EVERSHEDS SUTHERLAND

THE Committee OF Annuity Insurers
www.annuity-insurers.org

Eversheds Sutherland (US) LLP
700 6th Street, N.W.
Suite 700
Washington, D.C. 20001

D: +1 202.383.0100
F: + 1 202.383.6237

May 21, 2019

VIA ELECTRONIC MAIL

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Via email to: rule-comments@sec.gov

Re: SEC Release No. 34-85715; File No. SR-FINRA-2019-012

Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) To Make Substantive, Organizational and Terminology Changes

Dear Mr. Fields:

We are submitting this comment letter on behalf of the Committee of Annuity Insurers (the "Committee"),[1] in response to a notice (the "Notice") issued by the Securities and Exchange Commission (the "SEC") soliciting comments on a proposed rule change (the "Proposed Revision") to amend Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 5110, as published in the Federal Register on May 1, 2019.[2] The Committee appreciates the opportunity to submit these comments on the Notice to the SEC.

BACKGROUND

FINRA Rule 5110 (the "Corporate Financing Rule") is of interest to Committee members because of exemptions provided by the rule for certain types of insurance contracts issued by Committee members which are distributed by FINRA member firms. More specifically, since its adoption in 1970, the Corporate Financing Rule has provided exemptions for variable contracts,[3] and group annuity contracts purchased by qualified plans ("exempted

[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.govinfo.gov/content/pkg/FR-2019-05-01/pdf/2019-08774.pdf.

[3] *See* FINRA Rule 5110(b)(8)(D), which exempts variable contracts as defined in FINRA Rule 2320(b).

Eversheds Sutherland (US) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

group contracts").[4] An exemption for market value adjusted contracts ("MVA contracts")[5] was added in 1995. These exemptions currently appear in clauses (D), (B), and (E), respectively, of paragraph (b)(8) of the Corporate Financing Rule. Moreover, the introductory text to that paragraph also provides an exemption from FINRA Rule 5121 (the "QIU Rule") for the securities listed in paragraph (b)(8).

PROPOSED REVISION

The Proposed Revision would substantially revise the Corporate Financing Rule ("Revised Rule") with the intention of modernizing and simplifying its provisions, including revisions to the filing requirements and exemptions, disclosure requirements, organization, and terminology. Among other things, the Proposed Revision would retain the existing exemptions for variable contracts, exempted group contracts, and MVA contracts (together, the "Existing Exemptions"). The Proposed Revision would accomplish this by relocating the existing exemptions for variable contracts and MVA contracts to clauses (C) and (D), respectively, of paragraph (h)(2) of the Revised Rule, and then reclassifying the exemption for exempted group contracts as an exclusion from the definition of a "public offering" in clause (D) of paragraph (j)(18) of the Revised Rule.

Most relevant to the Committee, the Proposed Revision would add a new exemption for "insurance contracts not otherwise included" by adding clause (E) to paragraph (h)(2) of the Revised Rule (the "Other Contracts Exemption").[6] Insurance contracts qualifying for the Other Contracts Exemption thus would be exempt from the filing requirements and substantive regulation of the Revised Rule, as well as from the QIU Rule, under paragraph (h)(2) of the Revised Rule.

COMMITTEE COMMENTS

The Committee is very pleased that FINRA is proposing to include the Other Contracts Exemption in the Revised Rule and fully supports the inclusion of the Other Contracts Exemption in the Revised Rule. Further, the Committee urges the SEC to approve the proposal to add the Other Contracts Exemption to the Corporate Financing Rule, regardless of whether the SEC proceeds with approving the other changes contemplated by the Proposed Revision.

For some time, the Committee has advocated for revisions to the Corporate Financing Rule to encompass other types of insurance contracts developed by Committee members that are registered with the SEC and may not squarely fit within the Existing Exemptions from the Corporate Financing Rule (collectively, "Other Contracts"). Indeed, the Notice explicitly acknowledges the Committee's support for an exemption for Other Contracts during the rulemaking process leading to FINRA's submission of the Proposed Revision, observing that it would resolve members' questions about the status of insurance contracts under FINRA rules.[7]

Other Contracts could include annuity and life insurance contracts using an indexed method for crediting interest, synthetic guaranteed withdrawal benefit products (also known as

---

[4] *See* FINRA Rule 5110(b)(8)(B), which exempts securities that are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended, which in turn includes any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with certain qualified plans.

[5] *See* FINRA Rule 5110(b)(8)(E), which describes MVA contracts as deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specific periods, and the nonforfeiture value of which are based upon a market value adjustment formula for withdrawals made before the end of any specified period.

[6] *See* Revised FINRA Rule 5110(h)(2)(E).

[7] *See* Notice at 18607.

contingent annuities), funding agreements and contracts combining long-term care insurance with cash value annuities and life insurance products. Adding the Other Contracts Exemption would ensure that all insurance contract offerings are treated the same under the Corporate Financing Rule (or the Revised Rule), and resolve any question or ambiguity regarding the status of the Other Contracts under FINRA rules. Further, the resolution of this issue for the broker-dealers interested in distributing Other Contracts would facilitate further insurance product development in the marketplace, which would ultimately benefit consumers searching for appropriate financial and retirement planning tools.

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), Cliff 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.

Respectfully submitted,

Eversheds Sutherland (US) LLP

Eversheds Sutherland (US) LLP

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 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
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
Talcott Resolution
The Transamerica companies
TIAA
USAA Life Insurance Company