

December 19, 2008

**VIA E-MAIL**

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: **File Number SR-FINRA-2008-019: Notice of Filing of Proposed Rule Change Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities**

Dear Ms. Harmon:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> in connection with the Notice of Filing of Proposed Rule Change Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities submitted by the Securities and Exchange Commission ("SEC"). This letter responds to FINRA's statements concerning the effective date of the proposed amendments expressed in its Response to Comments dated November 12, 2008 ("FINRA Response Letter").

In the FINRA Response Letter, FINRA states that the effective date of the proposed amendments will be six months following publication of the FINRA Regulatory Notice announcing SEC approval. FINRA explains that six months represents an extension from the 120 day time period stated in the amendment filed with the SEC on May 21, 2008. FINRA further explains that some commenters asked for more time but that a longer delay would be unwarranted given the length of time that firms have already had to prepare for the implementation of the Rule.

We believe that FINRA may have been mistaken with respect to the effective date previously proposed for the rule, or that effective date, at a minimum, has been unclear. As published in the Federal Register on May 8, 2008, the effective date of paragraphs (c) and (d) of the Rule is described as delayed "until 180 days following the SEC's approval

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<sup>1</sup> The Committee of Annuity Insurers is a coalition of 33 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.

or disapproval of the substantive amendment that FINRA plans to file in the near future.”<sup>2</sup> The SEC referenced this effective date for such “substantive amendment” in footnote 3 of its June 4, 2008 release that was published in the Federal Register on June 10, 2008.<sup>3</sup> We are unclear on the validity and/or origin of the 120 day period referenced in the FINRA Response Letter.<sup>4</sup> The Committee therefore believes that there has not been any real extension provided by FINRA.<sup>5</sup>

In any event, we respectfully disagree with FINRA’s assessment that firms have had an adequate length of time to prepare for implementation of the rule’s provisions related to forwarding checks to an insurer’s suspense account. This aspect of the rule first was proposed in FINRA’s rule filing with the SEC as published in the Federal Register on June 10, 2008.<sup>6</sup> The proposal raised many critical interpretative issues that have only recently been clarified. As a general matter, many firms may need to evaluate and determine which of several new options they should pursue given the proposed treatment of funds held in an insurer’s suspense account.<sup>7</sup> Some of these options will include negotiations, and entering into written agreements, with third parties such as banks and possibly protracted legal and compliance review of the same. In addition, certain of the options will require changing existing protocols for handling business and

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<sup>2</sup> *Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Effective Date of Certain FINRA Rule Changes Approved in SR-NASD-2004-183*, 73 Fed. Reg. 26176, 26177 (May 8, 2008).

<sup>3</sup> *Notice of Filing of Proposed Rule Change Related to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities*, 73 Fed. Reg. 32771, 32772 at n. 3 (June 10, 2008).

<sup>4</sup> In FINRA’s rule filing with the SEC dated May 21, 2008 (SR-FINRA-2008-019), the 180 day period is reference in footnote 2. We would note that page 10 of that rule filing is the only location where there has been any reference to a 120 day period (stating that “[t]he effective date will be 120 days following the publication of the Regulatory Notice announcing Commission approval”).

<sup>5</sup> As a technical matter, we would note that the comment period has been extended from 180 days to 6 months.

<sup>6</sup> We note that FINRA’s rule filing with the SEC was publicly available shortly after its date of May 21, 2008 (SR-FINRA-019), but given the lengthy history of the rulemaking process, there were no assurances that rule filing would be published for comment by the SEC until it appeared in the Federal Register.

<sup>7</sup> For example, firms may be required to choose among at least the following three options which each have different challenges for a timely transition: (1) become a fully-computing broker-dealer which would require a Rule 1017 filing with FINRA; (2) establish a bank account as permitted under SM.03 which will require identifying and negotiating such account with a bank and re-routing cash flows; or (3) preparing appropriate procedures to safeguard customer checks during the period in which the suitability review is conducted, and communicating those procedures to registered representatives.

rolling out those change through a well-communicated training program. Specifically, existing policies and procedures for handling customer checks will have to be altered, and new policies and procedures will have to be developed that adequately address internal financial control, security, and privacy concerns. These changes will also involve significant adjustments to existing systems that will take time to plan, install, test and implement. Moreover, firms will need to develop a process for auditing to these new policies and procedures.

As explained above and in the Committee's comment letter dated July 1, 2008, re-doing long-standing suspense account practices will be a significant undertaking. Accordingly, the Committee requests an effective date of twelve months following SEC approval of the rule change. We ask for this extension only with respect to that aspect of the rule dealing with the forwarding of funds to insurer suspense accounts. We believe that no extension is necessary with respect to other aspects of the proposed amendments.

Thank you for your review of this submission. We would welcome the opportunity to meet with the staff in order to provide more specific input on the this point and answer any questions the staff may have.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: *Eric G. Ames*

BY: *Clifford Winters EAA*

FOR THE COMMITTEE OF ANNUITY  
INSURERS

cc: Erik R. Sirri, Division of Trading and Markets  
John J. Fahey, Division of Trading and Markets  
Andrew J. Donohue, Division of Investment Management  
James S. Wrona, FINRA

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

AEGON USA, Inc.  
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  
Merrill Lynch 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  
OM Financial Life Insurance Company  
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  
The Phoenix Life Insurance Company  
USAA Life Insurance Company