

October 19, 2017

Via E-Mail

The Honorable Walter J. Clayton III
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Attn: Mr. Brent J. Fields, Secretary

Re: Standard of Conduct

Dear Mr. Fields:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"), in response to Chairman Clayton's request for Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (the "Request"), which was published on June 1, 2017, by the Securities and Exchange Commission ("SEC" or "Commission").

Overview of the Committee

The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. The Committee's current 29 member companies represent over 80% of the annuity business in the United States. Most of the Committee's members also have affiliated broker/dealers that distribute and/or sell registered insurance products (including proprietary and/or non-proprietary products). A list of the Committee's member companies is attached as Appendix A. For over 35 years, the Committee has been actively involved in shaping and commenting upon many elements of the SEC regulatory framework as it applies to annuity products registered with the SEC under the Securities Act of 1933 and, with respect to variable annuities, which are also regulated under the Investment Company Act of 1940. The Committee also routinely comments on issues that affect broker-dealers registered with the SEC under the Securities Exchange Act of 1934, particularly those sales practices issues that have a particular impact on the marketing and sale of variable annuities.

Executive Summary

The Committee applauds the Chairman's issuance of the Request asking for public comment on the standards of conduct for investment advisers and broker-dealers. We support efforts to advance a workable framework for creating a uniform standard of conduct for broker-dealers and investment advisers that would be applicable to all retail investor accounts, including retirement and non-retirement accounts.

Secretary of Labor Acosta has stated publicly that the Commission has "critical expertise" in this area and hopes that the Commission will be a "full participant" in considering the standard of care for broker-dealers and registered investment advisers. We applaud this spirit of

cooperation, and along these same lines we note that given the Commission's role as a primary regulator of brokerage and advisory accounts, it is uniquely positioned to ensure a workable standard that serves all retail investors, while at the same time avoiding further confusion and inconsistency.

As the SEC considers whether and how to establish a uniform standard of care framework, we ask that the SEC keep in mind the importance of:

- Establishing a standard of care that is uniform and workable across various annuity product types and distribution channels;
- Preserving investors' choice among distribution channels, products, services, and the form of compensation; and
- Ensuring retail investor access to lifetime income options by not imposing regulatory standards that serve to disadvantage annuity products, and in particular by recognizing the value to the consumer, and costs to the issuer, of providing income guarantees.

With regard to the last point, the Committee urges the Commission to recognize lifetime income as an investment category in and of itself - serving particular financial needs in retirement. Any standard of care should take into consideration an investment product's material features, including non-investment features and benefits, rather than urging financial professionals to recommend the cheapest investment product as a "one-size-fits-all" method of satisfying a customer's "best interest."

Our letter focuses particularly on lifetime income guarantees – and guiding principles – which we respectfully request that the SEC be mindful of to ensure continued access to this critical asset class.

The Importance of Annuities and Lifetime Income Guarantees

Other than Social Security and defined benefit plans, annuities are the only investment products that can offer Americans lifetime income benefits that guarantee they will not outlive their retirement income. Annuity contracts can also protect against other significant risks to which individuals' retirement assets are exposed in retirement, including inflation risk, investment risk, interest rate risk, and liquidity risk, thereby allowing retail investors to acquire, in a single product, insurance against a number of different risks to their financial well-being.

As explained below, annuity contracts in their various forms are uniquely suited to help retail investors both accumulate assets and draw down on those assets because annuities can both facilitate accumulation of retirement savings and guarantee income for as long as a retiree lives.

During the savings or "accumulation" phase, individuals must estimate how much they need to save over time in order to have a sufficient amount to live on for up to two, three or more decades in retirement. Determining how much to save is complicated by a number of factors, including making projections of the long-term rate of return that the individual will likely be able to achieve on his or her savings. If the rate of return actually experienced is insufficient to keep pace with inflation, the purchasing power of an individual's savings will be eroded over time, putting retirement security in real jeopardy. Investments in equity securities or similar assets can help retail investors pursue higher returns to help address inflation risk, but these investments also expose them to market volatility and risk of loss. Annuities in their various forms can help address both these risks while simultaneously guaranteeing an annuity owner the right to convert – at a guaranteed rate – the savings accumulated under the annuity into a stream of lifetime income through retirement.

When it is time to start drawing down on the investments that have been saved or accumulated, annuities offer individuals a variety of options, all of which can guarantee income for life. As indicated above, other than Social Security and defined benefit plans, annuities – by virtue of their lifetime guarantees – are the only means that Americans have to guarantee they will not outlive their retirement savings. This type of insurance guarantee is becoming increasingly important in light of factors such as reduced coverage by employer-sponsored defined benefit plans and the limited availability of annuity options in defined contribution plans.

At the same time, variable annuities offer unique investment features including the ability to transfer from one fund to another on a tax-deferred basis. Other popular features include dollar cost averaging, rebalancing and asset allocation programs, all of which provide annuity owners with significant flexibility in managing their retirement investments.

The Committee’s Suggestions for Guiding Principles

As the SEC considers advancing a uniform standard of care, the Committee believes it is important for the SEC to be guided by the following principles:

- The critical importance of regulatory coordination;
- The importance of preserving the commission-based distribution model;
- The importance of preserving the ability of broker-dealers to sell proprietary products; and
- The recognition that the cheapest investment product is not the appropriate test for assessing whether a recommendation meets an investor’s best interests.

Below, we discuss each of these in turn.

Regulatory Coordination. Effective regulation and investor protection will both be served if regulators work together to establish uniform standards and avoid conflicting and overlapping regulations. Today, the sale of variable annuities is subject to a myriad of “point-of-sale” requirements imposed at the federal, self-regulatory organization (i.e., FINRA) and state level. By way of example, the sale of an annuity by a broker-dealer to a New York resident for his/her IRA account is subject to the following requirements:

Rule or Regulation ¹	Obligations Include:
FINRA Rule 2111 (Suitability)	<ul style="list-style-type: none"> ✓ Customer profile questionnaire ✓ Written supervisory procedures ✓ Suitability standard of care
FINRA Rule 2330 (Members’ Responsibilities Regarding Deferred Variable Annuities)	<ul style="list-style-type: none"> ✓ Customer questionnaire ✓ Written supervisory procedures ✓ Suitability standard of care ✓ Disclosure ✓ Principal review and approval of purchase or exchange ✓ Training for registered representatives and principals

¹ We note as well that separate and apart from the state insurance laws impacting point of sale requirements for annuities, some states are adopting additional standard of care obligations. In Nevada, for example, a recent legislative amendment to its statutory regime impacting “financial planners” imposes a state-based fiduciary duty on anyone meeting the definition of “financial planner,” which would apply to broker-dealers and investment advisers. Nevada State Bill No. 383 (2017). Several other states are advancing legislation related to fiduciary duties of financial professionals. See, e.g., 2017 Conn. Pub. Acts 17-120; 2016 N.J. Laws 2979; 2017 N.Y. Laws 2464.

Department of Labor ("DOL") Fiduciary Rule & Best Interest Contract Exemption (upon the effective date of all components of the rule)	<ul style="list-style-type: none"> ✓ Customer questionnaire ✓ Written supervisory procedures ✓ Fiduciary standard of care ✓ Multiple disclosure deliveries ✓ Entry into Best Interest Contract with retirement investor
NY Insurance Regulation 187 (11 NYCRR 224) (Suitability in Annuity Transactions)	<ul style="list-style-type: none"> ✓ Customer questionnaire ✓ Written supervisory procedures ✓ Suitability standard of care ✓ Disclosure delivery ✓ Training for registered representatives and principals

Both retail investors and broker-dealer firms will be best served and protected if a single standard of conduct applies across all investment account types and redundant overlapping regulatory requirements are avoided. In the case of annuity products, collaboration amongst the National Association of Insurance Commissioners and key state insurance and securities regulators, the DOL, and the SEC is essential to ensure that customers are clear as to what standard of care they should expect from their broker-dealer. Additionally, overlapping standard of care requirements that differ and potentially conflict will make it difficult for broker-dealers to fulfill their compliance obligations. It is important that broker-dealers know that compliance with the best interest standard of care requirement is substantially the same regardless of the regulator and regardless of whether the account in question is an IRA or subject to ERISA. In this regard, all constituencies – retail investors, financial services firms and regulators – would be well-served if all of the regulators agreed upon the same specific disclosure requirements, conflict of interest considerations, compensation guidelines, and other requirements in order to ensure that an uneven playing field is not created between annuity products and other types of financial products, or even between different types of annuity products.

Preserve Commission-Based Sales. Insurance products have long been distributed on a commission basis, through intermediaries acting as agents or brokers authorized by insurers to offer their products. In this respect, the distribution of insurance products is similar to securities offerings conducted through broker-dealers on a best efforts basis.

The insurance regulatory framework is premised on this distribution structure. Congress clearly took this historical framework into account when adopting Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act² ("Section 913"), authorizing the Commission to establish a standard of care for broker-dealers that would be the same as that for investment advisers. That section outlined the goal of preserving investors' choice among distribution channels, products, services, and the form and means of compensation. It does so by providing, for example, that the receipt of sales-based compensation or limiting investments available to proprietary products or a limited range of products shall not in and of itself constitute a violation of a standard adopted by the Commission under Section 913.

In contrast to the principles set forth in Section 913, the fiduciary rules and related exemptions recently adopted by the DOL reflect a clear preference for asset-based or fixed fee compensation payments to broker-dealers, investment advisers and their registered personnel, and significant prejudice against the use of sales-based compensation, notwithstanding the longstanding use of sales-based compensation for the distribution of annuities. The DOL's fiduciary rule has and will continue to adversely impact retirement security by reducing access to, and use of, the guaranteed lifetime income options made available by annuities.

² Pub L. 111-203, 124 Stat. 1376 (2010).

Unlike Section 913, which recognizes the value of and protects longstanding and appropriate compensation arrangements, the DOL rules in practice disincentivize the sales of annuities and lifetime income guarantees because the rules impose major burdens on current compensation models, particularly commissions. Yet, commissions, which are an accepted and appropriate compensation model for annuities, align inherently with the nature of the product. In this regard, we note that annuities involve a considerable amount of attention from both the customer and the registered representative at the initial purchase, but in certain circumstances may involve less day-to-day monitoring by the registered representative and customer—if the customer’s circumstances and objectives remain intact.

While there has been a fair amount of discussion and speculation in the press about “fee-based” annuity products, the Committee believes that it is important for the Commission to understand that the insurance laws of some states do not easily or clearly accommodate the structuring or issuance of annuities as a “fee-based” annuity product. Moreover, the process for an insurance company to design, price and develop a new type of annuity product that would accommodate some form of ongoing, asset-based fee compensation is an expensive and time consuming undertaking. Put simply, the roadblocks the DOL created for the traditional annuity distribution and compensation methods are at odds with the needs of the American investing public.

As the Commission considers a possible uniform standard of care for broker-dealers and investment advisers, the Committee urges that the standard fully and carefully embrace investors’ choice among distribution channels, products, services and the form and means of compensation.

Preserve the Ability of Broker-Dealers to Sell Proprietary Products. Section 913 also seeks to preserve investors’ choice by providing that the sale of proprietary products or a broker-dealer’s limiting investments available to proprietary products or a limited range of products shall not in and of itself constitute a violation of that standard. As the SEC considers a possible uniform standard of care for broker-dealers and investment advisers, the Committee urges that any standard fully and carefully embrace investors’ choice to allow for a broker-dealer’s sale of proprietary products. We believe that any standard that serves to disfavor the sale of proprietary products would serve to harm investors by limiting their choice in accessing products through different types of distribution channels.

The Cheaper Product is Not Always the Right Fit for a Customer. Lifetime income is an investment category in and of itself – serving particular financial needs. An insurer offering these guarantees assesses charges to cover its anticipated costs related to providing those future guarantees. Any standard of care must avoid the temptation of lumping all investment products together – and urging financial professionals to recommend the cheapest product (e.g., an index mutual fund) as a “one-size fits-all” method of satisfying a best interest standard of conduct. The standard of care must recognize that investors look for different types of products and services to meet their financial needs, and a different cost structure of a product that provides different types of benefits should not be inherently discriminated against under the standard of care.

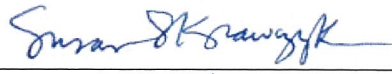
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The Committee appreciates the opportunity to comment on the Request. Please do not hesitate to contact Cliff Kirsch (212.389.5052 or cliffordkirsch@eversheds-sutherland.com); Susan Krawczyk (202.383.0197 or susankrawczyk@eversheds-sutherland.com); or Eric Arnold (202.383.0741 or ericarnold@eversheds-sutherland.com) with any questions or to discuss. We note that the Committee would be happy to meet with SEC staff to discuss any of the issues or concerns identified in this letter if that would be helpful.

Respectfully submitted,

Eversheds Sutherland (US) LLP

BY: 
Clifford Kirsch

BY: 
Susan S. Krawczyk

BY: 
Eric Arnold

**FOR THE COMMITTEE OF ANNUITY
INSURERS**

cc: The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piowar, Commissioner
Dalia Blass, Director, Division of Investment Management
Brett W. Redfearn, Director, Division of Trading and Markets
William H. Hinman, Director, Division of Corporation Finance

Appendix A

THE COMMITTEE OF ANNUITY INSURERS MEMBER LIST

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
Massachusetts Mutual Life Insurance Company
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.