

March 5, 2013

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 13-02: Retirement Compensation Practices

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 13-02, "Recruitment Compensation Practices" (the "Notice"). The Notice provides discussion and requests comments on a proposed rule to require certain disclosures to customers who may transfer their accounts to follow a registered person to his or her new broker-dealer. Set forth below is a brief overview of the rule and Notice, followed by the Committee's comments related to the Notice.

SUMMARY OF THE PROPOSAL UNDER REGULATORY NOTICE 13-02

The proposed rule under the Notice ("Proposal") addresses enhanced recruiting compensation packages offered to incentivize registered persons to move from one firm to another ("enhanced compensation"). Enhanced compensation is defined as compensation paid by the recruiting member firm "other than the compensation normally paid by the recruiting firm to its established registered persons." The proposed rule provides that such compensation could include, but would not be limited to, signing bonuses, upfront or back-end bonuses, loans, accelerated payouts and transition assistance. The Proposal would require disclosure of these arrangements for one year following the date the registered person associates with a new firm. Such disclosure would include providing the "details" of the enhanced compensation to any former customer with an account assigned to the registered person at the previous firm who: (1)

¹ The Committee of Annuity Insurers is a coalition of 28 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.

is individually contacted by the new firm or registered person, either orally or in writing, regarding the registered persons transfer to the new firm; or (2) seeks to transfer an account from the previous firm to a broker-dealer account assigned to the registered person with the new firm.

In support of the Proposal, FINRA refers to former SEC Chairman Mary Schapiro's 2009 letter (the "Schapiro Letter") to broker-dealer CEOs in which she identified potential conflicts related to these enhanced compensation packages, including incentives to recommend unsuitable investment products or otherwise engage in activity that generates commissions but is not in the investor's interest. These incentives result from, according to the Schapiro Letter, the belief of registered persons who have received such packages that they "must sell securities at a sufficiently high level to justify the special arrangements that they have been given."

The Notice also identifies a slightly different conflict, as FINRA indicates that the "proposed rule focuses on the undisclosed conflict that representatives have received lucrative financial incentives, often based on trailing production, to move firms, and customers that are solicited to follow their representatives are not directly notified of these practices" (the "Recruiting Firm Conflict"). FINRA explains that it believes customers would benefit from being informed of the incentives the registered person received to change firms.

COMMITTEE COMMENTS

While the Committee appreciates FINRA's focus on potential conflicts of interest associated with recruiting compensation practices, the Committee urges FINRA to reconsider the scope and purpose of its Proposal. The Committee does not believe that the Proposal provides a measured or effective approach to improving an investor's understanding of their relationship with their registered person, and the impact that the broker-dealer's recruiting efforts may have on that relationship. In addition, the Committee believes that the proposed disclosure requirements are not aligned to remedy the issues raised in either the Schapiro Letter or the Recruiting Firm Conflict with respect to enhanced compensation.

The Proposed Disclosure Is Not Necessary to Address the Concerns Identified in the Schapiro Letter

The Schapiro Letter identified the possibility that enhanced compensation would create incentives on the newly recruited registered person to recommend unsuitable investment products or otherwise engage in activity that generates commissions to justify his or her generous compensation package. The potential conflicts described in the Schapiro Letter speak directly to situations in which recruiting compensation may influence a registered person's recommendation and sales activities. Notably, FINRA has proposed various ways to address similar compensation practices over the years. The Committee believes that there are ample existing rules in place that require a firm to surveil for unsuitable recommendations. If the purpose of the Proposal is to address the conflict described in the Schapiro Letter, the Committee believes that focusing efforts on detecting and preventing the unsuitable sales, rather than requiring disclosure of the recruiting compensation, would be a more direct response to remedy the problem.

In addition, we note that the Proposal's definition of enhanced compensation is extremely broad and focuses on compensation not related to a registered person's recommendations or transactions (e.g., signing bonuses, transition assistance such as moving expenses). The breadth of the Proposal appears to suggest that registered persons receiving non-transaction based compensation may be influenced in their sales activities with customers and possibly result in customer harm. We respectfully disagree with the assertion that non-transaction-based compensation associated with recruiting compensation practices presents the conflict of interest described in the Schapiro Letter. Further, the Proposal does not cite a basis for the regulatory concern related to these practices. Has FINRA received customer complaints related to recruiting compensation practices or otherwise detected evidence of problematic sales practices?

The Recruiting Firm Conflict Does Not Impact the Relationship Between the Registered Person and the Investor

As described above, FINRA also focuses on the Recruiting Firm Conflict that the registered person faces in choosing the firm with which they are associated. The Committee believes it is important to note that the Recruiting Firm Conflict is *not* a conflict of interest that directly impacts a registered person's role or activity with an investor. The Committee notes that the more pressing conflicts between the registered person and the investor are typically the focus of regulatory concerns, and allow for clearer, more precise, and valuable disclosure to an investor.

FINRA indicates in the Notice that it believes customers would benefit from understanding the incentives that led the registered person to change firms. In many if not most cases, the decisions made by registered persons to change firms are exceedingly complex and may include a number of personal factors that are part of the equation whenever any working person makes a determination to change jobs, including: geographical location; family concerns; personality match; and the culture of the competing firms. FINRA's proposal to provide disclosure related to the enhanced compensation seems to focus investors too narrowly on the compensation package that the registered persons may have received from their new firm. The Committee is concerned that such disclosure will prove to be ineffective and, in fact, may confuse investors and cause them to lose focus on the more logical factors they should consider in determining whether to transfer an account to a new firm (e.g., the services, products, fees and expenses of the new firm).

FINRA Should Address Broker-Dealer Conflicts in a Comprehensive Manner

The Proposal's focus is limited to potential conflicts of interest related to recruiting compensation practices. We recommend that FINRA delay the rulemaking process and instead address possible disclosure regarding compensation practices in a comprehensive manner. For example, most recently, FINRA Regulatory Notice 10-54 addressed disclosure of conflicts of interest that arguably could encompass this issue. Section 919 of the Dodd-Frank Act also provides a permissive grant of authority for the SEC to engage in rulemaking on disclosure of certain compensation practices. The Committee believes that a comprehensive review of the required disclosure regime for broker-dealers would result in a more thoughtful, consistent and effective set of disclosures that would be most likely to benefit investors. Adding

disclosure requirements on broker-dealers in a piecemeal manner that focus only on one type of compensation is not likely to result in an efficient or effective set of disclosures for investors.

Comments on Specific Aspects of the Proposal

In the event that FINRA moves forward with the Proposal in a format similar to what is currently provided for, the Committee provides certain comments on specific aspects of the Proposal below.

Substance of Disclosure. If FINRA believes that disclosure of the enhanced compensation of newly recruited registered persons should be provided, the Committee recommends a generic disclosure of recruiting compensation packages. The Committee disagrees with providing customers details of amounts received because it does not appear to address the contemplated purpose of the Proposal. Further, we believe this information is likely to result in confusion for customers and is not relevant to any services provided by their registered persons. An investor may believe that the compensation being paid to the registered person impacts the services or products available to the investor, and not understand that it simply represents the recruiting firm's determination of the business value of bringing the registered person on board.

The Committee also believes that FINRA should provide more explicit information on how the enhanced compensation packages should be disclosed. The guidance provided in the Notice and Proposal is extremely limited. For example, the proposed rule simply indicates that firms must provide information about the "details" of the enhanced compensation. The Notice further indicates that firms must include information about the "timing, amount and nature" of the compensation. The Committee believes that FINRA should provide expanded details on what disclosures would be expected, particularly with respect to the specific types of compensation that are expressly included in the definition of "enhanced compensation." In addition, the Committee believes that FINRA should provide guidance on how to disclose enhanced compensation that is incapable of being accurately quantified in advance.

Finally, disclosing the terms of recruiting compensation packages also presents concerns regarding the confidentiality and success of these programs. Oftentimes, the terms of these programs are confidential and disclosing specific details such as payment terms, duration, etc., could put firms at a competitive disadvantage and result in additional issues. By requiring disclosure of the details of the enhanced compensation, FINRA is impacting a core, and currently proprietary, tool that broker-dealers use to manage their business (i.e., compensation of personnel), without a measurable increase in customer protection or evidence that the disclosure will impact the conflicts identified in the Notice.

Timing of Disclosure. The Proposal clarifies that the disclosure may be presented orally or in writing at the first time the registered person's former customer is contacted by the recruiting firm or registered person, and prior to account opening. FINRA's proposal also states that it expects that these communications will occur after the registered person has terminated his or her association with the previous firm. The proposed timing of this disclosure appears

inconsistent with the level of potential customer harm. FINRA and SEC rules mandate few disclosures prior to account opening. The Committee requests that FINRA reconsider the timing of the disclosure requirement to better align the contemplated disclosure and timing of such with potential harm to customers.

Operational Challenges: Regulation S-P. The proposed timing of this disclosure also may present operational challenges. For example, registered persons may be bound to non-compete agreements that limit their ability to contact customers after terminating from their broker-dealers. Similarly, the transfer of customer information to a new firm that would be needed to monitor the delivery of the proposed disclosures to the applicable customers of the recruited registered person may violate provisions under Regulation S-P.

Duration of Disclosure Period. The Committee urges FINRA to limit the duration of the disclosure period based on the costs and efforts required to produce this information and ensure that it is provided to the applicable customers. The Committee suggests that the duration of the disclosure period be limited to the first 90 days after the registered person becomes associated with the new firm.

Scope of Disclosure Requirements. The Committee believes that the disclosure requirements should *only* be applied to former clients of the recruited registered person who transfer their accounts to such registered person at his or her new firm. Accordingly, we request confirmation that the scope of the disclosure requirements is limited to such former clients.

Regulatory Burdens. The Committee notes that many of its members are concerned about the complexity and cost of tracking and monitoring the required disclosures. As many firms would have multiple new hires to be considered for different “calendars” during which the requirements would apply, devising a system to track and monitor the required disclosures would be a significant challenge. Given that the Proposal provides little information on the harm created by the enhanced compensation, the Committee recommends that FINRA consider modifying the Proposal to more accurately address any perceived harm, and providing the industry with information on the harm. Additionally, the Committee recommends that FINRA consider a disclosure regime that is easier to implement (e.g., allowing for generic disclosure at or after account opening).

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

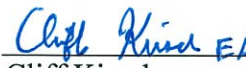
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regarding our comments. Please do not hesitate to contact Eric Arnold (202.383.0741) or Cliff Kirsch (212.389.5052) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Eric Arnold

BY:  EA
Cliff Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

Allianz Life
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
(a Goldman Sachs company)
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
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
SunAmerica Financial Group
Symetra Financial
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company