

May 1, 2017

VIA ELECTRONIC MAIL

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File Number SR-FINRA-2017-007
SEC Notice of Filing of FINRA Proposed Rule Change to Adopt
Consolidated FINRA Registration Rules, Restructure the
Representative-Level Qualification Examination Program and Amend
the Continuing Education Requirements**

Dear Mr./Ms. Secretary:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to the Notice of Filing SR-FINRA-2017-007 (the "Notice"), which was published in the Federal Register on April 10, 2017, by the Securities and Exchange Commission ("SEC").² The Notice requests comment on a proposal by the Financial Industry Regulatory Authority, Inc. ("FINRA") to adopt consolidated FINRA registration rules, restructure the representative-level qualification examination program and amend the continuing education requirements (collectively referred to as the "Proposed Rules") in the Consolidated FINRA Rulebook.

The Proposed Rules would adopt with amendments several NASD and Incorporated NYSE rules relating to qualification and registration requirements. The Proposed Rules include a plan to restructure the current representative-level qualification examination program into a format whereby all candidates seeking registration would take a general knowledge examination called the Securities Industry Essentials ("SIE") and a specialized knowledge examination tailored to their registered role. FINRA is proposing that a passing result on the SIE be valid for four years, and representative- and principal-level registrations would continue to be subject to a two-year expiration period.

¹ The Committee was formed in 1981 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 over 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, FINRA, CFTC, IRS, Treasury, Department of Labor, as well as the National Association of Insurance Commissioners (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.

² 82 Fed. Reg. 17,336 (Apr. 10, 2017), which is available at <https://www.gpo.gov/fdsys/pkg/FR-2017-04-10/pdf/2017-07046.pdf>.

In addition, the Proposed Rules would allow any associated person of a member to obtain and maintain any registration permitted by such member. Individuals maintaining such permissive registrations under the Proposed Rules would be considered registered persons and subject to FINRA rules while engaged in relevant activities and the member would be required to have adequate supervisory systems and procedures related to their activities.

Furthermore, the Proposed Rules seek to adopt a process whereby individuals working for a financial services industry affiliate of a member would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy specified conditions. FINRA would require members seeking qualification of a person under the waiver to meet the following conditions:

- (1) prior to the individual's initial designation, the individual was registered as a representative or principal with FINRA for a total of five years within the most recent 10-year period, including for the most recent year with the member that initially designated the individual;
- (2) the waiver request is made within seven years of the individual's initial designation;
- (3) the initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;
- (4) the individual continuously worked for the financial services industry affiliate(s) of a member since the individual's last Form U5 filing;
- (5) the individual has complied with the Regulatory Element of continuing education; and
- (6) the individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as eligible for a waiver.

The Proposed Rules define a "financial services industry affiliate of a member" as "a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities."³

Finally, the Proposed Rules amend the Continuing Education requirements of FINRA Rule 1240 to require that all registered persons, including those individuals who maintain permissive registrations, must satisfy the Regulatory Element of continuing education.

³ 82 Fed. Reg. 17,336, 17,343 n. 39 (Apr. 10, 2017).

BACKGROUND ON THE PROPOSED RULES

The Committee has been active in reviewing and commenting on the rules proposed by FINRA related to registration and qualification requirements from the outset of FINRA's efforts. FINRA originally announced a rule proposal on December 3, 2009, in Regulatory Notice 09-70, *Registration and Qualification Requirements: FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements* (Dec. 2009) ("RN 09-70").⁴ RN 09-70 requested public comments on adopting, with amendments, the NASD and Incorporated NYSE rules relating to qualification and registration requirements as FINRA Rules 1210 through 1240. The Committee filed a comment letter in response to RN 09-70 on March 1, 2010 ("09-70 Comment Letter").⁵ FINRA announced an additional rule proposal through Regulatory Notice 15-20, *Qualification Examinations Restructuring: FINRA Requests Comment on a Concept Proposal to Restructure the Representative-Level Qualification Examination Program* (May 2015) ("RN 15-20").⁶ RN 15-20 requested public comments on restructuring the current representative-level qualification exams and creating a general knowledge exam and specialized knowledge exams. The Committee also filed a comment letter in response to RN 15-20 on July 27, 2015 ("15-20 Comment Letter").⁷

After reviewing the comments submitted by the Committee, as well as other commenters, FINRA filed the Proposed Rules for approval by the SEC on March 28, 2017. The Proposed Rules reflect FINRA's response to the comments it received under RN 09-70 and RN 15-20, including many of the comments raised by the Committee's 09-70 Comment Letter and 15-20 Comment Letter.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to provide comments on the Proposed Rules. While the Committee believes that certain aspects of the Proposed Rules are an improvement, there are other areas where the Committee suggests either additional clarification or revisions to make the Proposed Rules more workable and efficient. Set forth below are the Committee's comments on the following aspect of the Proposed Rules: the new SIE exam structure; permissive registration; the financial services industry affiliate waiver process; and the general rulemaking process related to these particular rules.

The Securities Industry Essentials (SIE) Exam Structure. Under the Proposed Rules, all candidates to become registered persons of a firm will start the qualification process through taking the SIE exam. The SIE exam will test on general securities laws principles. Once a candidate for registration has passed that exam, he or she will be required to take a specialized knowledge exam prior to becoming a registered person with a firm. In a change from the existing examination framework, the SIE exam can be taken by the general public, in addition to associated persons

⁴ RN 09-70 is available at <http://www.finra.org/sites/default/files/NoticeDocument/p120490.pdf>.

⁵ The Committee's comment letter on Regulatory Notice 09-70 is available here: <http://www.finra.org/sites/default/files/NoticeComment/p121071.pdf>.

⁶ RN 15-20 is available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-20.pdf.

⁷ The Committee's comment letter on Regulatory Notice 15-20 is available here: http://www.finra.org/sites/default/files/notice_comment_file_ref/15-20_sutherland_comment.pdf.

"sponsored" by a firm. Under Supplementary Material .08 to FINRA Proposed Rule 1210, the SIE exam will be valid for a period of four years.

As a general matter, the Committee believes that opening up the SIE to the general public is a positive development. That feature will allow for individuals with an interest in working for member firms to demonstrate that interest, and some basic level of proficiency with the securities regulatory environment, through passing the SIE. More critically, however, the Committee believes that implementing and managing the web of new rules (and categories) for registration, and tracking and monitoring the examination status of associated persons, are not necessarily improvements over the current exam structure. As a result, the Committee generally is concerned that the time and effort spent on this initiative, by FINRA and eventually by member firms in preparing for compliance, may be better spent on other projects.⁸

The Committee also believes that the expiration of the SIE qualification after four years should be eliminated and candidates for registration should only be required to take that examination once. In the Notice, FINRA does not describe its rationale for the four year expiration in any detail, and says simply "[b]ased on the content covered on the SIE, FINRA is proposing that a passing result on the SIE be valid for four years."⁹ The Committee believes that it makes sense under the new qualification framework to allow the SIE to last for an unlimited period of time, or at least much longer than four years. Since the ability to become registered with a firm for any individual who passes the SIE is conditioned on their passing another exam (e.g., general securities representative, investment company and variable products representative), the ability to pass the additional exam should be evidence that the fundamental concepts of the SIE are understood.

Permissive Registration. The Committee generally approves of the new structure under the Proposed Rules that allows for permissive registrations. In particular, the Committee agrees that the change is necessary to allow for more flexibility to respond to personnel changes and the promotion of a higher general level of regulatory understanding. The Committee recommends, however, that more specific guidance be provided with respect to the supervisory obligations related to individuals who are permissively registered. Currently, Supplementary Material .02 of FINRA Proposed Rule 1210 indicates that such individuals are "subject to all FINRA rules, to the extent relevant to their activities." The Committee believes that this provision could be subject to a wide range of interpretations and could be both over, and under inclusive in the types of conduct that are contemplated to trigger supervisory duties related to the person holding the permissive registration. For example, if someone is permissively registered, a firm could take the position that their limited securities-related activities do not call upon them to adhere to the outside business activities or personal securities transaction requirements. The Committee believes that a more "rules based" structure for this new concept would be more productive and easier for firms to implement. As one possible approach, FINRA could require that individuals who maintain a permissive registration simply be required to meet firm element and regulatory element continuing education requirements, attend the member's annual compliance meeting and that no additional supervisory

⁸ See also the discussion below under "General Comments about the Rulemaking Process" expressing concern that the costs for taking the SIE have not been determined.

⁹ 82 Fed. Reg. 17,336, 17,343 (Apr. 10, 2017).

requirements would be presumed unless the firm reasonably determines that additional supervision is necessary given any particular set of facts and circumstances.

Financial Services Industry Affiliate Waiver Process. The Committee believes that the waiver process proposed under Supplementary Material .09 of FINRA Rule 1210 ("FINRA Proposed Rule 1210.09") is an improvement over the "retained associate" structure discussed in RN 09-70. FINRA Proposed Rule 1210.09 would allow individuals registered with FINRA member firms to terminate their registrations and be designated as eligible for a Financial Services Industry Affiliate waiver (the "FSIA waiver"). Assuming a person satisfies the conditions of the FSIA waiver (which are identified in detail above), there would be no requirement to satisfy the requalification requirements upon such individual's re-registering with a FINRA member. While the current proposal avoids some of the complexity associated with the retained associate concept, the Committee believes that the FSIA waiver process remains overly complex with a complicated structure for determining both when an individual can be designated as eligible for an FSIA waiver, and how that plays out over time under different fact situations. In addition, since there are still a number of uncertain aspects about how the CRD system, among other things, might be able to assist firms with compliance efforts related to the FSIA waiver, it is difficult for firms to understand and determine the impact that the process could have on their operations.

With respect to the process for "designation" of the eligible individual to FINRA, the Committee believes that more clarification is required. In addition, the Committee believes that the current process under the Proposed Rules could be significantly simplified by relying on the CRD system to effectively "accept" the designation and then maintain information related to the designation over the course of time that the individual remains eligible to rely on the FSIA waiver. The additional effort that a firm's registration department will need to spend on: (1) designating the individuals to FINRA for status as eligible to rely on the FSIA waiver; (2) accurately filing the Form U5 to terminate the individual's registered status with the firm; (3) recordkeeping and tracking the individual during the time period that the waiver is available; and (4) re-registering the individual under the waiver process and re-filing a Form U4 could be substantial. In its place, the Committee recommends that the FSIA waiver structure be implemented through a CRD structure that simply "tags" the qualified individual as an unregistered, but FSIA-eligible person. Since the CRD system will likely need to be designed to allow such individuals to satisfy their regulatory element requirements of continuing education, the Committee recommends that this type of additional functionality be built out as well. If the individual attempts to re-register with a firm, then they simply file an updated Form U4 that amends their status from that of an unregistered FSIA eligible individual to a registered person, and update the information included on their Form U4.

The Committee also makes the following recommendations related to the FSIA waiver process:

- The seven year time frame after which the FSIA waiver is extinguished is too short and should be eliminated, given all the other protections that have been included in the FSIA waiver process to ensure that the individual is qualified to serve as a registered person; and

- The requirement that the individual proposing to rely on the FSIA waiver must have been registered for a total of five years of the previous 10-year period should be scaled back and require, at the most, a registration period of three years.

General Comments about the Rulemaking Process. As a general matter, the Committee believes that the Proposed Rules would have benefitted greatly from additional seasoning through another round of member comments responding directly to FINRA, rather than moving them quickly to the filing with the Securities and Exchange Commission for approval. The comprehensive nature of the Proposed Rules and the Notice impose a significant burden of firms providing comments under a challenging time frame (21 days after publication in the Federal Register). In addition, most firms have not spent much time thinking about RN 09-70 for over seven years, and the process of re-engaging on the Proposed Rules is very time consuming.

The Committee would also appreciate an opportunity to comment on several aspects critical to the Proposed Rules which have yet to be fully developed by FINRA. For example, FINRA has not provided a cost estimate for the SIE. Without understanding the costs associated with the SIE, the Committee is unable to provide thoughtful comments on the implications of making the SIE available to the general public. If the Proposed Rules are adopted without such information being provided, the anticipated benefits may be outweighed by the financial costs associated with the examinations. The Committee respectfully requests additional time so that FINRA can provide cost estimates and the Committee may consider the feasibility of the Proposed Rules in totality.

In addition, FINRA stated that it will consider changes to the CRD system and BrokerCheck to reflect permissive registrations, and that FINRA has already developed an interface in the CRD system that would allow individuals who are not associated persons to enroll and pay the examination fee. However, FINRA has not provided details on this system, its operational costs, or its projected launch date. Although FINRA states that the cost of developing and maintaining a management system to track SIE results would primarily fall upon FINRA, the costs associated with such system is still of critical importance to the Committee and possibly other commenters. The Proposed Rules also explain that FINRA is considering the possibility of extending the two-year expiration period for specialized knowledge examinations through the use of more frequent continuing education. Despite this, the Proposed Rules will proceed with a two-year expiration period for these exams. In an effort to increase efficiency, the Committee believes that FINRA should make such a decision after thoughtful consideration, but not after the Proposed Rules are adopted. Furthermore, FINRA stated that the principal-level examinations are under evaluation to determine whether they may be restructured in a similar manner to align with the representative-level examinations. The Committee believes that it would be beneficial to take a holistic approach to the review and restructuring of these examinations, and that a delay of the representative-level restructuring is appropriate until FINRA has determined whether a similar structure is feasible for principal examinations. The Committee believes that these aspects of the Proposed Rules present critical concerns that would benefit from further deliberation, as well as an additional comment period.

As a result, the Committee believes that a better course of action would have been for FINRA to expose the Proposed Rules again with members and the public,

rather than going straight to a rule filing of the Proposed Rules with the SEC. Doing so would have provided firms with the opportunity to provide a more complete and deliberative response to the request for comment than what is available at this stage of the rule making process.


Implementation Period. The Committee recommends that the Proposed Rules provide a significant period of time after adoption for updating policies and preparing for the new requirements. The Committee believes that firms should have at least 18-months to prepare for the Proposed Rules.

CONCLUSION

The Committee appreciates the opportunity to comment on the Notice. Please do not hesitate to contact Eric Arnold (202.383.0741, ericarnold@eversheds-sutherland.com) or Clifford Kirsch (212.389.5052, cliffordkirsch@eversheds-sutherland.com) if you have any questions regarding this letter. We note that the Committee would be happy to meet with either FINRA or SEC staff to discuss any of the issues or concerns identified in this letter if you think that would be helpful.

Respectfully submitted,

Eversheds Sutherland (US) LLP

BY: 
Eric Arnold

BY:  EA
Clifford Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

AIG
Allianz Life
Allstate Financial
Ameriprise 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
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
National Life Group
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
USAA Life Insurance Company
Voya Financial, Inc.