

May 23, 2014

VIA ELECTRONIC MAIL

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

**Re: FINRA Regulatory Notice 14-14
Retrospective Rule Review: FINRA Requests Comment on the
Effectiveness of its Communications with the Public Rules**

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 14-14, *Retrospective Rule Review: FINRA Requests Comment on the Effectiveness of its Communications with the Public Rules* (the "Notice") issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on April 8, 2014. The Notice requests comments in connection with FINRA's retrospective review of its communications with the public rule set (the "Rules") to assess their effectiveness and efficiency. In particular, FINRA seeks answers to the following questions with respect to the Rules:

1. Have the Rules effectively addressed the problem(s) they were intended to mitigate?
2. What have been experiences with implementation of the Rules, including any ambiguities in the Rules or challenges to comply with them?
3. What have been the costs and benefits arising from the Rules? Have the costs and benefits been in line with expectations described in the rulemaking?

¹ The Committee was formed in 1982 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 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.

4. Can FINRA make the Rules more efficient and effective, including FINRA's administrative processes?

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit its comments in response to the Notice. The Committee believes that the Rules are generally meeting their intended purpose. Below, we note several areas where the Rules could operate more efficiently or where various ambiguities could potentially be clarified.

In addition, while perhaps outside the scope of the Notice, we use this opportunity to encourage FINRA to re-engage in its rulemaking with respect to communications with the public about variable products.

Improved Effectiveness of Advertising Filing and Review Process. The Committee believes that FINRA should consider revising the filing requirements to no longer require all variable product and mutual fund retail communications to be filed with the Advertising Regulation Department. A more strategic and risk-based approach to the filing requirements would allow FINRA to more strategically deploy its advertising review staff, which could include spot-checking material related to various types of securities products which FINRA staff believes may present risks to investors. We believe that FINRA should conduct an assessment of the costs imposed by the requirement to file such pieces as compared to the investor protections afforded by the requirement.

Inconsistent Review by FINRA Advertising Staff. We believe that FINRA should explore opportunities to better ensure consistency in staff review. We respect the efforts that the staff takes today to address inconsistencies, however we believe that more needs to be done.

Filing Formats Other than PDF. FINRA should develop the technology to allow firms to electronically file communications in file formats other than PDF. This would create operational efficiencies and also allow FINRA to review certain pieces in their actual format.

User Interface. FINRA has a user interface that firms can use to file materials electronically and access FINRA responses to filed materials. FINRA also has a "Batch Process" that allows firms to send a feed to FINRA with materials that need to be reviewed and receive a feed from FINRA with FINRA's responses (in PDF format) once material has been reviewed. Any material submitted to FINRA for review, whether directly through the user interface or via the batch process, is stored in FINRA's user interface system so it can be accessed by the firm. To improve its administrative processes associated with the Rules, the Committee would request that FINRA develop reporting capabilities that would allow firms to run reports of the data stored in the user interface described above. The Committee would also request that the XML/Report file received from FINRA in connection with the Batch Process be updated to include result codes for all submission transmitted to FINRA through the Batch Process.

Filing Requirements Re: Communications to Existing Customers. When FINRA consolidated NASD Rule 2210 into its rulebook as FINRA Rule 2210, it included in the definition of “retail communications” written letters and electronic messages to existing retail customers that are distributed or made available to more than 25 existing retail customers over a 30 calendar-day period. As a result, in contrast to the prior rule, such communications are now subject to FINRA Rule 2210’s filing requirements. This change has resulted in a large volume of filings for firms, and thus substantial filing fees that were not incurred under former NASD Rule 2210. The Committee believes that FINRA should seek to afford flexibility from the filing requirements for materials that are sent only to existing customers.

Rulemaking with Respect to Communications about Variable Products. In 2008 FINRA proposed a rule change to adopt NASD Interpretive Material 2210-2 (Communications with the Public about Variable Life Insurance and Variable Annuities) into the Consolidated FINRA Rulebook as FINRA Rule 2211.² The proposal was subsequently filed with the U.S. Securities and Exchange Commission (the “SEC”) in 2009,³ but was withdrawn by FINRA in 2012.⁴

The Committee believes that FINRA’s rulemaking with respect to proposed FINRA Rule 2211 should advance, and that any issue that may have caused the filing to derail should be addressed in a revised filing with the opportunity to comment.

CONCLUSION

The Committee appreciates the opportunity to comment on the Notice. 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.

² See FINRA Regulatory Notice 08-39 (July 2008).

³ See *Notice of Filing of Proposed Rule Change to Adopt NASD Interpretive Material 2210-2 into the Consolidated Rulebook as FINRA Rule 2211*, SEC Release No. 34-61107 (Dec. 3, 2009).

⁴ The withdrawal notice is available at the following address:

<http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p126114.pdf>.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Eric Arnold EA
Eric Arnold

BY: Cliff Kirsch CK
Cliff Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate 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
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
Symetra Financial Corporation
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company
Voya Financial, Inc.