

October 13, 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-2009-058
Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2232
(Customer Confirmations) in the Consolidated FINRA Rulebook and to
Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule
409(f)**

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 to Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and to Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f)* (the “Proposal Notice”), issued by the U.S. Securities and Exchange Commission (the “SEC”).² The Proposal Notice proposes to adopt FINRA Rule 2232 (the “Proposed Rule”) and to delete NASD Conduct Rule 2230 (“Rule 2230”), NASD IM-2110-6 and Incorporated NYSE Rule 409(f) (together, the “Proposal”). The Committee appreciates this opportunity to comment on the Proposed Rule.

The Committee first wishes to express its overall support of the Proposal, which the Committee believes will help streamline and combine basic customer confirmation requirements in existing NASD and NYSE Rules. However, the Committee is concerned about the Proposed

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. 34-60669, 74 Fed. Reg. 48107 (Sept. 14, 2009).

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Rule's requirement that customer confirmations include the settlement date for each securities transaction.

Proposal. Both the SEC's confirmation rule, Rule 10b-10 under the Securities Exchange Act of 1934 ("Rule 10b-10"), and current Rule 2230 require FINRA members ("member firms") to include the date of a transaction (the "trade date") on customer confirmations. However, neither Rule 10b-10 nor Rule 2230 require that customer confirmations include the date a trade settles (the "settlement date"). In contrast, the Proposed Rule would require member firms to clearly set forth the settlement date of each customer transaction on customer confirmations. Thus, the proposed Rule, when read together with Rule 10b-10, would require that both the trade date and the settlement date be reported for each transaction. It does not appear that any exceptions or exemptions to this requirement are presently contemplated.

Comment. The Committee views this new requirement – inclusion of the settlement date – as unnecessary in the context of variable products, because the concept of a "settlement date" is not a "good fit" for variable products. The term "settlement date" typically refers to the date by which an executed securities transaction must be settled through a broker-dealer, by delivering funds for a purchase or by delivering a sold asset, in accordance with Rule 15c6-1 under the Securities Exchange Act of 1934. Ordinarily, the settlement date is three business days after a trade was executed ("T+3 settlement").

Variable products, however, do not "settle" like typical securities. Instead, they involve the purchase or surrender of an insurance policy. In fact, the unique issues related to variable product processing prompted the SEC to provide an exemption from the T+3 settlement requirements.³ In addition, the SEC staff has provided no-action relief from certain of Rule 10b-10's confirmation requirements in light of the unique features of variable products.⁴

In light of the fact variable products do not "settle" like typical securities, including a settlement date on confirmations for variable products is more likely to confuse customers than afford them any benefit. The Committee believes members would incur significant costs if they must reprogram their processing system so that a settlement date field can be added to confirmations and a settlement date entered into this field. Thus, the Committee requests

³ See Exchange Act Rel. No. 34-35815 (June 6, 1995).

⁴ See, e.g., *Occidental Life Ins. Co. of California (Transamerica Fund Sales, Inc.)*, SEC No-Action Letter (Nov. 28, 1980) (providing no-action relief from the requirement to disclose, among other things, the "time of the transaction" on a confirmation in connection with a deferred annuity, in recognition that, among other things, purchase payments and allocation procedures under the annuity differed fundamentally from "ordinary" securities transactions; inclusion of the time would have been "impracticable and expensive"; and reflecting the "time" of the transaction on the confirmation afforded customers "little or no benefit").

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FINRA's assurance that the Proposed Rule would not require the settlement date for variable annuity contracts to appear on customer confirmations.

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 E. Kirsch (DGA)

BY: Susan S. Krowczyk (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