

January 20, 2016

**VIA ELECTRONIC MAIL**

Robert W. Errett  
Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File Number SR-FINRA-2015-057  
SEC Notice of Filing of FINRA Proposed Rule Change to Adopt FINRA  
Rule 2273 (Educational Communication Related to Recruitment Practices  
and Account Transfers)**

Dear Mr. Errett:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the “Committee”)<sup>1</sup> in response to the Notice of Filing SR-FINRA-2015-057 (the “Notice”), which was published in the Federal Register on December 30, 2015 by the Securities and Exchange Commission (“SEC”).<sup>2</sup> The Notice requests comment on a proposal by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to adopt FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers) ( the “Proposed Rule” or “Rule 2273”) in the Consolidated FINRA Rulebook. The Proposed Rule would require a member firm that hires or associates with a registered representative (the “recruiting firm”) to provide an educational communication to former retail customers who the member, directly or through the transferring representative, contacts regarding the transfer of assets to the recruiting firm or who choose to transfer assets to the recruiting firm. FINRA has indicated that this educational communication would be required to highlight the potential implications of transferring assets to

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<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 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.

<sup>2</sup> 80 Fed. Reg. 81,590 (Dec. 30, 2015), which is available here: <https://www.gpo.gov/fdsys/pkg/FR-2015-12-30/pdf/2015-32816.pdf>.

the recruiting firm and may be used to suggest certain questions a customer may wish to ask in order to make an informed decision about transferring his or her assets.

As indicated in the Notice, the educational communication would not be required in circumstances where a customer's account is transferred to a new member firm via bulk transfer, or due to a change of broker-dealer of record. FINRA does not propose any rule language on this exemption, but rather indicates that it "proposes to interpret the proposed rule change as not applying to circumstances where a customer's account is proposed to be transferred via bulk transfer or due to a change of broker-dealer of record."<sup>3</sup> FINRA expressly addresses this proposed interpretation in the context of application-way business (such as variable annuities) and indicates that it will interpret a change of broker-dealer of record for application-way business as exempt from the proposed rules because such an account "typically does not present the same considerations for customers related to costs, portability, differences in products and services and fees between the firms as in circumstances where a representative individually contacts a former customer to transfer assets to a new member."<sup>4</sup>

## BACKGROUND ON THE PROPOSED RULE AND COMMITTEE COMMENTS

The Committee has been active in reviewing and commenting on the rules proposed by FINRA related to recruiting disclosures from the outset of FINRA's efforts. Proposed rules related to recruiting practices and asset transfers were first circulated by FINRA in 2013 under Regulatory Notice 13-02, *Recruitment Compensation Practices: FINRA Requests Comment on a Proposed Rule to Require Disclosure of Conflicts of Interest Relating to Recruitment Compensation Practices* (Jan. 2013). The Committee submitted a comment letter on that initial proposal on March 5, 2013.<sup>5</sup> The next step for the FINRA rules addressing recruiting disclosures was a filing of revised rules for approval by the SEC in March, 2014.<sup>6</sup> The revised rules reflected FINRA's response to the comments it received under Regulatory Notice 13-02. The Committee also submitted a comment letter in response to the 2014 rule filing with the SEC.<sup>7</sup> FINRA ultimately withdrew that rule filing in June, 2014.<sup>8</sup> As the next step to this process, FINRA issued Regulatory Notice 15-19, *Recruitment Practices: FINRA Requests Comment on a Proposed Rule to Require Delivery of an Educational Communication to Customers of a Transferring Representative* (May 27, 2015) ("RN 15-19"). The rules proposed under RN 15-19 addressed many of the comments raised by the Committee in its 2014 comment letter. In response to RN 15-19, the Committee submitted a comment letter to FINRA on July 13, 2015.<sup>9</sup>

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<sup>3</sup> 80 Fed. Reg. at 81,596.

<sup>4</sup> *Id.*

<sup>5</sup> The Committee's comment letter on Regulatory Notice 13-02 is available here:

<https://www.finra.org/sites/default/files/NoticeComment/p220108.pdf>

<sup>6</sup> 79 Fed. Reg. 17,592 (March 28, 2014).

<sup>7</sup> The Committee's comment letter in response to the 2014 rule filing is available here:

<https://www.sec.gov/comments/sr-finra-2014-010/finra2014010-29.pdf>

<sup>8</sup> 79 Fed. Reg. 36,855 (June 30, 2014).

<sup>9</sup> The comment letter on RN 15-19 is available at:

[https://www.finra.org/sites/default/files/notice\\_comment\\_file\\_ref/15-19\\_sutherland\\_comment.pdf](https://www.finra.org/sites/default/files/notice_comment_file_ref/15-19_sutherland_comment.pdf).

The Notice responds to the comment letters received by FINRA in response to RN 15-19 and provides several minor modifications to Rule 2273. The Committee commends FINRA for its efforts to revise the Proposed Rule over the course of the rulemaking history. The Committee appreciates the opportunity to comment on the Proposed Rule and also on FINRA's response to certain previous comments made by the Committee.

## COMMITTEE COMMENTS

The Committee believes it is worthwhile to continue to focus its attention on several aspects of the Proposed Rule that create undue compliance and supervision burdens. In addition, the Committee provides comments on the proposed interpretive exemption for bulk transfers and changes of broker-dealer of record.

**The Required Timing for Delivery of the Educational Communication.** The Committee comment letter in response to RN 15-19, along with many other commenters, suggested that the required timing for delivery of the educational communication be either changed or made more flexible. Under the Proposed Rule, delivery is required at the time of first individualized contact with the former customer related to the transfer of assets. The Committee, along with other commenters, maintained that changing the requirement from the time of first individualized contact to the time of sending other documents related to the account transfer or account opening is critical to making the rule workable, cost-efficient and subject to more meaningful supervision. FINRA rejected those suggestions, and stated that it believes the timing it proposes is:

- more effective than requiring delivery prior to the account opening because customers typically already made the decision to transfer assets;
- not particularly burdensome; and
- consistent with the approach of allowing a dialogue to occur between the registered representative and the customer about the account transfer process.<sup>10</sup>

The Committee strongly disagrees with the purported rationales offered by FINRA for not modifying the proposed timing requirements under Rule 2273. The Committee does not agree with FINRA's assertion that allowing for delivery of the educational communication at first contact (rather than simply prior to account opening) will impact the likelihood that a customer will discuss the transfer of assets with his or her registered representative. The Committee believes strongly that the historical relationship between the customer and the registered representative, and the level of customer engagement (e.g., are they a relatively active customer) are much more important indicators of whether a dialogue between the customer and the registered representative will occur than when the educational communication is delivered.

The Committee is also concerned that a requirement based upon the time of first individualized contact creates an unwise and impractical new standard for delivering customer

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<sup>10</sup> 80 Fed. Reg. at 81,595.

disclosures. This outcome would likely cause the educational communication to stand apart from other customer disclosures, and may well lead a customer to think that the educational communication has greater significance than more comprehensive and critical disclosures. These would include, for example, offering documents and prospectuses, which address critical investor protections concerns well beyond the content of the educational communication. The Committee believes that requiring the delivery of the educational communication at the time of first contact elevates the perceived significance of the educational communication to a degree that is unwarranted and is likely to result in unnecessary and avoidable investor confusion.

The Committee also believes that the ability to provide the educational communication along with other required documentation would materially decrease the logistical burden the Proposed Rule imposes on firms. While FINRA notes that the use of a FINRA-drafted educational communication decreases the burden on firms, the Proposed Rule will in fact require significant resource expenditures by firms. For example, educating, training and supervising representatives on the Proposed Rule will require extensive effort on the part of both large and small firms. In addition, given that the rule applies to the first "oral contact" made by the registered representatives, firms will need to devote significant time and attention planning for and educating registered representatives on that requirement, building the necessary operational processes to ensure delivery of the educational communication on a timely basis, and supervising that entire range of activity. In particular with respect to supervising the delivery of the educational communication triggered by the first oral contact, the Committee has consistently argued and continues to believe that supervision of that aspect of the Proposed Rule is exceedingly challenging or nearly impossible.

The Committee believes that by requiring delivery of the educational communication prior to the time of other key disclosures, the Proposed Rule unnecessarily complicates what should be a simple and seamless process. As drafted, the Proposed Rule is overly burdensome (without meaningful investor protections to justify such burdens), and is inconsistent with other disclosure rules that often include more critical investor protection information. For these reasons, the Committee believes that the Proposed Rule should be revised to properly allow for the educational communication to be delivered with the account transfer documentation.

**Interpretive Exemption for Bulk Transfers and Changes of Broker-Dealer of Record.** The Notice indicates that FINRA proposes to interpret the Proposed Rule as being inapplicable to bulk transfers of securities accounts and changes in broker-dealer of record. FINRA indicates that such changes in broker-dealer of record for application-way business, which would include variable annuities, do not present similar issues to those identified as concerns for transfers of assets. The Committee supports such exemptions since the identified transactions do not raise the types of concerns that the Proposed Rule seek to address. The Committee recommends that FINRA include this interpretive position as a Supplementary Material to Rule 2273.

## CONCLUSION

The Committee appreciates the opportunity to offer these comments on the Notice. Please do not hesitate to contact Eric Arnold (██████████, ██████████) or

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Clifford Kirsch ( [REDACTED] ) if you have any questions regarding this letter. We note that the Committee would be happy to meet with staff to discuss any of the issues or concerns identified in this letter if you think that would be helpful.

Respectfully submitted,

**SUTHERLAND ASBILL & BRENNAN LLP**

BY:   
Eric Arnold

BY:  EA  
Clifford Kirsch

**FOR THE COMMITTEE OF ANNUITY INSURERS**

**Appendix A**

**THE COMMITTEE OF ANNUITY INSURERS**

AIG Life & Retirement  
Allianz Life  
Allstate Financial  
Ameriprise 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.