

June 19, 2017

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

**Re: FINRA Special Notice  
Engagement Initiative: FINRA Requests Comment on Potential Enhancements  
to Certain Engagement Programs**

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> in response to the Special Notice, *Engagement Initiative* (the "Notice") issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on March 21, 2017.<sup>2</sup> The Notice solicits comments on FINRA's engagement programs, as one of the first steps of FINRA360, a comprehensive self-evaluation and organizational improvement initiative.

The Notice provides an overview of FINRA's current engagement programs, including its committees, rulemaking process, and member relations and related programs. The Notice emphasizes the importance of engaging FINRA's member firms, investors, and other regulators and policymakers. Specifically, the Notice provides a detailed overview of the benefits of engagement, and the process by which FINRA solicits members for its advisory, *ad hoc*, and district committees and the responsibilities of each committee. In addition, the Notice provides insight into FINRA's rulemaking process, including how changes to rules are generated, the process for retrospective rule reviews, and how FINRA issues regulatory guidance. The Notice also reviews FINRA's effort to provide a variety of resources to member firms through conferences, meetings, education programs and compliance tools, as well its efforts around investor education and protection and FINRA Board of Governors (the "Board") operations and activities. The Notice requests comment on how FINRA can enhance all of these engagement programs to further align with its mission and increase its effectiveness as a self-regulatory organization.

The Committee appreciates the opportunity to submit its comments in response to the Notice and we welcome the opportunity to discuss these in greater detail.

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<sup>1</sup> 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.

<sup>2</sup> The Notice is available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Special-Notice-032117.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Special-Notice-032117.pdf).

### **Annuity Product Expertise**

During the past ten or so years, the pace of annuity product innovation has been staggering. Annuities have evolved to offer individuals a wide spectrum of choices that provide diverse investment options combined with lifetime income guarantees. They now offer a wider array of investment styles and managers to choose from, provide a range of death benefit guarantees and innovative guaranteed lifetime income options. In order for FINRA to effectively oversee the distribution of annuity products by broker-dealers, it is critical for it to maintain expertise regarding the current generation of annuity products. FINRA could look to accomplish this through enhancing the training and education afforded to dedicated staff focused on annuity issues. The Committee would also welcome the opportunity to engage in a series of discussions with FINRA staff regarding these innovations.

### **Establishing a Committee Specific to Annuity Products**

As the Notice mentions, one of FINRA's critical engagement initiatives is its use of various committees which engage its member firms and the general public on its regulatory and policy initiatives. In particular, FINRA's advisory committees generally provide comment on rule proposals and regulatory initiatives, which in turn are presented to the Board. In addition, some advisory committees provide feedback on issues related to specific subject matter. Advisory committees were created concerning a range of issues, including compliance, small firms, fixed income, and independent dealers/insurance affiliates. Over time, advisory committees may be consolidated or created, depending on FINRA's particular needs. FINRA also creates *ad hoc* committees from time to time to comment on issues of particular interest at any moment in time.

The Committee strongly believes that FINRA would benefit from the subject matter insight of an advisory committee specific to annuity products in contrast to the current handling in which annuity products are lumped together with issues related to independent broker-dealers. A standing advisory committee would be most appropriate as opposed to an *ad hoc* committee because the insight provided will likely be relevant to various initiatives, rules and policies on an ongoing basis.

### **Committee Selection Process**

The Notice also requests comment on the advantages and disadvantages of a more formalized selection process for advisory and *ad hoc* committee membership. The Notice states that most advisory and *ad hoc* committee members are appointed by the Board, while certain other committee members are elected.

The Committee believes that FINRA's committees would benefit from a more transparent selection process with respect to how individuals may be nominated for appointment, as well as how an individual may be appointed to serve. Alternatively, the Committee suggests that FINRA instead require the election of committee members to promote engagement by member firms.

The Notice also requests comment on whether FINRA should make publicly available all advisory and *ad hoc* committee rosters. The Committee believes that publicly available advisory and *ad hoc* committee rosters further foster transparency and encourage members to be held accountable for active participation on committees. Making the advisory and *ad hoc* committee rosters publicly available should not present any concerns which do not already exist with respect to District Committee rosters, which are currently publicly available.

The Notice further requests comment on implementing term limits for committee membership. The Notice indicates that FINRA reviews advisory committee membership annually "to ensure appropriate composition and representation," while *ad hoc* committee membership is reviewed "regularly." In addition, while certain advisory and *ad hoc* committees have a limit on

the number of terms that a member may serve, the majority of advisory and *ad hoc* committees have no term limits. District Committees have a limit of two consecutive terms. The Committee believes that FINRA's committees would benefit from the imposition of term limits, with a view to ensuring fresh and diverse perspectives.

### **FINRA Rulemaking**

The Notice also requests comment on additional information that FINRA could provide to make the FINRA rulemaking process more transparent. We offer the following thoughts:

- In the past, the Committee has expended a great deal of effort commenting on significant rulemakings. In some cases, there is no communication from FINRA as to the status of the rulemaking following the close of the comment periods.<sup>3</sup> In a few instances, the same rulemakings have reappeared years later with significant revisions, as they are filed by FINRA with the SEC for notice and comment.<sup>4</sup> In many of these cases, the Committee believes that it would be beneficial to member engagement for FINRA, as a rule, to provide a second comment period prior to filing the rule directly with the SEC. This is especially important if FINRA makes substantial revisions to a rulemaking or revisits a prior rulemaking after several years of inactivity. Ongoing substantive communication would also be helpful in instances in which a rule is ultimately not advanced.<sup>5</sup>
- While the rulemaking process promotes important dialogue between FINRA and its members, there are times that FINRA has not been completely responsive to comments provided by the Committee. And, when the Committee has sought to re-address comments to FINRA once the filing is made with the SEC for notice and comment, FINRA declines to respond, stating that the comment has already been raised. The Committee recognizes that FINRA must be strategic and efficient when addressing the numerous comments received, and that FINRA could not possibly address each comment provided in response to Regulatory Notices. However, the Committee believes that overall, the rulemaking process would be improved where FINRA provides substantive justification for not addressing a comment.

### **Effective Dates of Rules**

In connection with the rulemaking process, FINRA adopts rules which become effective on various dates throughout the year. At times, the effective date for a rulemaking may overlap, or closely follow, the effective date for another rulemaking. Additionally, member firms are tasked with keeping track of the effective dates of various rules throughout the year.

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<sup>3</sup> See, e.g., FINRA Regulatory Notice 11-14 (FINRA Requests Comment on Proposed New FINRA Rule 3190 to Clarify the Scope of a Firm's Obligations and Supervisory Responsibilities for Functions or Activities Outsourced to a Third-Party Service Provider) ("RN 11-14"). RN 11-14 had a comment period that closed on May 13, 2011 and FINRA took no formal subsequent action on the proposed rules, nor did it formally indicate to member firms and the public that the proposed rulemaking was not being advanced.

<sup>4</sup> A recent example of such rulemaking practices is illustrated by Regulatory Notice 09-70, Registration and Qualification Requirements and Regulatory Notice 15-20, Qualification Examinations Restructuring, which were combined years later and filed with the SEC as SR-FINRA-2017-007.

<sup>5</sup> About 8 years ago, in 2008, FINRA embarked on a proposal to revise and update NASD Interpretive Materials 2210-1 and 2210-2. The Committee was very supportive of the proposal and collaborated on the proposal with FINRA staff. Unfortunately, the proposal stalled at the SEC and was ultimately withdrawn. However, Committee members are supportive of reviving the proposal, particularly in light of the recent proposal from the Advertising Department relating to customized hypothetical investment planning illustrations, and are hopeful that FINRA staff can reconsider this rulemaking in the near future. See Regulatory Notice 08-39 (July 28, 2008) (proposing changes to FINRA's rules governing variable products). Regulatory Notice 08-39 was followed by FINRA filing a formal proposal with the SEC on October 20, 2009 (File No. SR-FINRA-2009-070).

Therefore, member firms implement procedures and processes to ensure compliance with adopted rules on various dates throughout the year. However, overlapping, consecutive, and sometimes arbitrary effective dates may present considerable difficulty for compliance personnel who are tasked with managing various projects. To the extent possible, the Committee asks that FINRA coordinate the effective dates for adopted rules in a systematic way that would alleviate the difficulty faced by member firms (e.g., new rules become effective the first of every year and/or the first of July).

The Committee appreciates the opportunity to offer these comments on the Notice. The Committee would be pleased to meet with FINRA staff to discuss the comments in this letter and provide additional feedback to FINRA if this would be helpful. Please do not hesitate to contact Clifford Kirsch (212.389.5052, [cliffordkirsch@eversheds-sutherland.com](mailto:cliffordkirsch@eversheds-sutherland.com)); Eric Arnold (202.383.0741, [ericarnold@eversheds-sutherland.com](mailto:ericarnold@eversheds-sutherland.com)) or Susan Krawczyk (202.383.0197, [susankrawczyk@eversheds-sutherland.com](mailto:susankrawczyk@eversheds-sutherland.com)) if you have any questions regarding this letter.

Respectfully submitted,

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Clifford Kirsch

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**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.