SUTHERLAND

1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
202.383.0100 Fax 202.637.3593
www.sutherland.com

ATLANTA
AUSTIN
HOUSTON
NEW YORK
TALLAHASSEE
WASHINGTON DC

October 2, 2009

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2009-057
Notice of Filing of Proposed Rule Change Relating to Section 1(c) of Schedule A to the FINRA By-Laws To Amend the Personnel Assessment and Gross Income Assessment

Dear Ms. Murphy:

This letter is submitted on behalf of the Committee of Annuity Insurers (the "Committee")[1] in response to the publication of *Notice of Filing of Proposed Rule Change Relating to Section 1(c) of Schedule A to the FINRA By-Laws To Amend the Personnel Assessment and Gross Income Assessment* (the "Proposal Notice"), issued by the U.S. Securities and Exchange Commission (the "SEC").[2] The Proposal Notice requests comment on proposed increases to FINRA's Personal Assessment ("PA") and Gross Income Assessment ("GIA") fees (the "Proposed Amendments"). The stated purpose of the Proposed Amendments is to stabilize FINRA's revenues and protect against future industry downturns. The Committee appreciates this opportunity to comment on the Proposed Amendments.

---

[1] The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of Committee members is attached at Appendix A.

[2] The Proposal Notice was published in SEC Release No. 34-60624, 74 Fed. Reg. 46828 (Sept. 3, 2009).

8649420.1

Stabilizing the GIA

Proposal. Under current Section 1(c) to Schedule A of the FINRA Bylaws ("Schedule A"), a member firm's GIA is calculated based on a firm's annual gross revenue for the preceding calendar year, and it is assessed through a tiered structure based on the firm's annual gross revenue. The Proposed Amendments would change this by assessing a GIA of the greater of (i) the current year's GIA as calculated above *or* (ii) a three-year average of the current and past two years' GIAs (the "three-year approach"). FINRA hopes that this change will "smooth out" the potential volatility of the GIA amount.

Comment. The Committee agrees that FINRA needs a consistent and predictable funding stream to meet its regulatory responsibilities. One way FINRA hopes to accomplish this goal is by "smoothing out" the potential volatility of the GIA by assessing the greater of two calculations. As a practical matter, the three-year alternative prong would be triggered in those years when income levels are down. However, the Committee notes that only the three-year approach would actually "smooth out" such volatility. Thus, the Committee suggests that the GIA be assessed solely on the basis of the three-year approach.

Doubling the PA

Proposal. Schedule A also sets forth the process for calculating a member firm's PA. A member firm's PA is calculated based on the size of the firm and the number of its registered persons. The Proposed Amendments would *double* the PA for all member firms. Specifically, the Proposed Amendments would increase the PA for member firms with:

- 1-5 registered persons and principals from $75 to $150 per registered person;
- 6-25 registered persons and principals from $70 to $140 per registered person; and
- 26 or more registered persons and principals from $65 to $130 per registered person.

Comment. The Committee believes that FINRA's objective can be met by using the three-year approach discussed above, and requests that FINRA reconsider whether the three-year approach, by itself, would be sufficient to meet FINRA's goal of ensuring a "consistent and predictable" funding stream. If FINRA determines it would not be, the Committee requests that FINRA provide additional analysis regarding how the PA increase, acting both alone and in addition to the proposed GIA, would help FINRA meet its stated goals.

In addition, if FINRA ultimately determines that increasing the PA is necessary, the Committee views doubling the PA as excessive in light of the admittedly lesser role the PA plays in funding FINRA when compared to the GIA. As such, the Committee would encourage FINRA to increase the PA, if at all, by a less significant amount (*i.e.*, by no more than 10%).

The Committee appreciates this opportunity to comment on the Proposed Rule, and would be happy to answer any questions you may have.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: CLIFFORD F. KIRSCH (DGA)

BY: SUSAN S. KRAWCZYK (DGA)

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
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
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company