and examination will focus on those issues and topics that are relevant to any Compliance Officer, regardless of the business model of the member firm. However, the Committee suggests that to register as a Compliance Officer for a member firm with such a limited business model (i.e., only the sale of variable products), a person should only need to hold the Series 6, and not the currently proposed Series 7 license as a prerequisite. The Committee urges FINRA to amend the provisions of Proposed Rule 1230 pertaining to prerequisites to Compliance Officer registration accordingly.

The Committee also requests that FINRA confirm that the grandfathering provision of Proposed Rule 1230 applies to a situation in which a Chief Compliance Officer, who previously qualified for registration pursuant to Proposed Rule 1230, transfers to a new member firm. In other words the ability of a Chief Compliance Officer to be grandfathered should not terminate upon his or her affiliation with a new firm.

#### **UPDATING CRD SYSTEM TO ACCOUNT FOR NON-ACTIVE REGISTRATION CATEGORIES**

At the moment, the Proposal does not state whether FINRA's CRD system will provide for indication of any registered representative who is an Inactive registrant or a Retained Associate. The Committee recommends that FINRA's CRD system should be updated to indicate those individuals who are Inactive registrants or Retained Associates. Such enhancements would assist firms in their efforts to comply with the new rule.

#### **FINRA'S EXAM AND INVESTIGATION POWERS APPLICABLE TO RETAINED ASSOCIATES**

The Committee believes that subjecting Retained Associates to the full panoply of FINRA's exam and investigation powers under the FINRA Rule 8000 and 9000 series, with no limitations, is inappropriate. Given the tangential relationship that such Retained Associates will have to the member firm's business, the Committee believes that FINRA should only have such authority over Retained Associates in limited circumstances. For example, the Committee believes that exam and investigation powers should only apply to Retained Associates when such individuals have direct knowledge of the particular aspect of the member firm's business being reviewed, and should not be used to collect information about affiliated entities, or the business of such entities, that does not relate in a material way to the member firm's securities conduct being reviewed.

#### **IMPLEMENTATION ISSUES**

The Committee notes that member firms would need to undertake a significant review and modification of current business practices, policies and procedures, and training programs to comply with the Proposal, if all the proposed rule changes are adopted substantially as proposed. This undertaking would likely require an extended period of time. In light of these considerations, the Committee recommends that FINRA provide a lengthy implementation period for the Proposal, if it is eventually adopted.

Marcia E. Asquith  
March 1, 2010  
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**CONCLUSION**

The Committee appreciates the opportunity to comment on the Proposal. We would look forward to a meeting with FINRA staff in order to provide more specific input on the issues raised in this letter and answer any questions the staff may have regarding our comments.

Please do not hesitate to e-mail or call Eric Arnold (eric.arnold@sutherland.com, or 202.382.0741) if you have any questions on the issues addressed in this letter or Clifford Kirsch (clifford.kirsch@sutherland.com, or 212.389.5055).

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Eric Arnold (EJA)

BY: Clifford Kirsch (CK)

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  
Massachusetts Mutual 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  
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  
TIAA-CREF  
USAA Life Insurance Company