

July 29, 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-2009-042
Notice of Filing of Proposed Rule Change Relating to Outside Business
Activities of Registered Persons**

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 Outside Business Activities of Registered Persons* (the “Proposal Notice”), issued by the U.S. Securities and Exchange Commission (the “SEC”).² The Proposal Notice requests comment on the proposed adoption of FINRA Rule 3270, including supplementary material (together, the “Proposed Rule”), in the Consolidated FINRA Rulebook, which would replace current NASD Conduct Rule 3030 (“Rule 3030”) and Incorporated NYSE Rule 346 and its interpretations. The Committee appreciates the opportunity to comment on the Proposed Rule.

The Committee first wishes to express its approval of a number of the Proposed Rule’s provisions relating to a registered person’s outside business activities (“OBAs”). For example, the Committee commends FINRA for proposing to maintain Rule 3030’s current exemption for passive investments and activities subject to the requirements of NASD Conduct Rule 3040.

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. 34-60199, 74 Fed. Reg. 32668 (July 8, 2009). 8489948.1

However, the Committee has concerns about several aspects of the Proposed Rule, as discussed below.

The “Prior Written Notice” Requirement

Proposal. The Proposed Rule would require a registered person to give the member written notice “*prior*” to engaging in an OBA. As explained in the Proposal Notice, the “prior” notice requirement reflects a change from Rule 3030, which currently requires a registered person to provide “prompt” written notice to a member prior to engaging in an OBA.

Comment. While the Committee generally supports the change to a “prior” notice requirement, it wishes to point out that, in certain circumstances, a registered person may be incapable of securing member approval of an OBA prior to engaging in it. For example, where a registered person transfers his/her registration from one member to another or is entering the securities business for the first time, he/she may already be engaged in the OBA prior to his/her association with the new member. For purposes of these circumstances only, the Committee believes that the “prior” notice requirement should be expressed in terms of a requirement to give notice prior to the registered person’s *registration* with the member.

“Reasonable Expectation” of Compensation

Proposal. The Proposed Rule would require a registered person to give the member prior written notice of an OBA, for which the person will be compensated or has the “*reasonable expectation*” of compensation. According to the Proposal Notice, the “reasonable expectation” standard is designed to encompass situations where an OBA does not immediately yield compensation but may in the future (*e.g.*, where a registered person intends to work for a start-up business). The Proposed Rule, as drafted, would allow the registered person, rather than the member, to make the initial determination of whether there is a “reasonable expectation” of compensation that would trigger the prior notice requirement.

Comment. The Committee is concerned that the “reasonable expectation” standard is too vague, particularly when the initial determination is left to the registered person. In this regard, the Committee easily envisions situations in which a registered person will argue that he/she did not foresee compensation at the outset of the activity. On the other hand, the Committee is concerned about situations in which FINRA examiners will second-guess the initial determinations made by registered persons and/or their supervisors. The Committee believes that further guidance should be provided regarding what facts and circumstances would be relevant to that initial determination. Accordingly, the Committee recommends that FINRA clarify that the “reasonable expectation” standard would not be triggered absent a concrete understanding or agreement between the registered person and the outside business that compensation will, or is likely to, be paid over time. Furthermore, the Committee believes that

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FINRA should clarify that the “reasonable expectation” determination is ultimately the determination of the Firm, not the registered person, based on information provided to the Firm by the registered person.

The “Investor Protection” Standard

Proposal. Proposed Supplementary Material .01 to the Proposed Rule (“Proposed SM .01”) would require members to evaluate whether a proposed OBA “raises investor protection concerns.” If so, Proposed SM .01 would then require members either to “implement procedures or restrictions on the activity to protect investors, or prohibit the activity.”

Comment. The Committee has two significant concerns regarding Proposed SM .01. First, the Committee is concerned that the “investor protection” standard is overly broad and inappropriate in this context. Second, the Committee is concerned that the “procedures” requirement is wholly inconsistent with the activity being an “outside business activity” and will effectively result in a requirement for members to supervise non-securities activities.

The Committee views the “investor protection” standard as overly broad, because many OBAs have nothing to do with investors or investor protection issues. FINRA has not explained why traditional investor protection concerns applicable to broker-dealers – such as the handling of customer funds and securities or the processing of securities transactions – should be applied to outside business activities. Does the sale of a term life insurance policy raise an issue of “investor protection?” What about service on a board of directors of a local bank? In addition, in many cases, OBAs are subject to a separate regulatory scheme focused on the consumer concerns and interests specific to that kind of business activity. Further, FINRA has not explained why it believes that the current standards applying to a member firm’s review and approval of outside business activities are deficient and in need of revisions. In short, the Committee believes that the “investor protection” standard is an inappropriate standard to be applied by a member when considering an OBA notice from a registered person.

Moreover, the Committee is concerned that Proposed SM .01’s requirement to “implement procedures or restrictions” on an OBA effectively imposes a supervision requirement on a member firm, particularly when combined with the broad scope of the “investor protection” standard. This is a radical change from Rule 3030, which has not required, or been construed as requiring, members to supervise OBAs. Indeed, supervising OBAs would effectively bring those activities within the ambit of the member’s activities. Furthermore, exercising that supervision could subject the member to additional licensing and registration requirements under other regulatory schemes applicable to that OBA. For these reasons, the Committee urges FINRA to strike this aspect of the Proposal.

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Determination of Outside Business Activity

Proposal. Proposed SM .01 would also require a member to evaluate whether a proposed activity “properly is characterized as an outside business activity or whether it should be treated as an outside securities activity.”

Comment. The Committee seeks clarification regarding the level of documentation required to be developed and maintained by a member in making the required determination. In particular, the Committee requests that FINRA confirm that extensive legal opinions or other documentation are not required to support a member’s characterization of a proposed activity.

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)

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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