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ATLANTA AUSTIN HOUSTON NEW YORK WASHINGTON DC

March 5, 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 10-01: Proposed Consolidated FINRA Rules Governing FINRA's Membership Application Proceedings

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 10-01, "Proposed Consolidated FINRA Rules Governing FINRA's Membership Application Proceedings" ("Regulatory Notice 10-01"). Regulatory Notice 10-01 proposes revisions to certain provisions of the existing membership rules related to new and continuing membership applications, and requires certain additional information (including certain affiliate information) about the applicant (the "Proposal").

This letter provides comments with respect to certain provisions of three of the rules covered by the Proposal – proposed FINRA Rule 1121 ("Proposed Rule 1121"), proposed FINRA Rule 1160 ("Proposed Rule 1160"), and proposed FINRA Rule 1170 ("Proposed Rule 1170"). In particular, this letter provides comments on: provisions under Proposed Rule 1121, Proposed Rule 1160, and Proposed Rule 1170 relating to disclosure of information about affiliates of member firms; a provision under Proposed Rule 1160 concerning FINRA's ability to waive a Continuance in Membership Application ("CMA") filing requirement for changes in business operations or control; and provisions under Proposed Rule 1170 regarding the requirement that member firms file written notice of business changes with FINRA under certain defined circumstances.

¹ 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.

DISCLOSURE OF INFORMATION REGARDING AFFILIATES

Information Regarding Affiliates. Regulatory Notice 10-01 sets forth a significant expansion to the information of member firm affiliates that is subject to collection and review during a New Member Application ("NMA"), a CMA, and on an ongoing basis upon FINRA's request. Set forth below is a summary of the prominent points of the proposed rule changes that could materially impact Committee members. Following this summary, the Committee provides its comments that criticize the proposals as overly broad and without appropriate limits in terms of the applicable information to be reviewed related to member firm affiliates.

New Member Application – Proposed FINRA Rule 1121. Regulatory Notice 10-01 introduces Proposed Rule 1121 which would expand and replace NASD Rule 1013 on New Member Applications. Proposed Rule 1121(a)(1)(G)(iv) requires an applicant to provide an organizational chart that identifies the applicant and all of its affiliates,² provide a brief summary of each affiliate's principal activity and identify the legal relationship between the applicant and each affiliate.

Additionally, Proposed Rule 1121 requires, in certain circumstances, that additional information be provided about an applicant's affiliate. Under Proposed Rule 1121(a)(1)(G)(v), an applicant must provide a detailed and comprehensive summary of the business relationship between the applicant and any affiliate:

- (1) whose financial information is consolidated with that of the applicant;
- (2) whose liabilities or obligations have been, directly or indirectly, guaranteed by the applicant;
- (3) that is the source of flow-through capital to the applicant in accordance with Appendix C of Rule 15c3-1 under the Securities Exchange Act of 1934:
- (4) upon which the applicant or its customers rely for operational support or services that are used in connection with the applicant's securities, investment banking or investment advisory business;
- (5) that has the authority or the ability to withdraw, or cause the withdrawal of, capital from the applicant;
- (6) that has a mutually dependent financial relationship with the applicant;
- (7) that has a financial or marketing relationship with the applicant; or
- (8) that provides any third-party products and/or services as part of any operation or function of the applicant required to be supervised by the applicant pursuant to FINRA rules.

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² Proposed Rule 1111(a) defines "affiliate" to mean "(1) a person that directly or indirectly controls an applicant (excluding a natural person who controls an Applicant solely in his or her role as a director, general partner or officer (or occupies a similar status or performs a similar function)); or (2) an entity that is controlled by, or is under common control with, an applicant."

At the discretion of FINRA's Department of Member Regulation, an applicant shall submit "evidence of, and information regarding, any business relationship [described above] from the books and records of the Applicant and/or the books and records of any Affiliate that is a party to such business relationship." In Regulatory Notice 10-01, FINRA describes the requirement for the expanded scope of affiliate information as resulting from its experience that "during the NMA review process ... some applicants and their affiliates have such close, and sometimes interwoven, business relationships that a more thorough review is needed to ensure that adequate investor protection safeguards are in place."

Continuance in Membership Applications – Proposed FINRA Rule 1160. Regulatory Notice 10-01 introduces Proposed Rule 1160 to replace and expand current NASD Rule 1017 governing changes in control and material changes to business operations. Proposed Rule 1160(b) identifies a "catch all" category for information that is required to be submitted in connection with a CMA. More specifically, Proposed Rule 1160(b)(2) states that:

The application shall also identify and update any member application information required pursuant to Rule 1121(a) (e.g., organizational charts, constituent documents, etc.) that would be rendered inaccurate or incomplete as a result of the proposed changes; to the extent a member has not previously submitted an item required pursuant to Rule 1121(a) to the Department, the application shall include such information where relevant to, or implicated by, the proposed change(s).

Proposed Rule 1160 would therefore incorporate the requirements with respect to information about the member's affiliates into the CMA process. Moreover, the requirement for such information would apparently be required only where it is "relevant to" or "implicated by" the proposed change in business operations (or membership agreement change).

Continuous Access to Affiliate Information – Proposed FINRA Rule 1170. Proposed Rule 1170 adds an ongoing and continuous ability of FINRA to request information about a member firm's affiliates. Proposed Rule 1170(c) provides that FINRA may request that a member "promptly provide to FINRA any information concerning its Affiliates that an Applicant or member would otherwise be required to provide under the Rule 1100 Series (Member Application)." This appears to provide FINRA with an ongoing ability to require that a member firm provide its books and records, or direct that its affiliates provide books and records, where one of the triggers under Proposed Rule 1121(a)(1)(G)(v) is met.

Comment. Most of the Committee members have one or more affiliated broker-dealers and therefore are likely to incur a significant share of the burden under the proposed expansion of review and oversight of broker-dealer affiliates. The Committee believes that, as currently drafted, the triggers for review of affiliate information under Proposed Rule 1121 ("Triggers") are too broad, and the information to be requested from such affiliates is without proper limits. As a result, the Committee believes that FINRA should narrow both the Triggers for receiving affiliate information, as well as the types of information that is appropriate for FINRA to review

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and request. The Committee believes that without this narrowing, the NMA and CMA process will likely become very inefficient and unproductive. It appears to the Committee that, because the standards identified under Proposed Rule 1121 are the source of all requests for affiliate information (those for CMA and under Proposed Rule 1170), amending the terms of Proposed Rule 1121 should likely remedy the problems the Committee sees with the other proposed rules that impact the collection and review of affiliate information.

More specifically, the Committee believes that several of the Triggers are overly broad. For example, if the member firm and affiliate have a mutually dependent financial relationship, extensive information is required including the possibility of a review of the books and records of the affiliate. One could argue that any affiliate relationship is, by definition, mutually dependent financially since the ultimate ownership is the same. This Trigger should either be eliminated or certain limits should be imposed. One possible limit would be that the alleged mutually dependent financial relationship with the affiliate has a material impact on the member's financial status or its ability to meet its financial, supervisory or compliance obligations. The Committee also has significant concerns about the Trigger related to an affiliate that provides products or services that are required to be supervised by the member. This raises serious concerns for the Committee about the possibility of FINRA attempting to review and even regulate the non-securities insurance activities of an affiliate of a FINRA member. In addition, there is currently a lack of clarity about what might be required to be supervised by the member. For example, pending rulemaking proposals with respect to outside business activities³ and supervision⁴ could significantly expand the scope of this Trigger such that an affiliate providing virtually any product or service would be subject to comprehensive review.

The Committee believes that FINRA should carefully review each of the Triggers, and specifically consider eliminating or limiting them as described above. Moreover, to the extent that a Trigger is met, the Committee believes that any subsequent request for information related to the affiliate should be required to meet a materiality threshold in that such information must be material to the ability of FINRA to make its determination under the NMA or CMA.

WAIVER OF THE CMA FILING REQUIREMENT

CMA Filing Requirement. Proposed Rule 1160, which governs changes in control and material changes to business operations, specifically defines the changes in a member's ownership, control, or business operations that trigger the need to file a CMA with FINRA. Proposed Rule 1160(b)(4) would permit FINRA staff to waive the filing of a CMA if it

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³ The Securities and Exchange Commission published for comment proposed FINRA Rule 3270, which would effectively replace NASD Rule 3030, the so-called Outside Business Activities rule. 74 Fed. Reg. 32,668 (July 8, 2009). Under the proposal, a member firm would be required to "implement procedures or restrictions" on a proposed outside business activity if it raises investor protection concerns.

⁴ FINRA Regulatory Notice 08-24 proposed FINRA Rule 3110 (amending NASD Rule 3010) that would require a member firm to designate a registered principal to supervise any business activity of the firm, whether or not such activity would require broker-dealer registration.

determines that a change in ownership or control does not result in any practical changes in a member's business activities, management, supervision, assets, liabilities, or ultimate ownership or control.

Comment. The Committee agrees with the underlying premise of the waiver requirement—in many instances financial services enterprises that are effecting internal corporate reorganizations impacting the ownership of their broker-dealers should be able to do so without submitting formal applications to FINRA. In many cases, these internal reorganizations do not result in any practical changes which would call for FINRA review and approval.

However, the Committee believes that the requirement to file a formal waiver will create unnecessary administrative burdens. Accordingly, the Committee recommends permitting the exception to be self-operating. More specifically, the Committee suggests that FINRA allow member firms to make the determination that a change in ownership or control does not result in a practical change requiring filing of a CMA without securing FINRA's approval of its determination.

WRITTEN NOTICE OF BUSINESS CHANGES

Written Notice of Business Changes. The Proposal would also impose a new written notice requirement when a member firm implements business changes that are specifically delineated under Proposed Rule 1170. A member firm planning on implementing one of the business changes listed under Proposed Rule 1170 must file its written notice with FINRA 30 days prior to the event's occurrence (or as soon as possible if circumstances make it impracticable to meet the 30-day time period), even if such changes do not trigger a CMA filing. This new written notice requirement is separate and apart from, and in addition to, the formal continuing membership approval process that Proposed Rule 1160 sets forth.

Comment. The Committee recommends that FINRA tailor the written notice requirement under Proposed Rule 1170 to ensure that this requirement does not result in duplicative filings. By way of example, a member firm required to update its Form BD to reflect a certain type of business change, or update its key personnel, should not be required to file a separate written notice to FINRA pursuant to Proposed Rule 1170. In such a case, FINRA staff would be notified of the change and the filing pursuant to Proposed Rule 1170 would merely duplicate the information the firm has already reported in its updated Form BD.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposal. Please do not hesitate to e-mail or call Eric Arnold (eric.arnold@sutherland.com, or 202.383.0741) or Clifford Kirsch (clifford.kirsch@sutherland.com, or 212.389.5052) if you have any questions on the issues addressed in this letter or if you would like more specific input on the issues raised in this letter.

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Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Eric Arnold (IUH)

BY: Clifford Kirsch (IJH)

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

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