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April 9, 2018

VIA ELECTRONIC MAIL

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

Re: FINRA Regulatory Notice 18-05
Government Securities Initiative: FINRA Requests Comment on the Application of Certain Rules to Government Securities and to Other Debt Securities More Broadly

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 18-05 described above (the "Notice"), issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on February 6, 2018.[2] The Notice solicits comments on the application of certain rules to government securities, including U.S. Treasury securities. The Notice also solicits comment on the application of certain rules to all debt securities, and potentially to all exempted securities.

REQUEST FOR COMMENT

According to the Notice, FINRA received a request from the SEC's Division of Trading and Markets and the U.S. Department of the Treasury to commence a review of FINRA's rulebook to identify rules that exclude U.S. government securities. The SEC's Division of Trading and Markets and the U.S. Department of the Treasury also asked FINRA to assess the continuing validity of exclusions provided by FINRA rules for government securities. As a result of the review conducted in response to these requests, FINRA published the Notice to request comment on the application of the following rules to government securities: FINRA Rules 2242 (Debt Research Analysts and Debt Research Reports); 5240 (Anti-Intimidation/Coordination); 5250 (Payments for Market Making); 5270 (Front Running of Block Transactions); 5280 (Trading Ahead of Research Reports); 5320 (Prohibition Against Trading Ahead of Customer Orders); and NASD Rules 1032(f) (Securities Trader), 1032(i) (Limited Representative – Investment Banking) and 1050 (Registration of Research Analysts). In addition, FINRA is requesting comment on the application of FINRA Rule 5320 and NASD Rules 1032(f) and 1050 to all debt securities. The

[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-18-05.pdf.

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Notice also requests comment on whether the rules discussed in the Notice should be applied to other types of exempted securities and specifically refers to "group variable contracts."

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit comments in response to the Notice. The Committee has no comments on the proposal to apply the rules discussed in the Notice to government securities, and agrees with the observation in the Notice that FINRA Rule 2320(g), which is listed in FINRA Rule 0150, would not have relevance to government securities. But the Committee would like to address the final question in the Notice, which asks whether there are any potential issues with applying the rules discussed in the Notice to other exempted securities.

As noted in the Notice, the term "exempted securities" include group variable contracts. By way of background, the term "exempted securities" is defined in Section 3(a)(12) of the Securities Exchange Act of 1934 (the "1934 Act") as including any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan (as further defined in that section). The insurance contracts issued by Committee members include group variable contracts that qualify as "exempted securities" as defined by Section 3(a)(12) of the 1934 Act. Group variable contracts typically are annuity contracts that are issued in a qualified plan context on a group basis rather than on an individual basis.

The various FINRA rules discussed in the Notice all pertain to debt securities in one way or another. Group variable contracts have not been considered to be "debt securities" and, as insurance contracts entered into between the issuing insurance company and the qualified plan (or plan sponsor), are not traded in the securities markets (or even "tradable" in those markets). Given the structure of group variable contracts, the rules discussed in the Notice are wholly inapposite to group variable contracts: no "debt research reports" are published about group annuity contracts; no person can trade in, trade ahead of or otherwise affect the market pricing of, group variable contracts as there is no trading market for group variable contracts; and no one makes a market in group variable contracts. In short, there is no reason for or benefit to applying (or suggesting the application of) the rules discussed in the Notice to group variable contracts. Accordingly, if FINRA moves forward with a rulemaking to revise Rule 1050 to list the rules discussed in the Notice, the Committee requests that FINRA confirm that the additional rules have no applicability to group variable contracts.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. 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), if you have any questions regarding these comments.

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Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: Susan Krawczyk BMS
Susan Krawczyk

BY: Clifford Kirsch BMS
Clifford Kirsch

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.