

April 8, 2011

VIA Electronic Mail

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2011-013
Notice of Filing of Proposed Rule Change to Establish a
Registration Category, Qualification Examination and
Continuing Education Requirements for Certain
Operations Personnel and to Adopt FINRA Rule 1250
in the Consolidated FINRA Rulebook**

Dear Ms. Murphy:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to *Notice of Filing of Proposed Rule Change to Establish a Registration Category, Qualification Examination and Continuing Education Requirements for Certain Operations Personnel and to Adopt FINRA Rule 1250 in the Consolidated FINRA Rulebook* (the "Proposal Notice"), issued by the U.S. Securities and Exchange Commission (the "SEC").² The Proposal Notice proposes to adopt FINRA Rule 1230(b)(6) ("Rule 1230(b)(6)") to establish a registration category and qualification examination requirement for certain operations personnel, and to adopt NASD Rule 1120, Continuing Education Requirements, ("Rule 1120") as FINRA Rule 1250 (together, the "Proposed Rules") in the consolidated FINRA rulebook. The Proposal Notice also would add a supplementary material section to Rule 1230(b)(6) (together with the Proposed Rules and the Proposal Notice, the "Proposal"). Upon SEC approval and implementation of the Proposal, NASD Rule 1120 will be eliminated from the current FINRA rulebook and be consolidated as FINRA Rule 1250. The Committee appreciates this opportunity to comment on the Proposal.

¹ The Committee of Annuity Insurers is a coalition of 32 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1982 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

² The Proposal Notice was published in SEC Release No. 34-64080 on March 14, 2011. *See also* 76 Fed. Reg. 15012 (Mar. 18, 2011).

The Proposal is substantially similar to a proposal (the “2010 Proposal”) published by FINRA in Regulatory Notice 10-25 (“RN 10-25”),³ in response to which the Committee submitted comments.⁴ The Committee appreciates FINRA addressing some of the concerns raised by commenters in response to the 2010 Proposal. However, while the Proposed Rules reflect modest changes to the 2010 Proposal, the Committee continues to have significant concerns with certain aspects of the Proposal. In addition, the Committee is concerned with the rulemaking process as it has been described by FINRA in the Proposal. Specifically, the Committee notes that FINRA has made assertions in the Proposal based on “industry consultations” without disclosing precisely how it conducted such consultations in the broader rulemaking procedure. Further, the Committee requests that the SEC seek clarification from FINRA regarding the Proposal’s scope as applied to individuals who provide shared services to a number of related legal entities, including but not limited to a broker-dealer, in a financial services holding company. Finally, the Committee requests that FINRA coordinate the multiple registration changes currently proposed by it to provide a comprehensive framework for the implementation of the new registration categories. We discuss our comments below.

ELABORATION ON THE RULEMAKING PROCESS

Proposal. In several instances throughout the Proposal Notice, FINRA asserts that it has consulted with industry representatives in developing the proposed rule change, and as a result of such consultations, formulated responses to comments it received relating to the 2010 Proposal. For example, FINRA relied on these industry consultations in determining the depth of personnel to be subject to the Operations Professional registration category,⁵ and again in deciding whether to further define the scope of some of the identified covered functions set forth in Proposed Rule 1230(b)(6).⁶ FINRA also indicates in the Proposal Notice that it does not need to further clarify or define terms used in the Proposed Rules at this time because it believes those terms to be well understood in the industry. As a caveat to this assertion, FINRA notes that it will consider issuing additional guidance in the future on an “as needed” basis.

Comments. The Committee requests that the SEC seek FINRA elaboration on this aspect of the rulemaking process as it relates to consideration of comments to the 2010 Proposal from a wide range of industry representatives. For example, FINRA dismisses comments from the Committee “based on industry consultations.” The Committee is concerned that a lack of transparency in the rulemaking process will lead to certain segments of the industry being disenfranchised from effectively voicing concerns and making recommendations with respect to the Proposed Rules. Further, the Committee strongly believes, as mentioned above, that while some terms used in the Proposed Rules that are not defined by FINRA may be commonly used in

³ Regulatory Notice 10-25: Registration and Qualification Requirements for Certain Operations Personnel (May 26, 2010), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p121533.pdf>.

⁴ Letter from Committee of Annuity Insurers, dated July 30, 2010, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticerecommendations/p121866.pdf>.

⁵ SEC Release No. 34-64080 (at text accompanying notes 45-46).

⁶ SEC Release No. 34-64080 (at text accompanying notes 69-70).

some industry segments, those same terms may not be widely used or understood in the same manner or to the same degree in other industry segments. It is for precisely this reason that the Committee continues to urge FINRA to further clarify some aspects of the Proposed Rules. The Committee is significantly concerned that FINRA's decision to wait until after the approval and implementation of the Proposed Rules to consider further guidance will create confusion and inconsistencies in compliance with the Proposed Rules, as well as an increased burden on member firms in their efforts to comply. The Committee believes that the delay in providing interpretive guidance during the rulemaking process would hinder FINRA in achieving the purpose of the Proposed Rules by failing to provide a clear framework that will close regulatory gaps in licensing and education of individuals performing certain operations for or on behalf of a broker-dealer.

APPLICABILITY OF THE PROPOSED RULES TO SUPERVISORS AND SUBORDINATES OF OPERATIONS PROFESSIONALS PROVIDING SERVICES TO A NUMBER OF FINANCIAL SERVICES HOLDING COMPANY AFFILIATES

Proposal. Proposed Rule 1230(b)(6)(B) requires certain individuals engaging in the activities set forth in the Proposed Rules to register as an Operations Professional. The Proposal Notice clarifies that the registration requirement applies regardless of the capacity in which such individual is performing those activities or whether such individual is employed by a member firm, an affiliate of a member firm, or a third-party service provider. The Proposal Notice did not address the application of the Proposed Rules and FINRA rules generally to other employees who report to an Operations Professional or to whom the Operational Professional reports.

Comments. In this respect, the Proposed Rules are virtually unchanged from the 2010 Proposal. In its comments on the 2010 Proposal, the Committee observed that the Proposal appeared to be drafted presuming that broker-dealers operate in a "stand-alone" manner, and did not accommodate the differences that exist in complex financial services firms. To summarize, financial services holding companies routinely rely on shared services (e.g., accounting, legal, data processing) being provided to different legal entities and many individuals required to register as Operations Professionals are likely also to engage in functions on behalf of a broker-dealer's affiliated insurance company, bank or other operating company. Given the prevalence of these arrangements, the Committee believes that it is critical that the SEC seek explicit guidance from FINRA regarding the limitations of the applicability of the Proposed Rules and FINRA rules generally to employees who supervise or who are subordinate to the Operations Professional.

Once again, the Committee believes it is helpful to illustrate how these relationships are intertwined. Assume that an individual is designated as an Operations Professional because he or she is a "senior manager" who has responsibility for the covered function of business security requirements and policies for information technology in connection with the covered functions with respect to a broker-dealer. In an insurance company complex (or any other financial services complex), that individual is likely to be employed by the insurance company and be

providing services not just to the broker-dealer, but also to other legal entities (insurance companies, investment advisers, non-regulated institutions, etc.). In addition, that individual is very likely to have several persons to whom they report (for purposes of example, the Senior Vice President of IT Security and the Executive Vice President of Operations of the affiliated insurance company), and possibly a number of people that report to such individual (e.g., data analysts, programmers, etc.). Despite FINRA's response in the Proposal Notice to the Committee's concerns with respect to clarifying the application of the Proposed Rules to personnel providing services to a number of affiliated financial service companies, the Proposal Notice still provides no clear guidance on how far FINRA's jurisdiction will reach. Further, given that in the Proposal Notice FINRA declines to make any categorical exclusions in the covered functions for activities carried out by an insurance company, the Committee continues to believe that clarification should be provided that only the Operations Professional, and not supervisors or subordinates of the Operations Professional, will be deemed to be associated persons of the broker-dealer. In addition, the Committee believes that FINRA's jurisdiction should be limited to the Operations Professional, and should not reach into any of the affiliated entities for which the Operations Professional also works.⁷

Moreover, the Committee continues to believe strongly that, if the Proposed Rules are adopted, the Operations Professional should be the end of the chain in terms of FINRA oversight. The Committee reiterates its position that it makes no sense to continue up the chain to senior level managers that have already been determined by the firm not to meet the definition of Operations Professional and have limited interaction with the broker-dealer. In addition, the personnel who report up to the Operations Professional and do not meet the requirements to be deemed an Operations Professional should not be deemed to be associated persons of the broker-dealer firm. To hold otherwise would ensnare a large pool of individuals that have only a tenuous relationship with the broker-dealer while providing no concomitant investor protection. The Committee believes that such an interpretation would still clearly allow FINRA to satisfy the articulated purpose of the rule to "enhance the regulatory structure surrounding a firm's back-office operations."⁸ The Committee urges that the SEC direct FINRA to provide clarification about the scope of FINRA oversight to supervisors and subordinates of individuals required to register as an Operations Professional.

ADDITIONAL GUIDANCE SHOULD BE PROVIDED FOR A NUMBER OF COVERED FUNCTIONS

Proposal. Proposed Rule 1230(b)(6)(B) identifies the covered functions that could lead to an individual registration requirement. Minor revisions addressing comments received by FINRA on the 2010 Proposal related to some of the covered functions were made in the Proposal; however, "client on-boarding" as a covered function and other identified covered functions are unchanged from the 2010 Proposal.

⁷ This limitation on FINRA jurisdiction would also be applicable where an unaffiliated third party vendor employed an individual who served as an Operations Professional.

⁸ See RN 10-25 at p. 3.

Comments. The Committee's comment letter on the 2010 Proposal expressed concerns with respect to some of the descriptions of activities included in covered functions. The covered functions identified in Proposed Rule 1230(b)(6)(B) are described only in short, jargon-like terms that have not been defined by FINRA and should be clarified. In particular, the Committee recommended clarification of "client on-boarding." FINRA notes in the Proposal, that based on its consultation with industry representatives, the term "client on-boarding" is commonly used and does not require further clarification. Despite FINRA's explanation in the Proposal Notice, the Committee continues to believe that the Proposed Rules would benefit from some additional guidance indicating precisely what the term "client on-boarding" means. The Committee reiterates its belief that while the bullet-point list of covered functions uses terminology that may be more understandable in the context of a stand-alone broker-dealer engaged in general securities business, it does not readily translate to the business of a broker-dealer engaged in variable annuity (or other special product type) sales. Broker-dealers engaged in variable annuity business should not be exposed to the risk of non-compliance attributable to a lack of clarity on the covered activities. Accordingly, the Committee urges the SEC to request that FINRA reconsider the extent to which it is willing to clarify the covered functions and provide guidance with respect to the applicability of these functions in the context of variable annuity business. As an example, it may be helpful to link the list of covered functions, where applicable, to FINRA or SEC rules related to the functions. In this fashion, the client on-boarding requirements could be linked to the FINRA and SEC customer account and recordkeeping rules similar to the clarification FINRA has made in the Proposal to the covered function relating to posting entries to a member's books and records.⁹

MULTIPLE REGISTRATION CHANGES PROPOSED BY FINRA SHOULD BE COORDINATED TO PROVIDE A COMPREHENSIVE FRAMEWORK FOR THE IMPLEMENTATION OF PROPOSED REGISTRATION CATEGORIES

Proposal. Proposed Rule 1230(b)(6) would require registration of individuals as Operations Professionals in addition to other registrations such individual may be required to hold as a result of activities performed for or on behalf of a member firm. The Proposal specifically addresses comments requesting FINRA to explain the Proposed Rules' relationship to the proposals set forth in Regulatory Notice 09-70 that would require the designation and registration of a Principal Operations Officer. The Proposal Notice warns firms that they should be aware of both sets of proposed registration requirements and that the Proposed Rules are in addition to and apply regardless of any other separate registration requirements.

Comments. The Committee's comment letter on the 2010 Proposal expressed several concerns with the overlapping registration requirements included in Regulatory Notice 09-70 and the 2010 Proposal. Although FINRA, in the Proposal Notice, has clarified that the proposed new registration categories are stand-alone requirements and must be evaluated separately to determine whether an individual must register in any given category, it did not recognize that an

⁹ Proposed Rule 1230(b)(6)(B)(xvi).

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ad hoc implementation of the new registration categories would cause significant burdens to member firms in meeting the proposed registration requirements. The Committee has significant concerns about the compliance costs associated with numerous, and possibly, duplicative registration regimes, applicable to individuals performing multiple functions for a member firm. In this regard, the Committee strongly encourages FINRA to ensure that the implementation timeframes of the proposed registration regimes under both the Proposal Notice and Regulatory Notice 09-70 are parallel, and result in a coherent, non-duplicative, understandable framework for registration. To this end, the Committee reiterates its recommendation in its comment letter on the 2010 Proposal that the SEC should request FINRA to review the comments received under this Proposal Notice, and re-publish an integrated registration notice that addresses the comments received under this Proposal Notice and RN 09-70 jointly to allow for a uniform approach to the proposed new registration categories which will lessen the burden of compliance by enabling member firms to review their registration requirements for certain individuals on a comprehensive basis.

The Committee appreciates this opportunity to comment on the Proposal. Please do not hesitate to contact Eric Arnold (202.393.0741), Susan Krawczyk (202.383.0197), or Clifford Kirsch (212.389.5055) if you have any questions on the issues addressed in this letter.

Sincerely,

SUTHERLAND ASBILL & BRENNAN LLP

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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
(a Goldman Sachs Company)
CNO Financial Group, 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 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)
SunAmerica Annuity and Life Insurance Company
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
TIAA-CREF
USAA Life Insurance Company