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Via E-Mail

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 21-17
Diversity and Inclusion: FINRA Seeks Comment on Supporting Diversity and Inclusion in the Broker-Dealer Industry

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to FINRA Regulatory Notice 21-17, Diversity and Inclusion: FINRA Seeks Comment on Supporting Diversity and Inclusion in the Broker-Dealer Industry (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on April 29, 2021.[2] The Notice solicits comment on any aspects of FINRA's rules, operations and administrative processes that may create unintended barriers to greater diversity and inclusion in the broker-dealer industry or that might have unintended disparate impacts on those within the industry.

BACKGROUND

The Notice acknowledges that "regulatory organizations like FINRA have an opportunity to evaluate and understand whether their rules and regulatory actions have unintended disparate impacts on those within the industries they regulate."[3] The Notice also acknowledges FINRA's support of industry participants' initiatives and programs that have been developed to foster greater diversity, inclusion and equal opportunity in the industry, and expand opportunities for historically underserved businesses and investors.[4] The Notice adds that FINRA has been engaging with its advisory committees, industry associations and other industry members to explore how FINRA can support similar efforts within the broker-dealer industry.[5] To date, FINRA notes that it has supported an internal Racial Justice Task Force, an Annual Diversity Summit, diversity programming at the FINRA Annual Conference, the development of the Securities Industry Essentials (SIE) Exam, and the proposal of enhancements to the continuing education program for broker-dealer industry professionals.[6]

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[1] The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 31 member companies represent more than 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, 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 at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is attached as Appendix A.
[2] The Notice is posted at https://www.finra.org/sites/default/files/2021-04/Regulatory-Notice-21-17.pdf.
[3] The Notice at p. 2.
[4] Id.
[5] Id.
[6] Id. at pp. 2-3.

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One of FINRA's goals is to promote greater diversity and inclusion and to better engage traditionally underinvested communities to serve the needs of all investors.[7] In furtherance of this goal, FINRA is requesting comment to ensure that its rules, operations and administrative processes do not create unintended barriers to greater diversity and inclusion in the broker-dealer industry or have unintended disparate impacts on those within the industry. More specifically, FINRA is requesting comment on the following: (1) any FINRA rules or market practices that have a disparate impact on individuals in the broker-dealer industry or discourage participation in the broker-dealer industry; (2) circumstances where FINRA's application of its rules have a disparate impact on individuals in the broker-dealer industry or discourage participation in the broker-dealer industry; (3) any FINRA operations and administrative processes that have a disparate impact on individuals in the broker-dealer industry or discourage participation in the broker-dealer industry; (4) whether the current collection and publication of registered representative background data, including that which relates to education, employment status, tenure, and complaints and grievances, create an unintended barrier to greater diversity in the broker-dealer industry; and (5) whether there are additional changes that FINRA could make to its rules, consistent with the scope and limitations of its statutory mandate, to affirmatively foster diversity, inclusion and equal opportunity in the broker-dealer industry.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit comments in response to the Notice. The Committee supports FINRA's goal of promoting greater diversity and inclusion and engaging traditionally underinvested communities to serve the needs of all investors. We stand ready to support FINRA's efforts and on behalf of the Committee affirm our commitment to the advancement of diversity and inclusion, as it is a top priority of the Committee's member companies. In addition, the Committee offers the following specific comments in response to the Notice.

Increasing Age Diversity. As noted above, FINRA is requesting comment on any FINRA rules or market practices that have a disparate impact on individuals in the broker-dealer industry. There is a well-recognized transition occurring at broker-dealer firms as aging registered representatives move on to retirement, and past surveys have indicated that the average age of financial advisers is 55.[8] The broker-dealer industry offers careers that should be accessible to younger populations because these careers can provide longevity and stability. In addition, the broker-dealer industry would benefit from greater age diversity for a number of reasons, including the ability to leverage a younger population's perspectives and experiences when building businesses and serving customers. The Committee believes that FINRA should assess its rules to determine whether adjustments should be made to facilitate younger populations entering the broker-dealer industry, including the option to provide more flexibility for broker-dealer professionals to work remotely.

Administering Qualification Exams in Languages Other Than English. As noted above, FINRA is requesting comment on its operations and administrative processes that have a disparate impact on individuals in the broker-dealer industry or discourage participation in the broker-dealer industry. Currently, FINRA permits candidates who do not speak English as their primary language and have limited ability to read, speak, write or understand English to receive additional time to complete a qualification examination, so long as they meet FINRA's Limited English Proficiency (LEP) criteria.[9] However, FINRA does not administer qualification exams in languages other than English, and it does not permit candidates for the SIE to have additional time based on LEP.

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[7] Id. at p. 3.
[8] David Rodeck, *Your Financial Adviser Wants to Retire, Too*, Kiplinger, Dec. 10, 2020, https://www.kiplinger.com/retirement/601878/your-financial-adviser-wants-to-retire-too#:~:text=The%20average%20age%20of%20financial,place%20before%20you%20need%20it.
[9] FINRA, Candidates with Limited English Proficiency (LEP), https://www.finra.org/registration-exams-ce/qualification-exams/limited-english-proficiency.

The Committee believes that by administering qualification examinations in English only, FINRA has created a barrier to entry into the broker-dealer industry for individuals who do not speak English as their primary language and have limited ability to read, speak, write or understand English. As the country's population shifts to include more persons whose primary language is not English, the broker-dealer industry should match these shifting demographics in response. As an example, the 2020 Census provided the option for persons to respond in English and 12 other languages. Furthermore, as the investing public becomes more diverse, there is an increase in the need for broker-dealer professionals who mirror the investing public and who live and work in diverse communities to serve those communities and provide ready access to the securities markets. The Committee supports administering qualification exams in languages other than English, which we believe will increase access to the broker-dealer industry.

Educating the Investing Public. Along the same lines as the comments above, the Committee encourages FINRA to give consideration to providing more flexibility for broker-dealer firms to distribute communications in languages other than English to facilitate outreach to underserved communities. FINRA should look to modernize, and clarify, its rules about the use of different types of forms, marketing materials and general investor education materials in languages other than English.

Update on FINRA Initiatives. The Notice states that FINRA created and filled a role at the FINRA Investor Education Foundation to build strategic partnerships and manage public engagement initiatives that benefit underserved financial consumers and include people from diverse cultures and socio-economic backgrounds. The Committee would like to understand the progress that FINRA has made to-date through strategic partnerships or public engagement that benefit underserved financial consumers and include people from diverse cultures and socio-economic backgrounds.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com) with any questions or to discuss this comment letter.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: _____
Clifford Kirsch

BY: _____
Eric Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
Brighthouse Financial, Inc.
Equitable
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Financial Group
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
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
Sammons Financial Group
Security Benefit Life Insurance Company
Symetra Financial Corporation
Talcott Life Insurance Company
Thrivent
TIAA
USAA Life Insurance Company