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January 12, 2018

VIA ELECTRONIC MAIL

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

Re: Regulatory Notice 17-38 Remote Branch Office Inspections: FINRA Requests Comment on a Proposal to Amend Rule 3110 (Supervision) to Provide Firms the Option to Conduct Remote Inspections of Offices and Locations That Meet Specified Criteria

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's Regulatory Notice 17-38: FINRA Requests Comment on a Proposal to Amend Rule 3110 (Supervision) to Provide Firms the Option to Conduct Remote Inspections of Offices and Locations That Meet Specified Criteria ("RN 17-38" or the "Notice").

The Notice seeks comment on a proposal to amend Rule 3110 to add new Supplementary Material .15 (the "Proposal") to provide firms with the flexibility to conduct remote inspections of "qualifying offices" that meet specified criteria, in lieu of physical, on-site inspections of such offices.

[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 over 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.

COMMITTEE COMMENTS

The Committee welcomes the opportunity to comment on the Notice. Our comments and recommendations are set forth below.

No Requirement for On-Site Inspections. The Proposal is based on the implicit assumption that Rule 3110 requires inspections to be conducted on an on-site basis. As a threshold matter, the Committee questions this assumption. By way of background, Rule 3110(c) requires broker-dealers to conduct a review, at least annually, of the business in which it engages. This rule also requires broker-dealers to review the activities of each office and "inspect" each office on a specified cycle depending on the office classification. But there is no specific requirement in the rule or current supplementary material that requires these office inspections to be performed on-site or in-person. Indeed, FINRA's assertion that Rule 3110 requires on-site inspections appears to be based on an interpretive position stated in a 2011 FINRA regulatory notice discussing NASD Rule 3010, the predecessor rule for Rule 3110, and this interpretive position was not explicitly incorporated into Rule 3110, which was developed to replace NASD Rule 3010.[2]

Given that there does not appear to be an explicit requirement in Rule 3110 for on-site inspections, the Committee questions why FINRA is now proposing to amend Rule 3110 to seemingly provide relief for a requirement that is not explicit in the rule. Amending the rule to provide for a narrow exception from the in-person inspection requirement would in effect suggest that in-person inspections are explicitly required by the rule, which is not the case.

The Definition of "Qualifying Office" is Too Restrictive. The Proposal would permit member firms to conduct "remote inspections" of locations that meet the definition of "qualifying office." The Proposal outlines seven conditions that a location would need to meet to qualify as a "qualifying office." The Committee believes that certain of these conditions, particularly the following ones set forth below, are overly restrictive for the reasons indicated:

- That not more than three associated persons who conduct business for the firm are designated to the location. While the Committee appreciates the benefits of establishing a numerical limit on associated persons, the Committee notes that the number of associated persons designated to a location can fluctuate over the course of a year, with the consequence that a given location could qualify as a "3 person or less" office at the time an inspection schedule was set for offices and thus be scheduled for a remote inspection, but the location could lose that qualification as a result of the designation of an additional person to the location during the period the inspection schedule is in effect.

[2] We note that RN 17-38 cites to Regulatory Notice 11-54 (November 2011) as support for its statement that "FINRA has interpreted the rule to require that inspections take place on-site, irrespective of the type of office." We note further that Regulatory Notice 11-54 simply states that "[a] broker-dealer must conduct on-site inspections of each of its office locations" without citing any source of authority for that position.

- That all books and records must be maintained at another office of the firm. Under the terms of this condition, it appears that a remote office would lose its eligibility if it happens to maintain any required books and records on-site.

If FINRA proceeds with the Proposal, the Committee recommends that the definition of qualifying office be structured in a manner that provides sufficient flexibility to allow firms to take advantage of the opportunity to conduct inspections of smaller offices without being "tripped up" by the overly broad and comprehensive criteria to define a qualifying office.

All Offices Should be Available for Remote Inspections. As noted above, the Proposal would permit remote inspections only for those locations that meet the definition of "qualifying office." The Committee suggests that FINRA consider use of remote inspection protocols for all offices. With the rapid pace of technological advances and use of online portals for the execution and processing of transactions, notices and requests, as well as the retention of required records, FINRA should acknowledge that remote inspections can be structured and carried out in a manner that is just as robust and efficient (if not more so) than on-site inspections. More specifically, e-mail surveillance tools, online searches, and activity and exception reporting tools have greatly improved the ability for broker-dealers to conduct effective remote inspections of their offices.

CONCLUSION

The Committee appreciates the opportunity to submit comments in response to RN 17-38. Please do not hesitate to contact Eric Arnold (202.383.0741, EricArnold@eversheds-sutherland.com) or Cliff Kirsch (212.389.5052, CliffordKirsch@eversheds-sutherland.com) if you have any questions regarding this letter.

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP

BY: _____ BTM

BY: _____ BTM

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.