

December 30, 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-2009-070
Notice of Filing of Proposed Rule Change to Adopt NASD Interpretive
Material 2210-2 into the Consolidated FINRA Rulebook as FINRA Rule
2211**

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 NASD Interpretive Material 2210-2 into the Consolidated FINRA Rulebook as FINRA Rule 2211* (the "Proposal Notice"), issued by the U.S. Securities and Exchange Commission (the "SEC").² The Proposal Notice proposes to adopt FINRA Rule 2211 (the "Proposed Rule," together with the Proposal Notice, the "Proposal") and to delete NASD Interpretive Material 2210-2 ("IM 2210-2"). The Committee appreciates this opportunity to comment on the Proposal.

The Committee first wishes to express its overall support of the Proposal, which the Committee believes will help modernize and formalize FINRA's interpretive material governing communications about variable insurance products. However, this letter provides comments with respect to certain provisions of the Proposed Rule relating to variable annuity contracts which are troubling to the Committee or are in need of clarification. In particular, this letter first provides comments on the Proposed Rule's treatment of the following variable annuity illustrations issues: requirement that variable annuity contract hypothetical illustrations reflect maximum guaranteed

¹ The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuity contracts. 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. 34-61107, 74 Fed. Reg. 65180 (Dec. 9, 2009).

charges, permitted use of actual performance of a broad-based securities market index in variable annuity contract illustrations, and requirement that variable annuity contract illustrations be presented in a format that depicts, at a minimum, year-by-year account values. We then provide our comments with respect to the Proposed Rule's definition of "rider," its requirement that a communication concerning a variable annuity contract offered within a qualified plan include certain tax-deferred treatment disclosure, and its use of the term "illustration." This letter concludes with comments concerning the implementation timeframe for the Proposed Rule.

I. Variable Annuity Illustrations

Reflecting Maximum Guaranteed Charges and Riders in Hypothetical Illustrations

Proposal. Paragraph (g)(5) of the Proposed Rule would require hypothetical illustrations for variable annuity contracts to include illustrations reflecting the deduction of "maximum guaranteed charges." Further, the Proposal would require firms to illustrate for the most expensive rider.

Comment. The Committee believes that the Proposed Rule should be modified to eliminate the requirement that hypothetical illustrations for variable products include illustrations that reflect the deduction of "maximum guaranteed charges." More specifically, the Proposed Rule would require an additional full set of illustrations that reflect the deduction of guaranteed charges to accompany illustrations which reflect current charges. The Committee has previously urged FINRA to reconsider this aspect of the Proposed Rule, pointing out that requiring an additional full set of illustrations reflecting guaranteed charges is unnecessary and could possibly lead to customer confusion. The Committee suggested that other possible alternatives be considered, such as including narrative disclosure that provides full and balanced disclosure of a contract's guaranteed charges or reflecting guaranteed charges with respect to only one set of illustrations.

The Committee is also concerned with the requirement that hypothetical illustrations for variable products include an illustration reflecting a contract's most expensive rider. In this connection, we note that particular riders may not apply to the contract that a customer is considering to purchase, and the inclusion of that illustration may not only be confusing but also potentially misleading.

Actual Performance of a Broad-Based Securities Market Index—Blended Rates

Proposal. Paragraph (g)(7)(C) of the Proposed Rule would permit the use of illustrations for variable annuity contracts based on the actual performance of a broad-based securities market index, but would not permit the use of "blended index rates" in illustrations.

Comment. The Committee supports the Proposed Rule in respect to its provisions allowing illustrations to be based on the actual performance of a broad-based securities market

index. However, the Committee requests that the Proposed Rule be revised to specifically permit the use of blended index rates. Blended index rate illustrations are illustrations based on more than one index (*e.g.*, illustrations based 50% on the S&P 500 index performance and 50% on the NASDAQ index performance). Blended index rate illustrations are very relevant in the case of variable annuity contracts offering a variety of investment options because most purchasers are likely to allocate their contract value among more than one investment option. The Committee believes that blended index rate illustrations could be very helpful to investors.

Illustrations Format

Proposal. Paragraph (g)(2) of the Proposed Rule would require that illustrations for variable annuity contracts be presented in a format that depicts, at a minimum, year-by-year account values.

Comment. The Committee believes that the Proposed Rule should be revised to provide members with the flexibility to choose which years (after a minimum number of the first 10 years) to illustrate as long as such years are clearly disclosed. Illustrations for variable annuity contracts may cover periods in excess of 20 years and a requirement that year-by-year account values be depicted could overwhelm illustrations and make such illustrations less “user-friendly.”

II. Other Comments

Definition of Rider

Proposal. Paragraph (a)(6) of the Proposed Rule would define the term “rider” as: “...an additional provision to a contract or an additional contract that adds or excludes coverage at an identifiable cost.”

Comment. As noted above, the Proposed Rule would define “rider” by reference to the phrase “...that adds or excludes coverage at an identifiable cost.” As such, riders that do not have contract costs would seem to be excluded from the definition. The Committee believes that FINRA should modify the definition to clarify that riders with no explicit contract cost are included within the definition of “rider.”

Qualified Plan Disclosure

Proposal. Paragraph (e)(2) of the Proposed Rule would require that a communication concerning a variable annuity contract offered within a tax-qualified retirement plan include certain disclosures regarding tax-deferred treatment.

Comment. It is not entirely clear which communications would be required to include the disclosures regarding tax-deferred treatment. Arguably, because variable annuity contracts are eligible investments within a qualified plan, every communication concerning a variable annuity

contract would be required to include the disclosure. The Committee believes that this disclosure requirement should be limited to communications which refer specifically to tax-qualified retirement plans.

The Term “Illustration” Is Undefined

Proposal. Although the term “illustration” is used extensively in the Proposed Rule and the Proposal Notice, neither of them provides a definition of the term illustration.

Comment. The Committee believes that it is critical that the Proposed Rule expressly define the term “illustration.” This would serve to clarify the types of communications to which the illustrations requirements apply.

III. Implementation Timeframe

The Committee urges that a compliance date be set which takes into account the significant time, cost and resources that will be required to comply with any new requirements. Any compliance date should be set with a view to minimizing the likelihood that firms would have to discard or revise large volumes of existing materials. A significant amount of material will require filing or re-filing with FINRA, and also with state insurance departments which may result in delays of 60 days for some state approvals.

The Committee appreciates this opportunity to comment on the Proposal. Please do not hesitate to contact Clifford Kirsch (212.389.5055) or Susan Krawczyk (202.383.0197) if you have any questions on the issues addressed in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford Kirsch (JKH)

BY: Susan Krawczyk (JKH)

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
Massachusetts Mutual Life Insurance Company
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