

February 20, 2009

Via E-Mail

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

**Re: Regulatory Notice 09-02:
Information and Data Reporting and Filing Requirements:
FINRA Requests Comment on Proposed Consolidated FINRA Rule
Governing Information and Data Reporting and Filing Requirements**

Dear Ms. Asquith:

This letter is submitted on behalf of the Committee of Annuity Insurers (“Committee”)¹ in response to Regulatory Notice 09-02, “Information and Data Reporting and Filing Requirements: FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Information and Data Reporting and Filing Requirements” (the “Notice”).

The Notice proposes the adoption of a new Rule, FINRA Rule 4540 (the “Proposed Rule”) and accompanying Supplementary Material, and in conjunction therewith, the elimination of NASD Rules 1160 (Contact Information Requirements), 3150 (Reporting Requirements for Clearing Firms), and 3170 (Mandatory Electronic Filing Requirements); IM-3150 (Reporting Requirements for Clearing Firms Exemptive Relief); and Incorporated NYSE Rule 416A (Member and Member Organization Profile Information). In place of the eliminated rules, the Proposed Rule would adopt broad statements of authority to compel information and data reporting from FINRA members about their business activities and related matters. The

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 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 Committee members is attached at Appendix A.

Proposed Rule would require all FINRA members to “report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information.” The Proposed Rule would also provide FINRA with the flexibility to require member firms to report additional specified data and information, as necessary.

The Committee’s comments follow.

Proposed FINRA Rule 4540(a)(1): Annual Form Reporting Requirements and Additional Contact Information

Proposal. Paragraph (a)(1) of the Proposed Rule would require each firm to report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information. The Notice states that the Proposed Rule will also provide FINRA with the flexibility to require member firms to report additional specified data and information, as necessary. In addition, the Notice states that FINRA intends to provide firms with advance notice through a Regulatory Notice (or similar guidance) of the Annual Form reporting requirement and of any future changes to the required data and information elements.

Comments. The Committee is concerned with the lack of specificity regarding the information and data to be reported as well as the lack of details regarding the format, time frame and manner in which such reporting will be required. For example, the Notice suggests that the Annual Form would require a member to report persons in various positions, such as “Chief Technology Office” and “General Counsel,” information concerning which a member is not currently required to provide. The reference to these positions calls into questions what other positions might be included in the Annual Form. The Notice also suggests that the Annual Form will require members to verify whether they engage in certain business activities “not enumerated on Form BD.” These suggestions indicate that the Annual Form could solicit an extensive amount of information. However, no form of Annual Form is provided with the Proposed Rule to enable an assessment of the scope of reporting and information collection that would be required to complete the Annual Form and an opportunity to comment.

The Committee also notes that the Notice indicates that the Annual Form would require a member to provide information concerning the number of accounts and “total assets under management based on the type of customer involved and service being provided.” The Committee requests that FINRA provide guidance on the scope of these terms (and other terms that may be used in the Annual Form). The Committee notes that the phrase “assets under management” is often used to refer to assets in investment advisory accounts. The Committee requests that FINRA clarify whether it is seeking information concerning funds and securities held by members for customers or information about investment advisory activities of members.

Given the foregoing considerations, we believe that FINRA and members will benefit from the publication of the "Annual Form" before its adoption to allow member comment with respect to the information FINRA proposes to collect.

Finally, the Committee believes that the rule text should specifically reference that the reporting requirements imposed by the Proposed Rule will be reasonable in nature, taking into account cost. Further, we believe that the Proposed Rule should specifically reference that member firms will have a reasonable time to respond to any requests for additional specified data and information.

Proposed FINRA Rule 4540(b): Clearing Member Reporting Requirements

Proposal. Paragraph (b)(1) of the Proposed Rule would require that each clearing firm report to FINRA in such format as FINRA may require, specified data or information pertaining to the member and any member broker-dealer for which it clears.

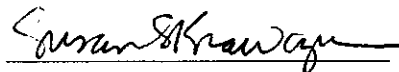
Comments. The rule text should provide a specific reference to the type of information and data that clearing firms will be required to report on behalf of firms for which they clear. Among other things, this will allow members to review their clearing firm relationships with a view to meeting applicable reporting requirements. Moreover, members will be better able to structure their clearing firm agreements to avoid duplicative reporting.

* * *

Thank you for your consideration of these comments. We would be happy to provide you with any additional information you would find useful or to meet with you to discuss any of these comments in more depth.

Sincerely,

Sutherland Asbill & Brennan LLP

By: 

By: 

For The Committee of Annuity Insurers

APPENDIX A

AEGON Group of Companies
Allstate Financial
AIG Life Insurance Companies
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
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)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company