

February 5, 2016

**VIA ELECTRONIC MAIL**

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: File Number SR-FINRA-2015-056  
Notice of Filing of Proposal to Adopt FINRA Rule 2030 and FINRA Rule  
4580 to Establish "Pay-to-Play" and Related Rules**

Dear Mr. Fields:

We are submitting this letter as a follow-up to a letter we previously submitted on January 20, 2016, on behalf of our client, the Committee of Annuity Insurers (the "**Committee**"),<sup>1</sup> in response to the Notice of Filing SR-FINRA-2015-056 (the "**Notice**"), which was published in the Federal Register on December 30, 2015 by the Securities and Exchange Commission (the "**Commission**").<sup>2</sup> The Notice requests comments on FINRA's proposed "pay-to-play" rule, FINRA Rule 2030 ("**Rule 2030**") and FINRA Rule 4580 ("**Rule 4580**"). The Committee appreciates this additional opportunity to provide comment on proposed Rule 2030 and Rule 4580 (collectively, the "**Proposed Rules**").

<sup>1</sup> 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 and advocating before the Commission, 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 an appendix to the Committee's previous letter.

<sup>2</sup> 80 Fed. Reg. 81,650 (Dec. 30, 2015), which is available at: <https://www.gpo.gov/fdsys/pkg/FR-2015-12-30/pdf/2015-32894.pdf>.

In order to facilitate the Commission staff's review of the Committee's comments, we stated in the Committee's previous letter that we intended to file a supplemental document that would reflect the Committee's suggested revisions to the language of the Proposed Rules. In this regard, the supplemental document setting forth the Committee's suggested revisions is attached as Appendix A.

Please do not hesitate to contact Cliff Kirsch (clifford.kirsch@sutherland.com) or Michael Koffler (michael.koffler@sutherland.com) if you have any questions regarding this letter.

Respectfully submitted,

**SUTHERLAND ASBILL & BRENNAN LLP**

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Clifford Kirsch

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Michael Koffler

**FOR THE COMMITTEE OF ANNUITY INSURERS**

## Appendix A

### PROPOSED REVISIONS TO RULE 2030

#### **2030. ~~Engaging in Distribution and Solicitation Activities with Government Entities~~ Certain Political Contributions**

##### **(a) ~~Limitation~~ Prohibition on ~~Distribution and~~ Solicitation Activities**

No covered member shall solicit a government entity for investment advisory services on behalf of an investment adviser that pays or whose covered associate pays the member, directly or indirectly, for such solicitation activity ~~engage in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity~~ within two years after a contribution to an official of the government entity is made by the covered member or a covered associate of such member (including a person who becomes a covered associate within two years after the contribution is made).

##### **(b) Prohibition on Soliciting and Coordinating Contributions**

No covered member or covered associate may solicit or coordinate any person or political action committee to make any:

(1) Contribution to an official of a government entity in respect of which the covered member is engaging in, or seeking to engage in, ~~distribution or~~ solicitation activities on behalf of an investment adviser; or

(2) Payment to a political party of a state or locality of a government entity with which the covered member is engaging in, or seeking to engage in, ~~distribution or~~ solicitation activities on behalf of an investment adviser.

##### **(c) Exceptions**

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##### **(2) Exception for Certain New Covered Associates**

The prohibitions of paragraph (a) shall not apply to a covered member as a result of a contribution made by a natural person more than six months prior to becoming a covered associate of the covered member unless such person, after becoming a covered associate, engages in, or seeks to engage in, ~~distribution or~~ solicitation activities with a government entity on behalf of the covered member.

##### **(3) Exception for Certain Returned Contributions**

(A) A covered member that is prohibited from engaging in ~~distribution or~~ solicitation activities with a government entity pursuant

to paragraph (a) as a result of a contribution made by a covered associate is excepted from such prohibition, subject to subparagraphs (B) and (C) below, upon satisfaction of the following requirements:

.....

**(d) Prohibitions as Applied to the Offer and Sale of Certain Covered Investment Pools**

~~For purposes of this Rule: (1) The prohibition in paragraph (a) on solicitation activity shall include the offer and sale by the covered member of interests in A covered member that engages in distribution or solicitation activities with a government entity on behalf of a covered investment pool in which a government entity invests, or is solicited to invest by the covered member, on behalf of the covered investment pool where the investment adviser to such covered investment pool pays or whose covered associate pays the member, directly or indirectly, for such activity. shall be treated as though that covered member was engaging in or seeking to engage in distribution or solicitation activities with the government entity on behalf of the investment adviser to the covered investment pool directly; and~~

~~(2) An investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity.~~

....

**(g) Definitions**

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**(2) "Covered associate" means**

....

(B) Any associated person of a covered member who engages in ~~distribution or~~ solicitation activities with a government entity for such covered member;

(C) Any associated person of a covered member who supervises, directly or indirectly, the government entity ~~distribution or~~ solicitation activities of a person in subparagraph (B) above; and

**NOTE:** We also would recommend conforming changes to Rule 4580.