

July 19, 2012

VIA ELECTRONIC MAIL

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

**Re: File Nos. SR-FINRA-2012-028; SR-FINRA-2012-029; SR-FINRA-2012-030; SR-FINRA-2012-031:  
Increased and New FINRA Fees**

Dear Ms. Murphy:

We are submitting these comments on behalf of our client, the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> related to the recent rulemakings identified above that announced increased, and new, fees assessed on FINRA member firms ("New Fees"). The Committee has several general comments related to the fees and therefore is submitting a single comment letter that relates to all the increased fees that were announced to FINRA member firms in Regulatory Notice 12-32. In addition, the Committee has a specific comment on the increase in late disclosure fees that is announced in SR-FINRA-2012-30.

**GENERAL COMMENTS**

Committee members have reviewed and discussed the New Fees proposed by FINRA and approved by the Securities and Exchange Commission ("SEC") and have several comments. The Committee recognizes the important responsibilities that FINRA has, and its need for adequate funding to satisfy those responsibilities. In addition, the Committee understands that FINRA, like any organization during the last several years, has been subject to challenging financial times. The Committee does, however, have several general comments that it would like to raise with respect to the manner in which FINRA proposed, and the SEC adopted, the New Fees, and the timing for implementation of those fees.

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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 1982 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. 18217083.5

**The Committee Believes that Increased Transparency Related to the Deliberations for Addressing Funding Issues, and Options Considered other than Fee Increases, Should Be Explored and Described.** The Committee believes that FINRA should provide a more detailed description of the rationale supporting the proposal for the New Fees, and the analysis of other options considered prior to such a substantial and sweeping increase in fees imposed on FINRA members. The Committee believes that evidence of comprehensive deliberations should be apparent in FINRA's analysis of the New Fees and that evidence should go beyond simply indicating that the fees have not been increased since a particular date, and that the work required with such functions (e.g., reviewing advertising or continuing membership applications) is time-consuming. Certainly, some explanation of the analysis of how current budgets and costs were reviewed in order to attempt to find additional funding sources through cuts to outdated or unnecessary FINRA programs, or an approach that indicates FINRA's comprehensive analysis of the possible use of improved technology, methodologies or staffing to increase investor protection and/or services to members would provide helpful context to member firms and would overall provide increased transparency with respect to this rulemaking. Unfortunately, the descriptions from FINRA related to the purpose of the rulemakings indicate little or no evidence of the consideration of any options that FINRA contemplated beyond simply moving directly to a determination to raise the fees imposed on its member firms.

**The Implementation Schedule of Certain of the New Fees Provides Member Firms with Little Ability to Budget and Plan for the Increased Financial Burdens.** Committee members are also extremely concerned about the effective dates of certain of the increased fees. The details related to FINRA's proposed fee increases were first available to FINRA members when the rulemakings were filed with the SEC in early-to-mid-June.<sup>2</sup> Many of the New Fees will be imposed by July 23, 2012 or earlier.<sup>3</sup> Unfortunately, this provides member firms with about six weeks or less to plan for, and react to, the new fees. In addition, given that most firms' budgets are established on a calendar year basis, many of the New Fees are going to be completely unaccounted for under firm budgets and will simply be completely unforeseen costs to firms for the remainder of 2012, especially for those firms with a precise and comprehensive budgeting process. The Committee urges the SEC and FINRA to consider delaying the New Fees for some more significant period of time (e.g., until January 1, 2013) in order to allow for firms to better budget for their new and increased expenses.

#### **LATE DISCLOSURE FEES**

Under SR-FINRA-2012-30, FINRA proposed, and the SEC adopted, increases on late reporting of disclosure events on Forms U4 and U5 so that the maximum fee will increase from \$300 to \$1,575. The Committee believes that, as a result of the current and ongoing enforcement by FINRA related to instances of late reporting, firms are today well positioned

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<sup>2</sup> According to the dates on the FINRA filings with the SEC, the New Fees were filed with the SEC between June 8, 2012 and June 13, 2012 .

<sup>3</sup> For example, Advertising Review and Corporate Financing fees were increased effective July 2, 2012. The increases to the new member application fees, and the new fee on continuing membership applications is effective on July 23, 2012.  
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with their procedures to educate their associated persons on the importance of updating disclosure and reporting such events in a timely manner. Since there is no practical way for firms to monitor for all possible disclosure events, the increase in fees is unlikely to have any impact on a firm's ability to successfully increase their diligence with respect to late reporting of disclosure events.<sup>4</sup> Moreover, in many cases, firms may not be permitted to pass such fines through to their associated persons due to certain labor and employment law restrictions. Therefore, the increase in the amount of the fines may not have the impact intended by FINRA: improving the timeliness of reporting efforts by firms or their associated persons. In short, FINRA has commonly used disciplinary actions to penalize firms and individuals for non-compliance with their timely disclosure obligations. The proposed increase in fees appears to be a punitive measure that will penalize even those firms that have policies and procedures well designed to ensure timely filings.

### CONCLUSION

The Committee appreciates the opportunity to provide its comments related to the increased fees announced by FINRA and approved by the SEC. Please do not hesitate to contact Eric A. Arnold (202.383.0741, eric.arnold@sutherland.com) or Cliff Kirsch (212.389.5052, clifford.kirsch@sutherland.com) if you have any questions regarding the comments in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY:   
Eric A. Arnold

BY:  EAA  
Clifford E. Kirsch

FOR THE COMMITTEE OF ANNUITY INSURERS

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<sup>4</sup> As described in Regulatory Notice 12-32, FINRA states that it "believes that it is appropriate to increase the late disclosure filing fee in part to help ensure that disclosure events are reported and updated in a timely manner."  
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**APPENDIX A**  
**THE COMMITTEE OF ANNUITY INSURERS**

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  
Symetra Financial  
The Transamerica companies  
TIAA-CREF  
USAA Life Insurance Company