

June 16, 2014

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-19 BrokerCheck: FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to Regulatory Notice 14-19, *FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public* (the "Notice") issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") on April 30, 2014.²

The Notice revises an earlier FINRA rule proposal³ to amend FINRA Rule 2267 (Investor Education and Protection), that FINRA proposed in January 2013 and then withdrew in April 2013.⁴ Under the revised rule proposal (the "Revised Rule Proposal") set forth in the

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 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.

² FINRA Regulatory Notice 14-19, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p496867.pdf>.

³ See Securities and Exchange Commission Release No. 34-68700 (Jan. 18, 2013), available at <http://www.sec.gov/rules/sro/finra/2013/34-68700.pdf>.

⁴ See Securities and Exchange Commission Release No. 34-69440 (April 24, 2013), available at <http://www.sec.gov/rules/sro/finra/2013/34-69440.pdf>.

Notice, FINRA would amend FINRA Rule 2210 (Communications With the Public) to require a firm (1) to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors, and (2) to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person, subject to specified conditions and exceptions.

COMMITTEE COMMENTS

The Committee appreciates the opportunity to submit its comments in response to the Notice. The Committee supports the larger goal of facilitating and increasing investor use of BrokerCheck information, however, as described more fully below, the Committee is concerned that the Revised Rule Proposal presents operational difficulties (especially with respect to the supervision of third party websites) and, as a result, alternative means to increase investor awareness should be explored. If the rule does advance, certain aspects need clarification.

Before we provide comment on the Revised Rule Proposal, we note our belief that the Revised Rule Proposal reflects several positive modifications in response to certain comments that were received in connection with the original rule filing. In particular, we note that the Committee supports FINRA's decision to eliminate the requirement for a deep link to a firm's or an associated person's BrokerCheck report summary page. The operational difficulties and expenses associated with embedding a deep link to an individualized BrokerCheck page would be very high, and in our opinion the added benefit to investor awareness of BrokerCheck would be minimal.

Our comments on the Revised Rule Proposal follow:

Explore Alternatives. Given the significant operational burdens the rule imposes on firms, the Committee questions whether the Revised Rule Proposal is the most effective way of increasing investor use and awareness of BrokerCheck. The Committee believes that FINRA should conduct targeted focus groups in order to identify possible alternative means of facilitating and increasing investor use of BrokerCheck. Such efforts would benefit from the active participation of FINRA's Chief Economist's Office. We believe that this effort would allow FINRA to refine the Revised Rule Proposal around the actual practices and patterns of investors, which would more accurately increase investor use and awareness of BrokerCheck.

We understand that FINRA may have conducted initial focus group outreach in connection with the original proposal. However, the rulemaking does not provide a great deal of detail about the manner in which such outreach was conducted or the types of alternatives explored at that time. In particular, the Committee believes that the impact on increasing

investor awareness of BrokerCheck by providing references and links to BrokerCheck be compared to other types of general education efforts.⁵

In addition, as another alternative FINRA might explore, the Committee recommends that FINRA initiate a dialogue with state securities regulators, with the goal of including a readily apparent and accessible hyperlink to BrokerCheck on the website of each state securities regulator. In sampling the websites of several state securities regulators, the Committee noted that certain states did not include any hyperlink to BrokerCheck, while others included outdated information about BrokerCheck or buried the hyperlink to BrokerCheck deep within the regulator's website (e.g., several clicks removed from the regulator's homepage). Since certain investors may look to their state's securities regulator for information concerning broker-dealers with whom they do business, the Committee recommends that FINRA explore options to make BrokerCheck more prominently featured on the websites of state security regulators before implementing any requirements on the websites of FINRA member firms.

Finally, while inclusion of a BrokerCheck hyperlink would be helpful to those investors who are actively seeking such information, the Committee questions whether omnipresent links to BrokerCheck as called for by the Revised Rule Proposal may lead to investors "tuning out" the references in a manner similar to other consumer experiences associated with the routine use of the internet (e.g., requiring agreement with the "terms of use" of a website).

Third-Party Websites. The requirements imposed with respect to third-party websites could prove to be unmanageable. It is not at all clear how a firm will determine whether it and its associated persons may be viewed to have "adopted" a third-party website. Further, reviewing the required textual disclosures (as opposed to the presence of the required hyperlink to the firm's website) in a third party website will be a significant supervisory and resource challenge. We believe that the requirement to include the additional textual language related to the BrokerCheck information being available at the firm's website creates additional burdens that are not justified by the costs, particularly given the obligation for the BrokerCheck link to be "readily apparent" on the firm's website.

Requested Clarifications

The Committee requests that FINRA clarify the Revised Rule Proposal as described below:

Meaning of "Website of the Member" in Context of Subsidiary Broker-Dealer. The Committee requests that FINRA clarify what constitutes a "website of the member," as used in proposed FINRA Rule 2210(d)(8)(A). More specifically, the Committee urges FINRA to clarify how a "website of the member" should be interpreted in the context of a subsidiary broker-dealer's relationship with its parent insurance company. Oftentimes, when a subsidiary broker-dealer sells variable annuities products on behalf of its parent insurance company, the broker-

⁵ As one example of such general education efforts, the Committee notes with favor the recent publication of an investor alert from the SEC's Office of Investor Education and Advocacy, "Check out Your Financial Professional" (June 11, 2014), which is available here: http://www.sec.gov/oiea/investor-alerts-bulletins/ia_checkfinpro.html.

dealer will not maintain its own independent website. Although the subsidiary broker-dealer may be referenced, directly or indirectly, on the insurance company's website in connection with the variable products being offered by the insurance company, the Committee believes that the mere reference to a subsidiary broker-dealer on an insurance company's website should not make it a "website of the member" under the terms of proposed FINRA Rule 2210(d)(8)(A). Consequently, our understanding is that the requirements of FINRA Rule 2210(d)(8)(A) would not apply to a subsidiary broker-dealer that does not maintain its own independent website. The Committee requests confirmation that this understanding is correct.

Furthermore, where a subsidiary broker-dealer does maintain its own website, we request clarification that the requirement to include a hyperlink to "each website" of the firm does not mean that it must appear on every single webpage *within* the firm's website. Rather, it would be required only on the firm's main webpage (e.g., its "homepage").

Sites that Identify Multiple Representatives. The Committee requests that FINRA clarify whether online retail communication that includes the professional profile or contact information for multiple associated persons would also require multiple hyperlinks to BrokerCheck under FINRA Rule 2210(d)(8)(B). For instance, if a firm releases online retail communication through LinkedIn and includes the contact information for two of its associated persons, the Committee believes that a single hyperlink to BrokerCheck would satisfy the requirements of FINRA Rule 2210(d)(8)(B). Investor awareness of BrokerCheck would not be significantly advanced by including multiple hyperlinks on the same piece of retail communication. The Committee requests confirmation that this understanding is correct.

Application of Rule to "Associated Persons" v. "Registered Representatives." FINRA should limit the requirement in proposed FINRA Rule 2210(d)(8)(B) to the registered representatives of a FINRA member firm. Extending that requirement to all "associated persons" would seem to provide no or limited benefit to investors.

CONCLUSION

The Committee appreciates the opportunity to comment on this Notice. Please do not hesitate to contact Clifford Kirsch (212.389.5052, clifford.kirsch@sutherland.com) or Eric Arnold (202.383.0741, eric.arnold@sutherland.com) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

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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.