

May 12, 2009

VIA ELECTRONIC MAIL

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

**Re: File No. SR-FINRA-2009-023  
Notice of Filing of Proposed Rule Change to Adopt  
FINRA Rule 2320 in the Consolidated FINRA Rulebook**

Dear Ms. Murphy:

This letter is submitted on behalf of the Committee of Annuity Insurers (the "Committee")<sup>1</sup> in response to the Securities and Exchange Commission's (the "SEC") publication of, and request for comments on, File No. SR-FINRA-2009-023 *Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2320 in the Consolidated FINRA Rulebook* (the "Rule Change Proposal").<sup>2</sup> The Committee appreciates this opportunity to comment on the Rule Change Proposal.

The Committee first wishes to express its general approval of the Rule Change Proposal and commends FINRA's decision to transfer NASD Conduct Rule 2820 ("Rule 2820") to the Consolidated FINRA Rulebook as FINRA Rule 2320 ("Rule 2320") with only a few changes. However, the Committee is concerned about one of the proposed changes.

Currently, Rule 2820(g)(3) requires members to maintain certain records of all non-cash compensation received by a member and/or its associated persons in connection with the sale and distribution of variable contracts. Among other things, the value of the non-cash compensation received must be recorded, but only if that value is "known."

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<sup>1</sup> 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.

<sup>2</sup> The SEC published File Number SR-FINRA-2009-023 in SEC Release No. 34-59762, 74 Fed. Reg. 18269 (Apr. 21, 2009).  
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The Rule Change Proposal would eliminate the “if known” qualifier from Rule 2320, which would require members to determine and keep records of the value of all non-cash compensation received from offerors. Where the value for some form of non-cash compensation is not known and a document assigning value (*e.g.*, a receipt) is not available, members would “estimate” the actual value of the non-cash compensation.

The Committee generally supports this proposed change, but does have two comments. First, the Committee requests that FINRA confirm that it would respect a member’s reasonable estimate of the value of non-cash compensation. The proposed “estimation” standard is inherently imprecise, which will undoubtedly result in members valuing similar forms of non-cash compensation differently. Thus, a member’s estimate of value should be respected unless it is patently unreasonable.

Second, the Committee requests no less than 180 days to implement the Rule Change Proposal. Members will need this time to adopt new policies and procedures, modify or create computerized and/or other compensation tracking systems, notify and educate their registered representatives, and adjust their training programs to ensure compliance with the new requirements.

The Committee appreciates this opportunity to comment on the Rule Change Proposal. We would be happy to answer any questions you may have about our comment letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford E. Kirsch EAA

Clifford E. Kirsch

BY: Eric A. Arnold

Eric A. Arnold

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