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April 27, 2018

Via E-Mail

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

Re: FINRA Regulatory Notice 18-08
Outside Business Activities: FINRA Requests Comment on Proposed New Rule Governing Outside Business Activities and Private Securities Transactions

Dear Ms. Mitchell:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to Regulatory Notice 18-08, *Outside Business Activities*, described above (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on February 26, 2018.[2] The Notice solicits comments on a proposed new rule to address the outside business activities of registered persons (the "Proposed Rule").

Background

Current FINRA Rules 3270 and 3280 require registered representatives to notify their firms of proposed outside business activities ("OBA(s)"), and all associated persons to notify their firms of proposed private securities transactions ("PST(s)"), respectively, so firms can determine whether to limit or allow those activities to proceed. The notifications required in these rules assist firms in identifying and determining how to mitigate potential risks posed by OBAs and PSTs, including by placing conditions on, or prohibiting, participation in the proposed OBA or PST. In May 2017, FINRA issued Regulatory Notice 17-20, which launched a retrospective review of its outside business activities and private securities transactions rules to assess their effectiveness and efficiency. FINRA's review revealed that the current rules could benefit from revisions. As a result, FINRA is proposing a single streamlined rule to address the outside business activities of registered persons.

General Comments

The Committee appreciates the opportunity to submit comments in response to the Notice. The Committee is generally supportive of the direction of the Proposed Rule. But the Committee has several questions regarding the proposal. In addition, the Committee believes that the changes contemplated by the Proposal need to be considered more broadly with respect to other applicable FINRA rules and requirements. Focusing solely on the current requirements FINRA Rules 3270 and 3280 is too narrow a scope—and failure to consider how the changes impact other related

[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 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, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the 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] The Notice is posted at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-08.pdf.

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requirements will lead to practical compliance challenges. Set forth below are the Committee's specific comments on the Proposed Rule.

Specific Comments

Interface with Form U4. Currently, registered representatives are required to report their outside business activities on their Form U4 and to update that information promptly. In the ordinary course, the outside business activities so disclosed align with the outside business activities that the registered representatives are required to report to their firm under Rule 3270 or 3280. The Committee understands that, under the Proposed Rule, fewer activities will be required to be reported on Form U4. To ensure that member firms and their registered representatives understand their U4 reporting requirements under the Proposed Rule, FINRA should clarify whether firms will be required to review and remove existing activities on current Form U4s that would no longer be required to be reported under the Proposed Rule. In light of the extensive effort any such undertaking would entail, the Committee suggests that FINRA apply changes to such reporting requirements prospectively.

The reporting of outside business activities to member firms also requires other updates to Form U4. For this reason, the Committee is requesting clarification on several issues arising from outside business activities which are currently required to be reported on Form U4. In particular, the Committee requests that FINRA address the following:

- FINRA should provide clarity as to the required disclosure, if any, when a registered person is both a grantor and trustee for his or her own trust account;
- FINRA should explain how to list multiple rental properties on a registered person's Form U4;
- FINRA should clarify which address should be listed on the Form U4 if a registered person's rental property is owned by a separate entity with a mailing address that is different from the registered person's mailing address;
- FINRA should clarify the differences between the activities required to be reported under Sections 12 and 13 of Form U4; and
- FINRA should provide guidance on the level of detail required on Form U4 when describing an outside business activity, as well as the specific details about an OBA that are required to be memorialized on the Form U4.

Proposed Exclusions from the Rule. FINRA is proposing to require registered persons to provide their firms with prior written notice for all investment-related or other business activities outside the scope of their relationship with the member. For purposes of the rule, a "business activity" is defined as either "acting as an employee, independent contractor, sole proprietor, officer, director or partner of another person" or "receiving compensation, or having the reasonable expectation of compensation, from any other person as a result of the activity."[3]

In addition, the Proposed Rule provides a list of exclusions from the types of activities required to be reported by registered persons. Specifically, Supplementary Material .01 of the Proposed Rule would provide exclusions for the following: (1) a registered person's personal investments (including transactions in accounts that are subject to FINRA Rule 3210); (2) transactions on behalf of the registered person's immediate family members (as defined in FINRA Rule 5130) for which the registered person receives no transaction-related compensation;(3) activities conducted on behalf of a member's affiliate, unless those activities would require, if not for the person's association with a member, registration as a broker or dealer under the Exchange Act and the person is not so registered; and (4) a member's non-broker-dealer activities.

Additional Exclusions. The Committee suggests that FINRA explicitly exclude the following activities from the definition of "business activity" in an effort to provide clarity on OBA disclosure obligations:

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[3] Proposed FINRA Rule 3290.

(1) ongoing or intermittent fundraising for a non-profit organization; (2) non-compensated activities; (3) the receipt of income from renting a personal vacation home or other residential rental properties; and (4) the receipt of residual insurance commissions. Each of these activities are commonly engaged in and create little risk to a broker-dealer firm.

As noted above, FINRA has excluded registered persons' personal investments from the reporting requirements under the Proposed Rule. The reporting of activities under the current rules serve to protect the interests of investors from potentially problematic activities, as well as protect the reputational interests of member firms. Given the goals and benefits of the current rules, the Committee believes that firms and registered persons would benefit from more clarity as to the application of the rule when a personal investment is *sold*.

The Committee would also like FINRA to clarify a member firm's supervision requirements for activities that are excluded from the Proposed Rule's reporting requirements. Specifically, the Committee would like clarification on the supervision requirements for: (1) activities conducted on behalf of a member firm's affiliate or (2) a member firm's non-broker-dealer activity. Based on the Proposed Rule, the Committee does not believe that FINRA intends to impose additional supervision requirements, but FINRA instead intends for its current supervision rules to apply to such activities that are excluded from the Proposed Rule.

Additionally, the Committee is requesting clarification on the activities required to be reported under the Proposed Rule and Form U4. For example, Form U4 provides an exclusion for civic activities, among other things, which are not explicitly excluded by the Proposed Rule. For purposes of consistency, the Committee is requesting that FINRA modify the required reporting under Form U-4 to align with those reporting requirements under the Proposed Rule. In particular, those exclusions which are provided in the Proposed Rule should also be available for purposes of reporting on Form U4. The Committee acknowledges that this may require changing the instructions that accompany Form U4.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Proposed Rule. Please do not hesitate to contact Susan Krawczyk (202.383.0197 or SusanKrawczyk@eversheds-sutherland.com) or Clifford Kirsch (212.389.5052 or CliffordKirsch@eversheds-sutherland.com) or Eric Arnold (202.383.0741 or EricArnold@eversheds-sutherland.com), if you have any questions regarding these comments.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: _____
Susan Krawczyk

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
AXA Equitable Life Insurance Company
Brighthouse Financial, Inc.
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
Sammons Financial Group
Symetra Financial Corporation
The Hartford Life Insurance companies
The Transamerica Companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.