

June 29, 2017

VIA ELECTRONIC MAIL

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: Regulatory Notice 17-20 Retrospective Rule Review:
FINRA Requests Comment on the Effectiveness and Efficiency of Its
Rules on Outside Business Activities and Private Securities Transactions**

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to FINRA's Regulatory Notice 17-20, FINRA Requests Comment on the Effectiveness and Efficiency of Its Rules on Outside Business Activities and Private Securities Transactions ("RN 17-20" or the "Notice").² The Notice requests comments under FINRA's retrospective rule review program on a "rule set" that includes FINRA Rules 3270 (Outside Business Activities of Registered Persons) and 3280 (Private Securities Transactions of an Associated Person).

The Committee welcomes the opportunity to comment on these FINRA rules and commends FINRA on further implementing its rule review program.

¹ The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies 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.

² FINRA Regulatory Notice 17-20, Retrospective Rule Review (May 2017), *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-20.pdf.

COMMITTEE COMMENTS

The Committee sets forth below a series of comments and recommendations related to Rule 3270 and Rule 3280.

Targeting Investment-Related Activities/Risk-Based Approach to Rule 3270. We believe that Rule 3270 should target “investment-related” activities, and that a risk-based approach be adopted with respect to other types of activities. In this regard, we suggest that FINRA adopt the definition of “investment related” that is used on Form U4 to determine the required disclosures of registered persons under Question 13 thereof that requests information on “Other Business” of the individual applying for registration. This change to the Rule would eliminate the unintentional failures to disclose activities that (1) are routine and ordinary, (2) are unlikely to create any of the risks that Rule 3270 is designed to guard against, and (3) would result in efficiencies for members by eliminating the need to track and disclose low risk activities.

Carving Out Certain Routine Activity from Rule 3270. As an alternative or in addition to limiting the application of Rule 3270 as discussed above, we believe that FINRA should expressly carve out certain activities from coverage under Rule 3270. The activities described below are, as described above, routine and ordinary, and unlikely to create any of the risks that Rule 3270 is designed to guard against. The Committee believes FINRA could carve out these activities from the purview of Rule 3270 either expressly in the rule itself or through guidance (e.g., Interpretive Material, Frequently Asked Questions, etc.).

These activities include:

- The mere formation of a legal corporate structure (e.g., limited liability company, corporation) for which no activity is taking place;
- Non-compensated activities including volunteering, coaching a little league team, board position-homeowners/condo association, religious organizations etc.;
- Acting as a non-compensated fiduciary for immediate family member appointments (e.g. trustee, custodian, executor etc.); and
- Participation in seasonal or short-term employment not related to securities (e.g., a temporary temp job at UPS at holiday time).

Cap on Number of Outside Business Activities (“OBAs”). FINRA should provide guidance regarding whether there is a cap on the number of OBAs a registered representative can participate in or the amount of time a registered representative can spend on the requested activity.

Rental Property Related Questions under Rule 3270. FINRA should provide extensive guidance regarding registered representative activity involving rental property, as these are frequently the subject of outside business activity reviews. This guidance should include:

- The circumstances under which rental property does and does not constitute a business activity.
- Can multiple rental properties be listed on a registered representative's Form U4 in a single entry rather than an entry for each property owned and rented out by the registered representative? Which address should be listed on the U4 if the rental property is owned by an LLC located at an address other than the property itself? Can the address of the LLC be used instead of the address of the property?

Private Securities Transactions. The Committee believes that the existing guidance related to interpreting the applicability of Rule 3280 to private securities transactions ("PSTs") is contained in a variety of sources and difficult to apply to given factual situations that frequently confront member firms. In this regard, the Committee recommends that FINRA undertake to attempt to consolidate that guidance in a single location related to Rule 3280, either as interpretive material or alternatively as content under a "Frequently Asked Questions" related to PSTs. For example, old NASD Notice to Members 94-44 and 96-33 could be refreshed and made more user friendly as a source of guidance related to the PST rules.

We also believe that FINRA should provide guidance with respect to the following questions related to PSTs:

- When would a PST also be deemed an OBA?
- When, if ever, should a registered person's investment in an LLC start-up company be reviewed as a PST?

CONCLUSION

The Committee appreciates the opportunity to submit comments in response to RN 17-20. Please do not hesitate to contact Eric Arnold (202.383.0741, ericarnold@evershed-sutherland.com) or Cliff Kirsch (212.389.5052, cliffordkirsch@eversheds-sutherland.com) if you have any questions regarding this letter.

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: Eric Arnold/SL
Eric Arnold

BY: Clifford Kirsch/SL
Clifford Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
National Life Group
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
Symetra Financial Corporation
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.