

December 5, 2011

VIA E-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-2011-064
Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 4524
(Supplemental FOCUS Information) and Proposed Supplementary
Schedule to the Statement of Income (Loss) Page of FOCUS Reports**

Dear Ms. Murphy:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to the *Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 4524 (Supplemental FOCUS Information) and Proposed Supplementary Schedule to the Statement of Income (Loss) Page of FOCUS Reports* ("Proposal Notice") published by the Securities and Exchange Commission (the "SEC" or the "Commission") on November 7, 2011.² The Commission solicits comment on a rule change (the "Proposed Rule Change") to adopt FINRA Rule 4524 (the "Proposed Rule") to require each member, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary as a supplement to the FOCUS Report. The content of such supplemental schedules or reports would be specified in a FINRA Regulatory Notice (or similar communication), which FINRA

¹ The Committee of Annuity Insurers is a coalition of 32 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 80 % of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

² See SEC Release No. 34-65700, 76 Fed. Reg. 70523 (Nov. 14, 2011).

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would file with the SEC pursuant to the Proposed Rule. As part of the Proposed Rule Change, FINRA filed one such proposed schedule, a supplement to the Statement of Income (Loss) page of the FOCUS Report (“SSOI”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 19b-4 thereunder.

The Committee appreciates the Commission’s solicitation of comments on this important proposal. The Committee submitted extensive comments to FINRA on the SSOI in August, 2010 (the “Committee Comment Letter”), when FINRA published FINRA Regulatory Notice 10-33 (“RN 10-33”). A copy of the Committee Comment Letter is attached to this letter as Appendix B.

FINRA states in the Proposed Rule Change that it addressed the comments it received in response to RN 10-33.³ While the Committee appreciates FINRA’s efforts in this regard, it respectfully disagrees with the conclusion that all comments were addressed. The Committee believes that certain comments, set forth in detail below, were not addressed by FINRA and that this rulemaking should not proceed until FINRA gives them full consideration and the details of this consideration are published for notice and comment. In addition, for the reasons set forth below, we believe that FINRA’s discussion in the Proposed Rule Change of the benefits and corresponding burdens on competition of the Proposed Rule Change is cursory and does not meet regulatory requirements. Finally, we offer further comments relating to the SSOI and any future supplements to FOCUS Reports.

I. The Committee’s Unaddressed Comments

Comments. The Committee Comment Letter requested that FINRA discuss, first, the legal authority upon which it is relying to adopt the SSOI, and second, explain how the SSOI fits within the legal framework created by Section 17 of the Exchange Act and Rule 17a-5 thereunder. The Committee raised these issues with FINRA because the FOCUS Report was developed by the Commission and plays a critical role in the overall SEC financial regulatory scheme codified in Section 17 and Rule 17a-5. This critical role can now be seen in the Commission’s proposed rulemaking to amend Rule 17a-5,⁴ and in the work of the Public Company Accounting Oversight Board with respect to, among other matters, attestation standards for broker-dealer audits. At this point in time, no one has addressed the authority of

³ See Proposal Notice at 9.

⁴ See SEC Release No. 34-64676, File No. S7-23-11 (June 15, 2011).

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any self-regulatory organization (“SRO”) to adopt a supplement to the FOCUS Report, and no one has addressed the role such a supplement would play with respect to a broker-dealer’s annual audits. We again request that FINRA address how the SSOI fits into all the other SEC financial reporting requirements to which member firms are subject, and explain its authority to require a supplement to the FOCUS Report.

The Committee also asked FINRA to address the inconsistency between the proposed new “Operational Page” to the SSOI and the FINRA offering rules. The Operational Page would require a member firm to provide information to FINRA regarding unregistered offerings (by both affiliated and unaffiliated entities, as well as by the firm itself) in which the member firm participates. The Committee does not understand FINRA’s need for this information in a supplement to the FOCUS Report, with respect to offerings that are exempt from FINRA offering rules. Specifically, FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements), exempts ten (10) different types of offerings from the rule, including offerings of open and closed-end investment companies, offerings of variable annuities, and offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies.⁵ A pending FINRA rule proposal for private offerings includes exemptions for variable annuities, and offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies.⁶ The Committee believes that offerings that are exempted from FINRA offering rules should not be subject to the Operational Page.

II. FINRA’s Discussion of Benefits and Corresponding Burdens Is Cursory and Does Not Meet Regulatory Requirements

Exchange Act Rules 15A(b)(6) and (9) require that FINRA rulemaking initiatives be designed to prevent fraudulent and manipulative acts and not impose any burden on competition not necessary or appropriate. Similarly, the instructions to Form 19b-4 require FINRA to explain in detail why the proposed rule change does not unduly burden competition or efficiency. Form 19b-4 further cautions that “a mere assertion that the proposed rule change is consistent with requirements is not sufficient.”

These Exchange Act requirements are notable because they impose on an SRO an obligation to balance the costs of a proposed rule change against its benefits. To date, we are not

⁵ See FINRA Rule 5110(8)(C), (D) and (E).

⁶ See FINRA Regulatory Notice 11-04 (Jan. 11, 2011) (proposing to adopt amendments to FINRA Rule 5122).

aware of any cost estimates developed by FINRA that approximate the impact of the SSOI on member firms. This lack of attention to cost is inconsistent with Exchange Act requirements and is also inconsistent with a series of executive orders issued by President Barack Obama asking federal agencies, including independent agencies, to find ways to improve and streamline their regulations.⁷ The Committee believes that these executive orders provide instructive guidelines.

These orders collectively ask independent federal agencies to review regulations with the following goals in mind:

- “identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. [Our regulatory system] must take into account benefits and costs...”
- “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs...”
- “tailor its regulations to impose the least burden on society...”
- “select in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental [benefits]...” [emphasis added]⁸

Comment. The required level of analysis and detail regarding burdens on competition or efficiency is noticeably absent from the Proposal Notice. FINRA states that it “does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act” but offers no economic analysis to support

⁷ See Executive Order 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011); Executive Order 13579, Regulation and Independent Regulatory Agencies, 76 Fed. Reg. 41,587 (July 14, 2011).

⁸ In addition, a recent decision from the United States Court of Appeals for the D.C. Circuit also highlights the importance of adequate consideration of the costs and burdens associated with regulatory rulemaking. In the *Business Roundtable* case, 2011 WL 2936808 (D.C. Cir. 2011), the court stated that it would scrutinize a proposal that opportunistically frames the benefits of a proposal or fails to respond to substantial problems raised by commenters. The court warns that regulators should be hesitant to rely upon insufficient empirical data when concluding the worth of a proposal’s benefit. The court then stated that it would discount support in the form of intangible or less readily quantifiable benefits. Regulatory statements should address the probability the rule will be of no net benefit.

this conclusion.⁹ The Committee asks that FINRA conduct a rigorous and detailed cost analysis that can be compared to alternatives to the rule. This analysis should include cost estimates based on the different types of member firms FINRA regulates - *e.g.*, large-sized firms that hold customer funds and securities, versus mid-sized firms, versus small firms.

When FINRA published RN 10-33, the Committee compared the revenue and expense items in the draft SSOI to items currently required in the FOCUS Report.¹⁰ Based on this comparison, the Committee estimated that the SSOI would require member firms to report revenue for one (1) new category and approximately fifty (50) new sub-categories that are not reported on FOCUS Parts II or IIA; Part II filers would report expenses for eight (8) new categories; and Part IIA filers would report for eleven (11) new expense categories. Part II and IIA filers would each report expenses in sixteen (16) sub-categories that are not reported on FOCUS Parts II or IIA.

FINRA's filing with the SEC never addresses the cost to member firms of developing new software to collect and report financial data in all of these categories, nor does FINRA explain why *every firm, regardless of the risk of the firm's business model*, must make these expenditures. The fact that FINRA has proposed a *de minimis* standard does not address the cost issue because every firm – even if it qualifies for use of the *de minimis* standard at some points in time – will have to develop the software and reporting systems for every item, in case the firm becomes ineligible to use the *de minimis* exemption, *e.g.*, as a result of a one-time event or because of a growth in business.

The cost issue highlights the fact that the SSOI is not, to use FINRA's word, a "supplemental" report. It is a new report, and it must be subjected to a robust cost-benefit analysis on that basis.

We also note that the comment period for this Proposed Rule Change and the SSOI is only twenty-one days and thus does not allow firms sufficient time to properly estimate the costs associated with the operational and systems changes needed to complete the SSOI. The

⁹ See Proposal Notice at 5.

¹⁰ The Committee Comment Letter specifically asked FINRA to study the likely costs of the draft SSOI and provide member firms and the SEC with this information so that any perceived need for the SSOI that is not already addressed by other forms of reporting or through FINRA's examination program could be weighed against a close examination of its cost.

complexity of the Proposed Rule Change is evidenced by the fourteen month period that passed between publication of RN 10-33 and the filing of the Proposed Rule Change. Member firms should be permitted more time to comment on the Proposed Rule Change. A longer comment period would also give FINRA time to respond to comments previously not addressed.

III. Committee Comments Relating to the SSOI and Future Supplements

For the reasons detailed above and in the Committee Comment Letter, the Committee believes that the SSOI should not be adopted. However, should the Commission decide to approve the Proposed Rule Change, which would have the effect of adopting the SSOI, the Committee believes that substantial revisions must be made to the SSOI before it becomes effective. Below, we offer comments suggesting that the *de minimis* exception to certain line items on the SSOI is so low as to render it of no use for many member firms. We also comment on the need for an exemption from the SSOI for firms engaged in wholesaling and principal underwriting.

The Committee also believes that, due to unique burdens that the SSOI imposes on mid- and small-sized firms, the compliance effective date of the SSOI should be at least one year from the approval of the Proposed Rule Change and the SSOI. Moreover, the Committee reiterates its request that any additional supplements to FOCUS Reports proposed by FINRA be subject to full notice and comment procedures.

A. The De Minimis Exception Should Be Raised to a Realistic Level

The SSOI contains a *de minimis* exception for providing details of revenue and expenses for certain designated sections. If a member's total dollar amount for a designated section is \$5,000 or less for the reporting period, the member would only be required to enter the total dollar amount to complete the section.

Comment. While we appreciate the inclusion of a *de minimis* exception from certain line items on the SSOI, we believe that the \$5,000 threshold is impractically low, rendering it virtually useless for many member firms. The Committee believes that a suitable threshold for the *de minimis* exception should reflect the revenues of the firm as a whole, so that, for example, a large firm with significant revenues would have a *de minimis* exception in the range of \$250,000 to \$500,000.

B. An Exemption Should Be Crafted for Wholesalers and Principal Underwriters

FINRA has stated that its motivation for developing the SSOI is to better assess risk at a firm by increasing transparency with respect to firm revenues and expenses. FINRA states that in the past, a lack of more specific revenue and expense categories for certain business activities on the Statement of Income (Loss) page of the FOCUS Reports has led many firms to report much of their revenue and expenses as “other” (miscellaneous), a general categorization that provides FINRA limited visibility into what can be opaque revenue and expense trends.¹¹

Comments. In light of the goals of the SSOI—identifying risk and improving the transparency of FOCUS Reports—the Committee believes that exemptions from the SSOI should be crafted for those firms that do not engage in risky business lines, and who provide financial information that is already transparent. For example, mutual fund wholesalers and variable annuity principal underwriters and wholesalers are limited purpose broker-dealers that do not present the type of risk that the SSOI contemplates. Their revenue streams are transparent and easily understandable from their FOCUS Reports.

C. The Compliance Effective Date for the SSOI Should Be at Least One Year from SEC Approval

FINRA states in the Proposal Notice that it is sensitive to the operational and systems changes that may be necessary for members to complete the SSOI. As a result, FINRA proposes to implement the SSOI no sooner than 180 days, and no later than 365 days, following the SEC’s approval of the Proposed Rule Change.

Comments. While we appreciate FINRA’s sensitivity to the operational and systems changes firms will need to implement in order to complete the SSOI, we believe that a compliance effective date of no sooner than 365 days following the SEC’s approval of the Proposed Rule Change would be more appropriate. Many of the Committee’s members are mid-sized firms that will not have the granular, detailed financial information required by the SSOI at their fingertips. Such firms will need to develop budgets for software and system changes and then test and modify system changes. In short, firms that are not already collecting the information required by the SSOI will require much more time than larger firms to implement the operational and systems changes the SSOI necessitates.

¹¹ See Proposal Notice at 3-4.

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D. Future Supplements to FOCUS Reports Must Be Subject to Full Notice and Comment Procedures

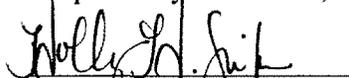
Pursuant to the Proposed Rule, FINRA will provide member firms with the specifics of any new required report or schedule in a Regulatory Notice or similar communication and file that document with the SEC. If the content of such document contains material substantive changes, FINRA will file the content for comment with the SEC. Commenters will have an opportunity to express their concerns and provide feedback only at that time.

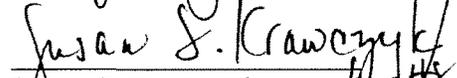
Comments. The Committee commented on this aspect of the Proposed Rule Change in the Committee Comment Letter, and now reiterates its concerns. The Committee believes that member firms should have an ability to comment on any new proposed financial reporting schedules before such schedules take effect. As shown by our previous comments, other laws and rules to which member firms are subject may conflict with new FINRA schedules and reports. New schedules or reports would almost undoubtedly increase member firm costs. We believe that FINRA should submit any new report or schedule to the SEC in the form of a proposed rule change, and such rule should be required to be published, public comment should be solicited thereon, and the SEC should approve such report or schedule before it is allowed to be effective. If this rulemaking process is not followed, then it is left to FINRA's discretion as to what constitutes a "material substantive change," an outcome that should not be permitted.

* * * * *

The Committee appreciates this opportunity to comment on the Proposed Rule Changes. Please do not hesitate to contact Holly Smith (202.383.0245) or Susan Krawczyk (202.383.0197) if you have any questions.

Respectfully submitted,


Holly H. Smith


Susan S. Krawczyk

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
(a Goldman Sachs company)
CNO Financial Group, 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)
SunAmerica Financial Group
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
TIAA-CREF
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August 18, 2010

Ms. Marcia Asquith
FINRA
Office of the Corporate Secretary
1735 K Street, N.W.
Washington, D.C. 20006-1506

VIA Electronic Mail

**Re: Regulatory Notice 10-33: Supplemental FOCUS
Information**

Dear Ms. Asquith:

This letter is submitted on behalf of our client, the Committee of Annuity Insurers (the "Committee"), in response to the publication of Regulatory Notice 10-33, "Supplemental FOCUS Information" (the "Notice").¹ The Notice proposes a new FINRA rule (Rule 4524) and a new supplementary schedule (the "Proposed Schedule") to the Statement of Income (Loss) page of FOCUS Report Parts II and IIA. We thank you for your solicitation of comments on this important proposal.

Our comments below first address the Proposed Schedule and then comment on proposed Rule 4524. For the reasons stated below, the Committee does not believe that a new form of financial reporting should be adopted at this time. The Proposed Schedule introduces many new items of revenue and expense that would need to be made consistent with the FOCUS Report, possibly through the development of instructions. This work will take significant time and energy on the part of member firms and regulators at a time when there are other pressing needs. If a new form of financial regulatory reporting is determined to be needed, we firmly believe that there are alternatives to the Proposed Schedule that should be explored.

¹The Committee of Annuity Insurers is a coalition of 31 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 more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

I. The Proposed Schedule

The Notice proposes that member firms file the Proposed Schedule with FINRA in addition to filing their FOCUS Reports. The Proposed Schedule – although characterized in the Notice as a supplement to the FOCUS Report – would require all member firms to report new revenue and expense items and use different account groupings than are currently used in the FOCUS Report. In this regard, we estimate that the Proposed Schedule would require member firms to report revenue for one (1) new category and approximately fifty (50) new sub-categories that are not reported on FOCUS Parts II or IIA; Part II filers would report expenses for eight (8) new categories; and Part IIA filers would report for eleven (11) new expense categories. Part II and IIA filers would each report expenses in sixteen (16) sub-categories that are not reported on FOCUS Parts II or IIA.

Comments. The Committee has a number of concerns with regard to the Proposed Schedule. Our primary concern is that the Proposed Schedule will unnecessarily lead to member firm and regulatory confusion because it is not a supplement to the FOCUS Report; it is a new report. We believe that, rather than adopt a new reporting form at this time, FINRA should look for alternative ways in which to augment the information already provided in the FOCUS Report.

We also believe that the legal status of the Proposed Schedule under the Securities Exchange Act of 1934 (the “Exchange Act”) would need to be established before a new reporting form is developed so that member firms and their outside auditors understand how that form of reporting fits into Exchange Act requirements, *e.g.*, member firm annual audits. Finally, we are not aware of a compelling regulatory need for a new form of financial reporting at this time and, given other pending regulatory proposals and studies (*e.g.*, the re-examination of SEC Rule 12b-1 and rules emanating from the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act), we question whether now is the best time to undertake such an initiative.

The following paragraphs elaborate on our concerns.

A. Two Different Reporting Schemes Will Lead to Member Firm and Regulatory Confusion and Inconsistencies Among Member Firm Reports

In analyzing FINRA’s proposal to adopt the Proposed Schedule, the Committee compared the line item reporting requirements of the Proposed Schedule to those of FOCUS Parts II and IIA. The differences the Committee noted between the FOCUS Report and the Proposed Schedule are shown in the charts included in Appendix B to this letter.

The charts illustrate several important points:

- The Proposed Schedule is a new report independent from the existing FOCUS Report. It lists categories that do not correspond to or supplement the categories in the Statement of Income (Loss) page and requires non-financial information to

be reported. For example, eight (8) new categories of expense have been added for Part II filers: (1) costs incurred on behalf of affiliates or clients; (2) fees paid under a service agreement to outsourcing providers; (3) finder fees; (4) research; (5) professional fees; (6) litigation, settlement, restitution and rescission related costs; (7) insurance costs; and (8) other expenses, which are categories amounting to 10% or more of total expenses. Non-financial items such as the registration exemption relied upon and the total number of customers to whom securities were sold would be part of the Proposed Schedule.

- Member firms will need to maintain two financial reporting systems – one for the FOCUS Report and another for the Proposed Schedule.
- Each member firm will have to devise its own solution for dealing with inconsistencies between reporting requirements for the FOCUS Report and the Proposed Schedule – in this regard, we note that there are instructions to the FOCUS Report but no instructions for the Proposed Schedule.
- Each member firm will need to develop its own definitions for terms used in the Proposed Schedule and try to reconcile FOCUS Report instructions with those terms.

Below are several examples to illustrate our points.

Example 1: Revenue Reporting

Member firms currently report revenue from the sale of mutual funds as a single line item on Parts II and IIA of the FOCUS Report.² Member firms separately report fees received for account supervision, investment advisory and administrative services, with no underlying sub-categories.³ The Proposed Schedule would require member firms to report SEC Rule 12b-1 fees and “Other Mutual Fund Revenue” under the new “Fee Income” category, each as a separate sub-category.

In this example, the Proposed Schedule appears to require a member firm to report various fees received in connection with mutual fund sales in different combinations and breakdowns than on Parts II and IIA. This difference raises a number of questions. For example, should member firms try to match the numbers reported for mutual fund revenue on Parts II and IIA to the number represented by the sum of 12b-1 fees and “Other Mutual Fund Revenue” on the Proposed Schedule? Would it be permissible for a member company to report two sets of numbers that do not equal each other?

² See FOCUS Part II item 6 and Part IIA item 5.

³ See FOCUS Part II item 7 and Part IIA item 7.

This example illustrates one of the problems we see with the Proposed Schedule: numbers reported on the FOCUS Report and the Proposed Schedule will not automatically “match.” Every firm will either have to work “backwards” in order to populate the FOCUS Report with numbers from the Proposed Schedule, manipulating those numbers as necessary to make them work, or in the alternative, simply let any inconsistencies between the Report and the Proposed Schedule go unreconciled.

Example 2: Expense Reporting

Member firms currently report “promotional costs” in Part II as a separate category of expense. Part IIA does not have a line item for promotional costs. The Proposed Schedule would require Part II and Part IIA filers to report “Promotional fees” without any additional sub-categories. The Proposed Schedule, however, also contains a new expense category titled “Costs incurred on Behalf of Affiliates or Clients,” which consists of four sub-categories. Two of the sub-categories – “Business Expenses of Other Broker-Dealers” and “Business Expenses of Affiliates or Subsidiaries” – could include promotional items.

This example illustrates another problem with the Proposed Schedule: it does not define key terms or provide guidance regarding how a member firm should classify items that can be classified in multiple ways. Another example of the problem created by the lack of instructions relates to accounting for compensation costs. Currently, member firms report commissions paid to other broker-dealers in a separate line item on FOCUS Part II.⁴ The Proposed Schedule contains no line item for this expense; instead, it contains a line item for “Compensation paid to producing associated persons” (without indicating whether this item should include compensation paid to other broker-dealers who pass commissions along to their registered persons).

Example 3: Revenue Reporting

The Supplement would require additional information with respect to a member firm’s registered and unregistered debt and equity offerings. It would also impose an additional reporting obligation when revenue from unregistered offerings exceeds 10 percent of total revenue. Under this additional reporting obligation, member firms would be required to provide additional information regarding unregistered offerings on a new “Operational Page.” The Operational Page contains thirteen (13) reporting items, including minimum and maximum offering amounts and percentage information from the offering memorandum regarding the member firm’s use of proceeds.

⁴ See FOCUS Part II item 17 and FOCUS Report General Instructions discussing reporting for commissions and floor brokerage.

This example illustrates the need for clarity with respect to the intended reach of certain reporting items, in this case, items related to registered and unregistered offerings. Current FINRA rules (specifically Rule 5110) exclude insurance products from certain filing requirements. The Committee requests clarification that insurance products, variable and non-variable, would not be covered by the new reporting requirements for registered and unregistered offerings. This example also illustrates the fact that the Proposed Schedule goes beyond reporting revenue and expense numbers because it calls for details regarding the legal status of offerings and other non-financial information, such as the total number of customers to whom securities were sold.

The Committee believes that having two different reporting forms and methodologies will inevitably lead to member firm and regulatory confusion. Differences in reporting among member firms will burden SEC and FINRA examiners and other staff and member firms as everyone questions what methodology a particular firm used to report its results and whether that methodology is consistent with regulatory objectives. There may be situations where there is no "right" or "wrong" answer to certain classification issues but it will take significant time to work through classification and other interpretative issues. The Committee believes that, without detailed guidance from FINRA, member firms will make different decisions, on an ad-hoc basis, regarding how best to classify various items and reconcile the two different reports. There may also be GAAP reporting issues.

These examples are intended to highlight the many issues raised by the Proposed Schedule and the substantial burden that would be imposed on member firms. For the reasons stated below, the Committee does not believe a new form of regulatory reporting should be adopted at this time; if, however, FINRA wants to pursue a new reporting scheme, the Committee urges FINRA to work with an advisory group of member firms on issues raised by that scheme.

B. The Legal Status of the Proposed Schedule Under SEC Rule 17a-5 is Unclear

The Proposed Schedule is described in the Notice as a supplement to the FOCUS Report but there is no discussion in the Notice regarding how the Proposed Schedule fits within the legal framework created by Section 17 of the Exchange Act and Rule 17a-5 thereunder. For example, FOCUS Reports and the requirement to file them are mandated by Rule 17a-5 but Rule 17a-5 does not seem to authorize a self-regulatory organization to supplement the FOCUS Report.⁵

The legal authority issue is critical because none of the requirements of Rule 17a-5 can be viewed in isolation. For example, SEC Rule 17a-5 requires member firm annual audited

⁵ Section 17 authorizes the SEC by rule to prescribe records and reports that must be made and kept by broker-dealers and others. Rule 17a-5 permits a broker-dealer's designated examining authority (DEA) to require a particular member firm (but not all member firms) to file other financial or operational information if the SEC or the DEA provides written notice to the broker-dealer that requests the broker-dealer to change the time of filing its Part II or IIA filings.

reports to contain a Statement of Financial Condition that is in a format and on a basis which is consistent with the totals reported on Part II or Part IIA. It also requires a registered principal of the broker-dealer to provide an oath or affirmation which refers specifically to the financial statements and schedules included with the annual report. If FINRA wants to adopt a reporting form that supplements the FOCUS Report, then it would seem to be necessary to address how that form fits into all the other SEC financial reporting requirements to which member firms are subject.

The Committee believes that FINRA would need to make clear that, for purposes of annual audit report rules, independent public accountants and member firms are not required to treat the Proposed Schedule as part of Part II or Part IIA. If this is not made clear, audit reports may note inconsistencies between the Proposed Schedule and Parts II and IIA, whichever is applicable.

A related issue is whether the same information can be required from Part IIA filers as is proposed to be required from Part II filers. The Proposed Schedule makes no distinction between the two types of filers, but there is such a distinction in Rule 17a-5, and it permits Part IIA filers to report fewer categories and subcategories than filers of Part II. The Notice does not explain why FINRA is not honoring these distinctions nor does it say anything about FINRA's analysis of legal authority issues or its conclusions with respect to them. The Committee believes that the legal authority issues should be addressed in conjunction with issues that relate to the content of the Proposed Schedule, *e.g.*, consistency, interpretation and definitional issues.

C. The Need for a Second Type of Financial Reporting Has Not Been Demonstrated

The Committee is not aware of a demonstrated need for a new type of financial reporting for member firms. Broker-dealers already report revenue and expense numbers to FINRA and the SEC, and examiners have the opportunity to verify the accuracy of those numbers during regularly-scheduled and surprise exams. FINRA and SEC staff can request more information from a member firm about any financial item at any time.

This is not an area where there is a lack of regulation or a regulatory problem that needs immediate attention. Current broker-dealer financial reporting is consistent from firm to firm because there is one form of report, one set of instructions and a long history of practice and interpretation with respect to the correct reporting of each line item. Before any new form of regulatory reporting could be implemented, detailed instructions regarding how the new report would work would need to be proposed and commented on by member firms.

The significant cost involved in developing a new financial reporting system and then maintaining two reporting systems for the life of a broker-dealer is multiplied for companies that have several broker-dealers within their structures. We believe FINRA should study the likely costs of the Proposed Schedule and provide member firms and the SEC with this information so that any perceived need for the form that is not already addressed by other forms of reporting or through FINRA's examination program is balanced by a close examination of its cost.

II. Alternative Approaches

The Committee believes that there are significant issues associated with the introduction of another form of financial reporting, and that FINRA should consider whether, in view of competing regulatory demands, now is the right time to try to develop a second financial report. As part of this evaluation, the Committee believes it would be appropriate for FINRA to meet with member firms to consider the issues. Individual member firm input is critical to considering whether a new form of regulatory reporting is needed; what format works best with the FOCUS Report; and what the costs of such a system would be.

The Committee believes there are alternatives to the Proposed Schedule that would be less costly and burdensome. If, for example, an individual member firm was only required to report at a more granular level when an item of revenue or expense reaches a certain threshold, *e.g.*, 10 percent of all revenue (or expenses), then the likelihood of mismatches between the FOCUS Report and the Proposed Schedule would be minimized, and the expense of a second type of financial reporting for all member firms would be decreased.

III. Proposed Rule 4524

The Notice sets forth the text of proposed FINRA Rule 4524. If adopted, the rule would require member firms to file with FINRA such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest. The text of the rule states that FINRA will provide member firms with the specifics of any new required report or schedule in a Regulatory Notice or similar communication and file that document with the SEC. The Notice does not state whether the specifics of the new required report or schedule would be published by the SEC for notice and comment before the effectiveness of the new schedule or report.

Comment. The Committee believes that member firms should have an ability to comment on any new proposed financial reporting schedules before such schedules take effect. As shown by our comments above with respect to the Proposed Schedule, other laws and rules to which member firms are subject, *e.g.*, FOCUS Report and annual audit reporting requirements, may conflict with new FINRA schedules and reports. New schedules or reports would almost undoubtedly increase member firm costs. We believe that FINRA should submit any new report or schedule to the SEC in the form of a proposed rule change, and such rule should be required to be published, public comment should be solicited thereon, and the SEC should approve such report or schedule before it is allowed to be effective.

Conclusion

The Committee appreciates the opportunity to comment on the Notice. We strongly believe that the proposed rule and the Proposed Schedule should not be submitted to the SEC

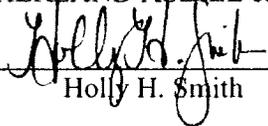
Ms. Marcia Asquith
August 18, 2010
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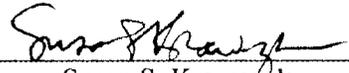
until member firms discuss all of the issues with FINRA staff and explore alternative approaches.

Please contact Holly Smith (202.383.0245) or Susan Krawczyk (202.383.0197) if you have any questions. We would be happy to meet with you at your convenience.

Sincerely,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Holly H. Smith

BY: 
Susan S. Krawczyk

FOR THE COMMITTEE OF ANNUITY
INSURERS

Attachments: Appendix A
Appendix B

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
American General Life Insurance Companies
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
CNO Financial Group, 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)
SunAmerica Annuity and Life Insurance Company
Sun Life Financial
Symetra Financial
TIAA-CREF
USAA Life Insurance Company

Appendix B

Explanatory Note: This Appendix B was prepared in conjunction with the comment letter submitted by the Committee of Annuity Insurers regarding Regulatory Notice 10-33: Supplemental FOCUS Information.

Statement of Income (Loss)

REVENUE:

The paragraphs below attempt to correlate the line item categories and sub-categories in the Proposed Supplementary Schedule (“Proposed Schedule”) to the categories currently found in either FOCUS Parts II or IIA. Currently, Part II has 11 revenue categories and Part IIA has 8 revenue categories. The Proposed Schedule would result in 7 categories for each part.⁶

1. Commissions

Under the current Part II, filers report commissions under 4 sub-categories (item 1). Under the current Part IIA, filers report commissions under 3 sub-categories (item 1). Under the Proposed Schedule, as shown below, both Part II and IIA filers would report commissions under 15 sub-categories.

| Current Part II Commissions | Current Part IIA Commissions | Proposed Schedule Commissions |
|--|--|---|
| Listed equity securities executed on an exchange | Listed equity securities executed on an exchange | Equities, ETFs and Closed End Funds |
| Listed equity securities executed over-the-counter | | |
| Listed options | Listed options | Listed options |
| All other securities commissions | All other securities commissions | U.S. Governments and Agencies |
| | | Foreign Sovereign Debt |
| | | Corporate Debt |
| | | Asset Backed Securities |
| | | Municipals |
| | | Foreign Exchange |
| | | Commodities |
| | | Investment Company Shares |
| | | Unit Investment Trusts |
| | | Annuities – reporting separately those attributable to Variable Annuities and those attributable to Fixed Annuities |
| | | Other Insurance Based Products |
| | | Other |

⁶ The seven categories are: (1) Net gains (losses) on principal trades; (2) Commissions; (3) Commodities related, other than commissions; (4) Interest/rebate/dividend income; (5) Underwritings; (6) Fee Income; and (7) Other Revenue.

2. Gains or Losses on Firm Securities Trading Accounts

Under the current Part II, filers report “Gains or Losses on Firm Securities Trading Accounts” under 4 sub-categories (item 2). Under the current Part IIA, filers report “Gains or Losses on Firm Securities Trading Accounts” under 2 sub-categories (item 2). Under the Proposed Schedule, as shown below, filers would report under 13 sub-categories the “Net Gains or Losses on Principal Trades.”

| Current Part II Gains or Losses on Firm Securities Trading Accounts | Current Part IIA Gains or Losses on Firm Securities Trading Accounts | Proposed Schedule Net Gains or Losses on Principal Trades |
|---|--|---|
| Market making in OTC equity securities | Market making in options on a national securities exchange | Equities, ETFs and Closed End Funds |
| Trading in debt securities | All other trading | U.S. Governments and Agencies |
| Market making in options on a national securities exchange | | Foreign Sovereign Debt |
| All other trading | | Corporate Debt |
| | | Asset Backed Securities |
| | | Municipals |
| | | Foreign Exchange |
| | | Commodities |
| | | Listed Options |
| | | OTC Options |
| | | Derivatives, other than listed/unlisted options |
| | | Other |
| | | Capital Gains/Losses on Firm Investments |

3. Gains or Losses on Firm Securities Investment Accounts

Under the current Part II, filers report “Gains or Losses on Firm Securities Investment Accounts” under 2 sub-categories – realized and unrealized gains (losses) (item 3). Under the current Part IIA, filers report “Gains or Losses on Firm Securities Investment Accounts” without any sub-categories (item 3). Under the Proposed Schedule, as shown below, filers would report 9 sub-categories under the new category titled “Interest/Rebate/Dividend Income,” which appears to roughly correspond to “Gains or Losses on Firm Securities Investment Accounts” under current Part II and Part IIA.

| Current Part II Gains or Losses on Firm Securities Investment Accounts | Current Part IIA Gains or Losses on Firm Securities Investment Accounts | Proposed Schedule Interest/Rebate/Dividend Income |
|--|--|--|
| Realized gains | | Interest received on trading and investment accounts |
| Unrealized gains | | Securities Borrowing |
| | | Reverse Repurchase transactions |
| | | Dividend Income |
| | | Margin Account interest |

| | | |
|--|--|--|
| | | Other Interest Income |
| | | Compensation (including interest earned on customer bank sweep programs) |
| | | Fees earned on customer sweep programs to '40 Act Investments |
| | | Rebates earned including margin rebates |

4. Profits or Losses from Underwriting and Selling Groups

Under the current Part II, filers report gains or losses from underwriting and selling groups (item 4) with one sub-category (underwriting income from corporate equity securities). Under the current Part IIA, filers report profit or loss from underwriting and selling group activities without any underlying sub-categories (item 4). Under the Proposed Schedule, as shown below, filers would report under 9 sub-categories.

| Current Part II Profits or (losses) from Underwriting and Selling Groups | Current Part IIA Profits (loss) from Underwriting and Selling Groups | Proposed Schedule Underwritings |
|--|---|--|
| Corporate equity securities | | Underwriting and selling group participations: municipal offerings |
| | | Registered equity offerings, other than self or affiliate ⁷ offerings |
| | | Registered debt offerings, other than self or affiliate offerings |
| | | Registered equity offerings, self or affiliate offerings |
| | | Registered debt offerings, self or affiliate offerings |
| | | Unregistered equity offerings, other than self or affiliate offerings (Section 1) ⁸ |
| | | Unregistered debt offerings, other than self or affiliate offerings (Section 2) |
| | | Unregistered equity offerings, self or affiliate offerings (Section 3) |
| | | Unregistered debt offerings, self or affiliate offerings (Section 4) |

⁷ "Affiliate" is defined as in NASD Rule 2720(f)(1).

⁸ To the extent revenue reflected in the four unregistered offerings fields exceeds 10% of total revenue, filers must complete the referenced section on a proposed new "Operational Page," appended to Regulatory Notice 10-33 at Attachment B.

5. Margin Interest

Under the current Part II, filers report margin interest as a separate line item (item 5). Current Part IIA does not contain a line item for reporting margin interest. Under the Proposed Schedule, filers would report margin account interest as a sub-category of the new "Interest/rebate/dividend income" category.

6. Revenue from Sale of Investment Company Shares

Under the current Part II and Part IIA, filers report revenue from the sale of investment company shares without any underlying sub-categories (items 6 and 5 respectively).

7. Fees for Account Supervision, Investment Advisory and Administrative Services

Under the current Part II and Part IIA, filers report fees received for account supervision, investment advisory and administrative services without any additional underlying sub-categories (both item 7). Under the Proposed Schedule, filers would report these fees under 14 sub-categories under a new category labeled "Fee Income."

| Current Part II Fees for Account Supervision, Investment Advisory and Administrative Services | Current Part IIA Fees for Account Supervision, Investment Advisory and Administrative Services | Proposed Schedule Fee Income |
|--|---|--|
| | | Investment Banking Services/M&A Advisory |
| | | Account Management (Firm manages discretionary account: Yes or No) |
| | | Investment Advisory (for dual BD/IA's) |
| | | Advisory Fees (for dual SEC/CFTC members) |
| | | Research Services |
| | | Rebates Received from Exchanges, ECNs, and ATSS |
| | | Earned under a Service Level Agreement with Affiliates |
| | | Earned under a Service Level Agreement with 3 rd Parties |
| | | 12b-1 Fees |
| | | Other Mutual Fund Revenue |
| | | Execution Services |
| | | Clearing Services |
| | | Administrative Fees |
| | | Other Fees |

8. Revenue from Research Services

Under the current Part II, filers report revenue from research services without any underlying sub-categories (item 8). Under the current Part IIA, research services are not included in the reporting requirements under revenue. Under the Proposed Schedule, filers would report revenue from research services as a sub-category of “Fee Income,” noted above in Section 7.

9. Commodities Revenue

Under the current Part II and Part IIA, filers report commodities revenue without any additional sub-categories (items 9 and 6 respectively). Under the Proposed Schedule, filers of Part II and IIA would report commodities revenue without any additional sub-categories; however, the reporting category is labeled as revenue that is “Commodities related, other than commissions.”

10. Other Revenue Related to Securities Business

Under the current Part II, filers report “Other revenue related to the securities business” without any additional sub-categories (item 10). Under the current Part IIA, there is no separate line item for other revenue related to the securities business. Under the Proposed Schedule, filers of Part II and IIA would report “other revenue” rather than report revenue related to the securities business; however, filers are also required to “describe categories amounting to 10% or more of Total Revenue.”

11. Other Revenue

Under the current Part II and Part IIA, filers report other revenue without any underlying sub-categories (items 11 and 8 respectively). Under the Proposed Schedule, filers would report other revenue, but as noted above in Section 10, filers are also required to “describe categories amounting to 10% or more of Total Revenue.”

EXPENSES:

The categories below correspond to the categories currently found in either FOCUS Part II or IIA. Currently, Part II has 15 expense categories and Part IIA has 6 expense categories. FINRA’s proposal would result in 17 categories for each part.

1. Compensation

Under the current Part II, filers report compensation expenses under 3 major categories – registered representative compensation; clerical and administrative employees’ expenses; and salaries and other employment costs of general partners and voting stockholder officers (items 13, 14 and 15). Under the current Part IIA, filers report compensation expenses under 2 major categories – salaries and other employment costs for general partners and voting stockholder officers and other employee compensation and benefits (items 10 and 11). The proposed reporting schedule for both Part II and IIA requires filers to report compensation costs as one category with 5 sub-categories.

| Current Part II | Current Part IIA | Proposed Compensation Costs |
|---|---|---|
| Registered Representative’s Compensation | Registered Representative’s Compensation | Compensation paid to Producing Associated Persons |
| Clerical and Administrative Employees’ Expenses | Clerical and Administrative Employees’ Expenses | Operational, administrative and clerical |
| Salaries and Other Employment Costs for General Partners, and Voting Stockholder Officers (includes interest credited to General and Limited Partners capital accounts) | Salaries and Other Employment Costs for General Partners, and Voting Stockholder Officers (includes interest credited to General and Limited Partners capital accounts) | Guaranteed Payments to LLC Members & Limited Partners |
| | | Bonuses |
| | | All Other Direct Compensation Costs |

2. Floor Brokerage, Commissions, and Clearance

Under the current Part II, filers report brokerage, commissions and clearance expenses under 3 major categories of expenses – floor brokerage paid to certain brokers, commissions and clearance paid to all other brokers, and clearance paid to non-brokers (items 16, 17 and 18). Under the current Part IIA, filers report commissions under one major category of expenses – commissions paid to other broker-dealers (item 12). The proposed reporting schedule for both Part II and IIA requires filers to report brokerage, commissions and clearance expenses under one category titled “Commission and Clearance Costs” with 5 sub-categories.

| Current Part II | Current Part IIA | Commission and Clearance Costs |
|---|--|---|
| Floor Brokerage Paid to Certain Brokers | Commissions Paid to Other Broker-Dealers | Floor Brokerage Commissions |
| Commissions and Clearance Paid to All Other Brokers | | Remittances paid to exchanges, ECNs, and ATSS |

| | | |
|-------------------------------|--|------------------------|
| Clearance Paid to Non-Brokers | | Execution |
| | | Clearance & Settlement |
| | | Custody |

3. Communications

Under the current Part II, filers report communication expenses without any additional sub-categories (item 19). The current Part IIA does not have a line item for communication expenses. Under the Proposed Schedule, filers of Part II and IIA would report communication expenses under a new category titled "Technology, data and communication costs."

4. Occupancy and Equipment Costs

Under the current Part II, filers report occupancy and equipment costs without any additional sub-categories (item 20). The current Part IIA does not have a line item for reporting occupancy and equipment expenses. Under the Proposed Schedule, filers of Part II and IIA would report "Occupancy costs" as a separate line item with no sub-categories.

5. Promotional Costs

Under the current Part II, filers report promotional costs without any additional sub-categories (item 21). The current Part IIA does not have a line item for promotional expenses. Under the Proposed Schedule, filers of Part II and IIA would report "Promotional fees" without any additional sub-categories.

6. Interest Expense

Under the current Part II and Part IIA, filers report "interest expense" (including interest on accounts subject to subordination agreements) (items 22 and 13 respectively). Under the Proposed Schedule, filers would report interest expenses under the "Interest/rebate costs" category, with 6 sub-categories.

| Interest Expense | Interest/Rebate Costs |
|---|---|
| Includes interest on accounts subject to subordination agreements | Interest on Instruments where Broker-Dealer is the Obligor (including subordination agreements) |
| | Interest on Bank Loans |
| | Interest Paid on Customer Balances |
| | Securities Loaned Rebates and Interest Paid |
| | Repurchase Agreements |
| | Other Interest |

7. Losses in Error Account and Bad Debts

Under the current Part II, filers report losses in error accounts and bad debts without any additional sub-categories (item 23). The current Part IIA does not have a line item for reporting losses in error accounts and bad debts. Under the Proposed Schedule, filers of Part II and IIA

would report “Losses in error accounts and bad debt costs” without any additional sub-categories.

8. Data Processing Costs (including service bureau service charges)

Under the current Part II, filers report data processing costs (including service bureau service charges) as a separate category of expenses (item 24). The current Part IIA does not have a line item for reporting data processing costs. Under the Proposed Schedule, filers would likely report data processing costs under the proposed new category titled “Technology, data and communication costs.”

9. Non-recurring Charges

Under the current Part II, filers report non-recurring charges as a separate category of expenses (item 25). The current Part IIA does not have a line item for reporting non-recurring charges. The Proposed Schedule does not include any specific category or sub-category for non-recurring charges.

10. Regulatory Fees and Expenses

Under the current Part II and Part IIA, filers report “Regulatory fees and expenses” without any additional sub-categories (items 26 and 14 respectively). Similarly, under the Proposed Schedule, filers would report “regulatory fees” as a separate category of expenses without any additional sub-categories.

11. Other Expenses

Under the current Part II and Part IIA, filers report in general “other expenses” (items 27 and 15 respectively). Under the Proposed Schedule, filers would continue to report “other expenses” but are also required to “describe categories amounting to 10% or more of Total Expenses.”

Proposed Expense Categories Not Currently Required by Part II or Part IIA

The following categories and sub-categories noted in the tables below currently are not included as separate line items in FOCUS Report Part II or Part IIA.

12. Costs incurred on Behalf of Affiliates or Clients

| Part II (Not Required) | Part IIA (Not Required) | Costs Incurred on Behalf of Affiliates or Clients |
|---------------------------|----------------------------|--|
| | | Business Expenses of Other Broker-Dealers |
| | | Business Expenses of Affiliates or Subsidiaries |

| | | |
|--|--|-----------------------------|
| | | Soft Dollar Costs |
| | | Commission Rebate/Recapture |
| | | |

13. Fees Paid Under a Service Agreement to Outsourcing Providers

| Part II (Not Required) | Part IIA (Not Required) | Proposed Fees Paid under a Service Agreement to Outsourcing Providers |
|-----------------------------------|------------------------------------|--|
| | | To Third Parties |
| | | To Affiliates |

14. Finder Fees

15. Research

16. Depreciation and Amortization

17. Professional Fees

18. Litigation, Settlement, Restitution and Rescission Related Costs

19. Insurance Costs