

September 4, 2015

**VIA ELECTRONIC MAIL**

Robert W. Errett  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File Number SR-FINRA-2015-029  
SEC Notice of Filing of FINRA Proposed Rule Change to Adopt FINRA  
Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions)**

Dear Mr. Errett:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the “Committee”),<sup>1</sup> in response to the Notice of Filing SR-FINRA-2015-029 (the “Notice”), which was issued by the Securities and Exchange Commission (“SEC”) on August 10, 2015.<sup>2</sup>

The Notice requests comment on a proposal by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook. More specifically, the FINRA rule proposal would combine and streamline certain provisions of NASD Rule 3050 and NYSE Rules 407 and 407A, and would require an associated person to obtain prior written consent of his or her employer (the “employing member”) when opening an account at another member firm (the “executing member”), or any other financial institution, in which securities transactions can be effected and in which the associated person has a beneficial interest. In addition, upon receiving

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<sup>1</sup> The Committee was formed in 1982 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.

<sup>2</sup> SEC File Number SR-FINRA-2015-029, available at <http://www.gpo.gov/fdsys/pkg/FR-2015-08-14/pdf/2015-20006.pdf>.

a written request from an employer member, the executing member must send the employer member duplicate copies of account confirmations and statements for the associated person's account. Finally, the FINRA rule proposal requires the associated person to notify in writing the executing member (or other financial institution) of his or her association with the employer member before opening the account.

The Notice revises an earlier FINRA proposal, outlined in Regulatory Notice 09-22, to adopt FINRA Rule 3210 (Personal Securities Transactions for or by Associated Persons) in the Consolidated FINRA Rulebook (the "Original Rule Proposal").<sup>3</sup> The Committee commented on the Original Rule Proposal, and appreciates FINRA's efforts to revise and clarify certain aspects of the Original Rule Proposal in the Notice.<sup>4</sup> While the Committee commends FINRA for revising the Original Rule Proposal to maintain many of the provisions of NASD Rule 3050, the Committee seeks amendment to and clarification regarding certain aspects of the Notice as set forth in the comments below.

## COMMITTEE COMMENTS

**Application to Previously Opened Accounts.** The Notice proposes that an associated person must notify the executing member of his or her association with the employer member, and also obtain the prior written consent of the employer member before opening an account. Given that the Notice requirements apply to account openings, it would follow that these requirements apply prospectively only, not to accounts already opened by associated persons with executing members before the proposed rule's compliance date. In order to avoid any doubt, the Committee requests confirmation that this requirement would only apply to associated persons that open accounts after the proposed rule's compliance date.

**Exemption for Insurance Contracts.** Supplementary Material .03 to the FINRA rule proposal ("Proposed SM .03") provides certain exemptions from the requirement for the executing member to provide the employer member with duplicate account confirmations and statements. The exemption in Proposed SM .03 applies to transactions in unit investment trusts, municipal fund securities, Section 529 plans, and variable contracts or redeemable investment company securities. This exemption does not appear to apply to all insurance contracts that are deemed to be securities, but only to such contracts that meet FINRA's definition of a "variable contract."<sup>5</sup>

The Committee recommends that the exemption be expanded to cover all insurance contracts that are securities because these insurance contracts are substantially similar to the "variable contracts" covered under the existing exemption in Proposed SM .03. In the Committee's view, expanding the exemption to include all such contracts would be consistent

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<sup>3</sup> FINRA Regulatory Notice 09-22, available at <https://www.finra.org/sites/default/files/NoticeDocument/p118524.pdf>.

<sup>4</sup> The Committee's comment letter is available at <https://www.finra.org/sites/default/files/NoticeComment/p118943.pdf>.

<sup>5</sup> See FINRA Rule 2320(b)(2).

with the policy purposes underlying the original exemption (e.g., identifying transaction that pose “limited risk” from the standpoint of the need to oversee associated persons accounts opened at another firm), while lessening the compliance burden and allowing firms to focus their supervisory efforts on accounts that pose the greatest risk.

The Committee believes it would be appropriate to identify as exempt under Proposed SM .03 other types of insurance contracts that fall under other typically utilized FINRA exemptions for insurance contracts. For example, under FINRA Rule 5123, FINRA provides exemptions for insurance contracts meeting the following terms:

- modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in FINRA Rule 5110(b)(8)(E) (together, “modified contracts”);<sup>6</sup> and
- exempted securities, as defined in Section 3(a)(12) of the Securities Exchange Act of 1934, 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 (“exempted group contracts”).

In addition, we note the likelihood that new insurance contracts will continue to be developed by the insurance industry that may be treated as securities under the federal securities laws but may not clearly fall within the existing exemptions for variable contracts, modified contracts and exempted group contracts. Such other insurance contracts could include (but would not be limited to) annuity and life insurance contracts using an indexed method for crediting interest, synthetic guaranteed withdrawal benefit products (also known as contingent annuities), and combination long-term care insurance with cash value annuities and life insurance products. Such other insurance contracts may not have all the features and benefits described or referenced in the existing exemptions for variable contracts, modified contracts and exempted group contracts, or may provide for alternative formulas or mechanisms for calculating benefit payments and determining the trigger for those payments (generally the basis for the distinctions drawn by the existing exemptions). However, these other insurance contracts would share all of the following features with variable contracts, modified contracts and exempted group contracts:

- They would be issued by an insurance company;
- They would be treated as insurance contracts under applicable state insurance laws;

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<sup>6</sup> FINRA Rule 5110(b)(8)(E) defines such contracts as follows: “modified guaranteed annuity contracts and modified guaranteed life insurance policies, which are deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specified 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.”

- They would be subject to the same comprehensive regulatory scheme under state insurance laws and regulations that applies to all insurance contracts issued by an insurance company and all insurance companies issuing those contracts; and
- Like mutual funds and variable contracts, they would not pose any risk of inappropriate purchases and sales by associated persons.

In order for the proposed FINRA Rule 3210 to provide an exemption for such other insurance contracts, the Committee proposes that the following clause be added to the list of exempt transactions under SM .03:

**“offerings of insurance premium funding programs and any other types of insurance contracts issued by an insurance company (not otherwise covered in an exemption above), except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933.”**

The text of the proposed exemption is derived from current NASD Rule 1022(d)(1)(A)(iii), which describes some of the types of investments for which a person registered as a “Limited Principal – Investment Company and Variable Contracts Products” (also referred to as a Series 26 registration) can act in a principal capacity. (This description is cross-referenced in NASD Rule 1032(b), which recognizes a registration category for a Limited Representative – Investment Company and Variable Contracts Products, also referred to as a Series 6 registration.) The Committee believes adding the addition insurance contract exemptions described above leads to a more logical and workable framework of treating all insurance contracts that are securities in the same manner.

**Exemptions from Prior Notice and Written Consent Requirements.** As noted above, Proposed SM .03 would exempt certain transactions from the requirement to provide duplicate account confirmations and statements. However, the exemption in Proposed SM .03 would not extend to other aspects of the proposed rule, including the requirements to notify the executing member and obtain the prior written consent of the employer member before opening an account. The Committee notes that NASD Rule 3050 provides a complete exemption from all provisions of the rule for the exempted transactions, and is far more expansive than Proposed SM .03. In that respect, Proposed SM .03 would effectively subject outside brokerage accounts limited to the exempted transactions to the requirement that an employer member maintain a process for the internal review and written consent, on an account-by-account basis, for such accounts. The Committee urges FINRA to broaden the exemption in Proposed SM .03 to cover the prior notice and consent provisions of the proposed rule. The Committee recognizes that FINRA’s response to previous, similar comments was to effectively defer to the current position under NYSE Rule 407.12, but believes that adoption of the structure under NASD Rule 3050 more closely tracks the policy determinations articulated under the proposed rule change and creates less regulatory burden on firms.

**CONCLUSION**

The Committee appreciates the opportunity to offer these comments on the Notice. Please do not hesitate to contact Eric Arnold [REDACTED] or [REDACTED] or Clifford Kirsch [REDACTED] if you have any questions regarding this letter. We note that the Committee would be happy to meet with staff to discuss any of the issues or concerns identified in this letter if you think that would be helpful.

Respectfully submitted,

**SUTHERLAND ASBILL & BRENNAN LLP**

BY: 

BY:  EA

**FOR THE COMMITTEE OF ANNUITY INSURERS**

Appendix A

**THE COMMITTEE OF ANNUITY INSURERS**

AIG Life & Retirement  
Allianz Life  
Allstate Financial  
Ameriprise Financial  
Athene USA  
AXA Equitable Life Insurance Company  
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  
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  
Symetra Financial Corporation  
The Transamerica companies  
TIAA-CREF  
USAA Life Insurance Company  
Voya Financial, Inc.