October 12, 2021

Via E-Mail

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2021-023
Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effectiveness of Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision)

Dear Secretary:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"), in response to FINRA’s Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effectiveness of Temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision) (the “Notice”). The Notice extends temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision) to include calendar year 2022 inspection obligations through June 30, 2022 within the scope of the supplementary material.

BACKGROUND

FINRA Rule 3110(c) requires firms to perform inspections of all locations from which associated persons regularly conduct businesses, which includes remote work locations. In 2020, in light of the pandemic’s disruptions to normal business operations, FINRA adopted temporary Supplementary Material .16 (Temporary Extension of Time to Complete Office Inspections) and temporary Supplementary Material .17 (Temporary Relief to Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) under FINRA Rule 3110 (Supervision). According to FINRA, Temporary Supplementary Material .16 was adopted to extend the time by which firms had to complete their calendar year 2020 inspection obligations under Rule 3110(c) to March 31, 2021, while temporary Supplementary Material .17 provides firms the option, subject

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1 The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. The Committee’s current 31 member companies represent approximately 80% of the annuity business in the United States. A list of the Committee’s member companies is available on the Committee’s website at www.annuity-insurers.org/about-the-committee/.


Due to the pandemic’s continued disruptions to normal business operations, FINRA is issuing the Notice to extend the temporary changes to FINRA Rule 3110.17 to include calendar year 2022 inspection obligations through June 30, 2022 within the scope of the conditions outlined in the supplementary material.

COMMITTEE COMMENTS

Over the years, the Committee has been actively involved in commenting on many elements of FINRA Rule 3110 (Supervision), including those relating to the inspection requirements in FINRA Rule 3110(c). For example, in November 2017, the Committee provided comments in response to FINRA Regulatory Notice 17-38 Remote Branch Office Inspections, which solicited comment on a proposal to amend FINRA Rule 3110 (Supervision) to provide firms with the flexibility to conduct remote inspections of “qualifying offices” that meet specified criteria, in lieu of physical, on-site inspections of such offices. In addition, the Committee provided comments in response to FINRA Regulatory Notice 20-42 FINRA Seeks Comment on Lessons From the COVID-19 Pandemic, which solicited comment on firms’ experiences and lessons learned during the COVID-19 pandemic, including but not limited to the use and effectiveness of remote inspections.

The Committee appreciates the opportunity to submit comments in response to this Notice.

The temporary relief provided under the Notice is based on the implicit assumption that FINRA Rule 3110 (Supervision) requires inspections to be conducted on an on-site basis. As a threshold matter, the Committee questions this assumption. By way of background, Rule 3110(c) requires broker-dealers to conduct a review, at least annually, of the business in which it engages. This rule also requires broker-dealers to review the activities of each office and “inspect” each office on a specified cycle depending on the office classification. But there is no specific requirement in the rule or current supplementary material that requires these office inspections to be performed on-site or in-person. Indeed, FINRA’s assertion that FINRA Rule 3110 (Supervision) requires on-site inspections is based on guidance discussing NASD Rule 3010, the predecessor rule for FINRA Rule 3110, and this interpretive position was not explicitly incorporated into FINRA Rule 3110, which was developed to replace NASD Rule 3010.

However, it appears that FINRA will continue to interpret FINRA Rule 3110(c) to require office inspections to be performed on-site or in-person. Therefore, the Committee supports the proposed extension and also urges consideration of a permanent change to Rule 3110(c) to provide firms with flexibility in conducting on-site and remote inspections. With the rapid pace of technological advances and use of online portals for the execution and processing of transactions, notices and requests, as well as the retention of records, FINRA should acknowledge that remote inspections can be structured and carried out in a manner that is just as robust and efficient (if not more so) than on-site or in-person inspections. More specifically,

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7 In particular, FINRA cites the following Securities and Exchange Commission (SEC) and FINRA guidance in support of its position that inspections must include a physical, on-site review component: SEC National Examination Risk Alert, Volume I, Issue 2 (Nov. 30, 2011); FINRA Regulatory Notice 11-54 (Nov. 2011); SEC Div. of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (Mar. 19, 2004). However, the Committee maintains that this guidance pre-dates the adoption of FINRA Rule 3110 (Supervision), and was not adopted as part of FINRA Rule 3110.
email surveillance tools, online searches, and activity and exception reporting tools have greatly
improved the ability for broker-dealers to conduct effective remote inspections of their offices.

CONCLUSION

The Committee appreciates the opportunity to provide these comments on the Notice. Please do
not hesitate to contact Clifford Kirsch or Eric Arnold with
any questions or to discuss this comment letter.

Respectfully submitted,

Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS