

July 17, 2014

VIA ELECTRONIC MAIL

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2014-025
Notice of Filing of a Proposed Rule Change to Adopt a Supplemental
Schedule for Inventory Positions Pursuant to FINRA Rule 4524
(Supplemental FOCUS Information)**

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 a Proposed Rule Change to Adopt a Supplemental Schedule for Inventory Positions Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)* (the "Notice") issued by the U.S. Securities and Exchange Commission (the "SEC") on June 20, 2014. The Notice requests comments on a proposed rule change by the Financial Industry Regulatory Authority, Inc. ("FINRA") to adopt a supplemental schedule for inventory positions ("SIS") pursuant to FINRA Rule 4524, which would require certain firms to provide more detailed information of inventory positions they hold.

¹ The Committee of Annuity Insurers is a coalition of 28 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](#). Committee members typically have one or in many cases several affiliated broker-dealers that are engaged in the distribution of annuity products. Together these broker-dealers represent a sizable portion of the brokerage industry. In some cases, broker-dealer activity is limited to acting as a principal underwriter of variable annuities. In many other cases, however, member broker-dealers engage in retail sales activity. Such activity generally involves the sale of annuities and other insurance products as well as mutual funds and 529 plans. They generally clear their securities business on a fully disclosed basis. Committee member broker-dealers engaged in retail sales activity are often dually-registered as investment advisers or affiliated with registered investment advisers, and their registered representatives may also provide advisory services through independently-owned investment advisers. Registered representatives of Committee broker-dealers are dually-licensed as insurance agents in connection with their sales of insurance products.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to comment on FINRA's proposal. While the Committee does not object to FINRA's request for the information that would be reported on the SIS, the Committee does have some concerns regarding FINRA's approach to requesting supplemental financial and operational information. Additionally, the Committee requests clarification regarding the definition of "inventory" for purposes of the form.

An Amended FOCUS Report Should Replace Supplemental Financial Forms

FINRA Rule 4524 (Supplemental FOCUS Information) permits FINRA to request financial or operational schedules or reports from member firms as a supplement to filing required FOCUS reports, provided that FINRA specifies the content of such schedules or reports in a Regulatory Notice, and files the content of any such Regulatory Notice with the SEC for comment by the public and approval by the SEC. To date, FINRA has adopted two supplementary schedules – the Supplemental Statement of Income (or "SSOI") and the Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items (or "OBS") – pursuant to Rule 4524, and is now proposing to adopt a third form (the SIS) pursuant to this rule as well.

While the Committee does not question FINRA's authority to propose supplementary financial or operational schedules pursuant to Rule 4524, and does not object to FINRA's request for the information that would be reported on the SIS, the Committee does have some concerns with FINRA's piecemeal approach to requesting supplemental financial and operational information. The Committee is specifically concerned that Rule 4524 does not impose a limit on the number of supplementary financial and operational schedules or reports that FINRA can propose pursuant to the rule, and that if FINRA adopts any additional schedules or reports, member firms could be faced with an overly complicated and inefficient reporting regime requiring firms to coordinate, and validate for consistency, information located on many different forms. To eliminate the possibility of a reporting regime that is more complicated than it needs to be, the Committee recommends that FINRA coordinate with the SEC to propose an amended FOCUS report that requests all of the information FINRA is collecting or plans to collect from firms via supplementary schedules or reports. The development of a new, amended FOCUS form would seem to be an appropriate goal, given a desire on everyone's part to decrease regulatory inefficiencies, particularly those that can easily lead to mistakes in reporting.

Instructions to the SIS Should Define "Inventory"

As currently drafted, the "General Instructions" to the SIS state that FINRA member firms "with inventory positions as of the end of the reporting period," need to file the SIS, unless an exception applies. The Committee requests that FINRA define the term "inventory" by reference to specific reporting lines of the FOCUS report, so that member firms know exactly what FOCUS line items are required to be dis-aggregated for the SIS.

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Additionally, the Committee believes that investments held by member firms for the purpose of funding employee benefit plans for a member firm's associated persons should not be reported on the SIS. A member firm and its associated persons may contribute to deferred compensation and retirement plans sponsored by the firm. The assets of these plans are routinely invested in mutual funds or other types of assets and, in the case of retirement plans and many deferred compensation plans, are held in trust under federal law for the exclusive benefit of plan participants and beneficiaries. The assets of deferred compensation and retirement arrangements serve as economic hedges against a liability to participants and thus no substantial net risk exists. The Committee would like confirmation that this type of investment would not be considered "inventory" for the purpose of the SIS.

Instructions for Member Firms with Nothing to Report

Lastly, the Committee requests that FINRA publish general directions for member firms that have nothing to report on the form (because they have no inventory) and accordingly, will not submit the SIS. The Committee understands that there may be certain operational aspects of the eFOCUS system that a member firm will need to understand in order to confirm that a firm has no SIS filing obligation as of the end of a particular reporting period, because the firm has nothing to report.

CONCLUSION

The Committee appreciates the opportunity to comment on FINRA's proposal. Please do not hesitate to contact the undersigned at [REDACTED] if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Holly H. Smith

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.
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
Voya Financial, Inc.