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March 4, 2014

VIA ELECTRONIC MAIL

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

Re: SEC Release No. 34-71486; File No. SR-FINRA-2014-004 Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to FINRA Rule 5110 (Corporate Financing Rule -- Underwriting Terms and Arrangements)

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 referenced above (the "Notice"), issued by the U.S. Securities and Exchange Commission (the "Commission") regarding a rule change proposed by the Financial Industry Regulatory Authority, Inc. ("FINRA") to amend FINRA Rule 5110 (the "Corporate Financing Rule"). According to the Notice, FINRA is proposing to amend the Corporate Financing Rule to expand the circumstances in which termination fees and rights of first refusal are permissible; to exempt from the filing requirements certain collective investment vehicles that are not registered as investment companies; and to make clarifying, nonsubstantive changes regarding documents filed through FINRA's electronic filing system ("Proposed Rule Change").

The Committee has no objection to the Proposed Rule Change. However, as discussed below, the Committee proposes that, in connection with adding an exemption from the Corporate Financing Rule for certain collective investment vehicles, FINRA also consider an additional

[1] The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with the advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies 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.

"catch-all" exemption for offerings of insurance contracts not explicitly described in existing exemptions from the Corporate Financing Rule in order to clarify and confirm that offerings of insurance contracts are not subject to the filing requirements of the Corporate Financing Rule.

PROPOSAL TO ADD EXEMPTION FOR CERTAIN COLLECTIVE INVESTMENT VEHICLES

As explained in the Notice, paragraph (b)(8) of the Corporate Financing Rule generally provides an exemption for investment companies from the rule's filing requirements. Under this exemption, exchange-traded funds ("ETFs") that are structured as investment companies generally are exempt from the Corporate Financing Rule. However, as acknowledged in the Notice, this exemption would not apply to ETFs that are not investment companies. According to the Notice, FINRA believes it is appropriate to add an exemption for these ETFs – even if they do not fall under the definition of an "investment company" – for the same reason that investment company ETFs are exempted from the Corporate Financing Rule. Thus, the Proposed Rule Change would add the following clause to paragraph (b)(7) of the Corporate Financing Rule:

> **"(H) offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange; provided that such equity securities may be created or redeemed on any business day at their net asset value per share."**

As indicated above, the Committee has no objection to the addition of this clause to paragraph (b)(7) of the Corporate Financing Rule. However, consistent with the concept of treating different types of ETFs the same, the Committee believes that it would be appropriate to add an exemption to the Corporate Financing Rule to clarify that different types of insurance contracts are treated the same under the Corporate Financing Rule.

EXISTING INSURANCE CONTRACT EXEMPTIONS

Current Exemptions in the Corporate Financing Rule. The Committee notes that paragraph (b)(8) of the Corporate Financing Rule in its current form provides exemptions from the Corporate Financing Rule (as well as FINRA Rule 2310 and FINRA Rule 5121) for the following types of insurance contracts:

- exempted securities, as defined in Section 3(a)(12) of the Securities Exchange Act of 1934, which in turn includes any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with certain qualified plans ("exempted group contracts")[2];
- variable contracts, as defined in FINRA Rule 2320(b)[3]; and

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[2] The exemption for exempted securities appears in paragraph (b)(8)(B) of Rule 5110.
[3] The exemption for variable contracts appears in paragraph (b)(8)(D) of Rule 5110.

- modified guaranteed annuity contracts and modified guaranteed life insurance policies (together, "modified contracts") which are described in paragraph (b)(8)(E) of the Corporate Financing Rule as deferred annuity contracts or life insurance policies the value of which are guaranteed if held for specified periods, and the nonforfeiture value of which are based upon a market-value adjustment formula for withdrawals made before the end of any specified period.

These three types of insurance contracts referenced in the exemptions – exempted group contracts, variable contracts and modified contracts (collectively, the "Contracts") – while treated as insurance contracts for purposes of state insurance laws, are treated as securities for purposes of the federal securities laws (and FINRA rules). The exemptions for exempted group contracts and variable contracts have been included in the Corporate Financing Rule since its adoption as an interpretation in 1970. The exemption for modified contracts was added to the Corporate Financing Rule in 1995 for contracts that had been developed by the insurance industry and were then being offered in the securities markets. According to the NASD notice announcing the addition of the exemption for modified contracts, the exemption recognized that the structure of the contracts was that of an insurance product, that the contracts had traditionally been regulated under state insurance law, and that the issuance and sale of the modified contracts on an open-ended basis did not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned.[4] As the insurance industry continues to develop innovative features for insurance contracts that are not variable contracts (as defined in FINRA Rule 2320(b)) but are treated as securities for purposes of the federal securities laws, the Committee believes that it would be helpful to clarify and confirm that all offerings of insurance contracts are exempt from the Corporate Financing Rule.

CONSIDERATION OF "CATCH-ALL" EXEMPTION FOR INSURANCE CONTRACTS

Comment. The Committee believes that, in the interest of clarifying and confirming the status of insurance contracts under the Corporate Financing Rule, FINRA should consider adding, along with an exemption for ETFs, a "catch-all" exemption for insurance contracts that would capture the various types of insurance contracts that may be developed by the insurance industry and that may be treated as securities under the federal securities laws but may not clearly fall within any of the three existing exemption in the Corporate Financing Rule. Such insurance contracts could include (but would not be limited to) annuity and life insurance contracts using an indexed method for crediting interest, synthetic guaranteed withdrawal benefit products (also known as contingent annuities), and combination long-term care insurance with cash value annuities and life insurance products. Such insurance contracts may not have all the features and benefits described or referenced in the three existing exemptions for the Contracts, or may provide for alternative formulas or mechanisms for calculating benefit payments and determining the trigger for those payments (generally the basis for the distinctions drawn by the

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[4] See NASD Notice to Members 95-22.

existing exemptions). However, these other insurance contracts would share all of the following features with the Contracts:

- They would be issued by an insurance company;
- They would be treated as insurance contracts under applicable state insurance laws; and
- They would be subject to the same comprehensive regulatory scheme under state insurance laws and regulations that applies to all insurance contracts issued by an insurance company and all insurance companies issuing those contracts.

More importantly, like the Contracts covered by the existing exemptions, these other insurance contracts would simply represent alternative approaches for insuring various types of risks and determining the benefits payable thereunder. As in the case of the Contracts, any offering of these insurance contracts would be conducted by an insurance company in its ordinary course of business of issuing insurance contracts in exchange for premium payments, and would not involve raising funds to finance business operations. In order for the Corporate Financing Rule to provide an exemption for such other insurance contracts, the Committee proposes that the following clause be added to paragraph (b)(8):

> **"(K) offerings of insurance premium funding programs and any other types of insurance contracts issued by an insurance company (not otherwise covered in an exemption above), except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933."**

The text of the proposed exemption is derived from current NASD Rule 1022(d)(1)(A)(iii), which describes some of the types of investments for which a person registered as a "Limited Principal – Investment Company and Variable Contracts Products" (also referred to as a Series 26 registration) can act in a principal capacity. (This description is cross-referenced in NASD Rule 1032(b), which recognizes a registration category for a Limited Representative – Investment Company and Variable Contracts Products, also referred to as a Series 6 registration.) The Committee notes that, from a registration perspective, FINRA has determined that a Series 6/26 registered person is qualified to offer all types of insurance contracts, arguably not limited to the three types of Contracts recognized in the existing exemptions.

CONCLUSION

The Committee appreciates the opportunity to comment on the Notice. We are happy to provide more specific input on the issues raised in this letter and answer any questions.

Please do not hesitate to contact Stephen E. Roth (202.383.0158) or Susan Krawczyk (202.383.0197) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

By: Stephen E. Roth /SSK
Stephen E. Roth

By: Susan S. Krawczyk
Susan S. Krawczyk

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
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
Symetra Financial Corporation
The Transamerica companies
TIAA-CREF
USAA Life Insurance Company