

April 27, 2012

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: FINRA Regulatory Notice 12-10: FINRA BrokerCheck:
FINRA Requests Comments on Ways to Facilitate and Increase Investor
Use of BrokerCheck Information**

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 12-10, "FINRA BrokerCheck: FINRA Requests Comments on Ways to Facilitate and Increase Investor Use of BrokerCheck Information" (the "Notice"). The Notice requests comment on ways to facilitate and increase investor use of BrokerCheck information. Specifically, FINRA requests comment on potential changes to the information disclosed through BrokerCheck, the format in which the information is presented and strategies to increase investor awareness of BrokerCheck. This letter provides comments with respect to certain of the questions asked in the Notice.

INFORMATION DISPLAYED

Notice Questions. Should changes be made to the categories of CRD system information that are displayed through BrokerCheck or the time frames for which such information is displayed? If so, what information should be added to or deleted from BrokerCheck and how long should the information be available in BrokerCheck?

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 1982 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee 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.

Committee Comments. The Committee is concerned about the disclosure of certain information that currently resides on BrokerCheck and is publicly available. For instance, certain questions on Form U4 call for disclosure of, among other things, certain: regulatory complaints, proceedings or investigations; pending civil litigation; arbitration or civil litigation containing certain allegations that are still pending; and investment-related, consumer-initiated, written complaint containing certain allegations. Similarly, various questions on Form U5 require disclosure of, among other things, certain: investigations or proceedings; internal reviews; investment-related, consumer-initiated arbitration or civil litigation containing certain allegations that are pending; and investment-related, consumer-initiated, written complaints. Form BD likewise requires disclosure of certain civil proceedings that could result in a “yes” answer to other questions on the form. A fair amount of this information, once reported, does not get removed from BrokerCheck even when subsequent events transpire and reveal a lack of justification for the disclosure. The static nature of this information is problematic when the factual predicate for the disclosure is shown to be without merit.

The Committee believes that mere allegations, complaints, proceedings and investigations should not be disclosed on BrokerCheck unless there is a mechanism to easily and promptly remove such information if and when subsequent events demonstrate there is no factual predicate for the disclosure. The Committee believes it is important to promptly update information on BrokerCheck and promptly remove information that is stale and reflects allegations, complaints, proceedings and investigations that are without merit. Allegations, complaints, proceedings and investigations, even if made and taken in good faith, that are later revealed to be without merit should not continue to stain the reputation of registered representatives and firms on BrokerCheck. The Committee maintains that the current practice of maintaining such information on BrokerCheck is not in the public interest. Investors should have the benefit of choosing firms and registered representatives on the basis of the most accurate information possible. Maintaining stale information on BrokerCheck may hurt not only firms and registered representatives but also investors who are influenced by such stale information.

The Committee believes that certain information on BrokerCheck should not be maintained more than two years. For example, “Historic Complaints” should not be maintained for more than two years. “Historic Complaints,” as defined in FINRA Rule 8312(b)(2)(G) are (1) customer complaints that were reported on a uniform registration form, are more than two years old and that have not been settled or adjudicated, and (2) customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 prior to May 18, 2009 or an amount less than \$15,000 on or after May 18, 2009 and are no longer reported on a registration form, provided that any such matter became a Historic Complaint on or after August 16, 1999. The Committee sees little rationale for requiring such complaints to be maintained for a period beyond two years. It is difficult to believe that complaints, arbitrations or litigations that fall within the narrow definition of “Historic Complaint” remain material for many years in the future.

More broadly, the Committee believes that certain information in the “Registration Forms,” as defined in FINRA Rule 8312(b)(2)(A) should be archived in the CRD system and not

publicly available through BrokerCheck. In this respect, it is the Committee's understanding that certain responses, such as prior responses to Items 14(I)(3) and 14(I)(5) of Form U4, are treated as "historical complaints" under Rule 8312(b)(2)(G) and thus are disclosed and publicly available through BrokerCheck despite the fact that (1) these items ask solely about information "[w]ithin the past twenty four (24) months" and (2) Item 14(I)(5) asks about arbitration claims or civil litigation and not customer complaints. Assuming the Committee's understanding is correct, the Committee strongly believes that initial positive responses to these questions and other similar questions on the Registration Forms that are subsequently revised to negative responses because the assertions are "Closed/No Action," "Withdrawn," "Denied," "Dismissed" or result in "No Action" should be archived in the CRD and not available through BrokerCheck the same way other responses to the Registration Forms are archived and not available through BrokerCheck. The Committee believes it is inappropriate and unfair for initial positive responses to these items that are subsequently changed to negative responses for the reasons noted above to continue to be publicly available on BrokerCheck. The Committee sees little rationale for treating responses to items like Items 14(I)(3) and 14(I)(5) of Form U4 differently than other items in the Registration Forms that initially result in positive responses but are then changed to negative responses for the reasons noted above.

The Committee notes that Rule 8312(d)(2) provides that FINRA shall not release information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority. Similarly, Rule 8312(d)(6) provides that FINRA shall not release the most recent information reported on a Registration Form if FINRA has determined that the information was reported in error by a member, regulator or other appropriate authority. The Committee believes that the logic underlying these provisions should apply to the types of responses discussed above.

The Committee maintains that a registered representative's score on industry qualification examinations is not useful to investors. A registered representative's score on an exam often is not indicative of the registered representative's industry knowledge or how well the registered representative will service customers. For many registered representatives, the score is merely indicative of how well they do on industry qualification exams. Disclosing the scores will therefore put undue emphasis on a registered representative's ability with respect to taking standardized tests.

Given the information already disclosed on BrokerCheck, the Committee believes that, in the ordinary course, it would not be helpful to disclose the reason for, and comments related to, a registered representative's termination and that such explanations could create significant legal liability for member firms.

Notice Question. Should a broker's educational background and/or professional designations (e.g., Chartered Financial Consultant, Chartered Financial Analyst) be available in BrokerCheck?

Committee Comments. The Committee believes it would be beneficial to provide information concerning registered representatives' designations. However, doing so would raise the question which designations would be available on BrokerCheck. The Committee believes

that only bona fide, industry-recognized quality designations should be available. FINRA would thus be placed in the position of having to vet designations and determining which ones are sufficient to be listed on BrokerCheck. The Committee is interested in understanding what criteria FINRA would use to make such determinations.

REPORT DESIGN, FORMAT AND CONTENT

Notice Question. What changes, if any, should be made to the design, format or content of the BrokerCheck summary report and/or the full detailed report?

Committee Comments. The Committee believes that the current combination of summary reports and full detailed reports work well and should be retained. The Committee believes that the summary reports provide crucial information in a concise format. If they wish, investors can then view the detailed report to get additional information about specific topics of interest. However, the Committee believes that explanatory comments in the Disclosure Reporting Pages should be more prominent and accessible on BrokerCheck. Based on the experience of Committee members, the Committee also notes that the format and structure of BrokerCheck disclosures at times confuses investors when a single event triggers the disclosure of multiple items on the Registration Forms. Specifically, Committee members have found that investors often mistakenly believe that the various disclosures reflect multiple unrelated events. The Committee believes that the presentation of information on BrokerCheck contributes to investor confusion when a single event triggers multiple disclosure items and that investors would be better served if it were more apparent when a single event triggered multiple disclosures.

In addition, while outside the scope of what the Notice seeks comment on, the Committee continues to believe that information about registered representatives of a broker-dealer and investment adviser representatives of an investment adviser should be available to investors via a single joint database. Forcing investors to go to different sites to obtain information about the professionals they use to provide advice and help manage their financial affairs makes little sense. The Committee believes that BrokerCheck and the Investment Adviser Public Disclosure website ought to be combined and the information available via a single source. A joint database for investment advisers and broker-dealers and their registered personnel would, in the Committee's view, enhance investor awareness of, and use of, such information and make it easier for investors to find information about their financial advisors.

INVESTOR AWARENESS OF BROKERCHECK

Notice Question. Should FINRA make basic BrokerCheck information (*e.g.*, registration status, employing firm, employment location) available in such a way that would enable an investor to enter a broker's name in an Internet search engine, see the basic information in the search results, and be directed to BrokerCheck for more detailed information?

Committee Comments. The Committee believes that information about member firms and their registered personnel should be limited to BrokerCheck and not available outside the contours of the BrokerCheck website. In this respect, the Committee is concerned about

investors and others viewing the information from BrokerCheck outside of the context in which such information was designed to be used.

COMMERCIAL USE

Notice Questions. Should FINRA provide BrokerCheck information to for-profit companies for commercial use? What are some of the benefits/concerns of such action? If FINRA were to provide BrokerCheck information to such companies, what conditions or limitations on use should FINRA consider imposing?

Committee Comments. The Committee strongly believes that it would be improper for FINRA to provide BrokerCheck information to for-profit companies for commercial use. The Committee believes that member firms should have the ability to decide for themselves whether and how to utilize their own information and the personal information of their registered persons. In the view of the Committee, much of the information about member firms and their registered persons belongs to such member firms and should not be used for commercial purposes without their consent. The Committee would be in favor of a system under which each member firm could decide whether and how such information is utilized for commercial purposes.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposal. We are happy 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 contact Michael B. Koffler (212.389.5014), Cliff Kirsch (212.389.5052) or Susan Krawczyk (202.383.0197) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Cliff Kirsch (JK)
Cliff Kirsch

BY: Michael Koffler (JK)
Michael Koffler

BY: Susan S. Krawczyk (JK)
Susan S. Krawczyk

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
(a Goldman Sachs company)
CNO Financial Group, 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)
SunAmerica Financial Group
Symetra Financial
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company