

May 23, 2014

VIA ELECTRONIC MAIL

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

**Re: Regulatory Notice 14-15 Retrospective Rule Review: FINRA Requests
Comment on the Effectiveness and Efficiency of its Gifts and Gratuities
and Non-Cash Compensation Rules**

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to FINRA's Regulatory Notice 14-15, *FINRA Requests Comment on the Effectiveness and Efficiency of its Gifts and Gratuities and Non-Cash Compensation Rules* ("RN 14-15" or the "Notice"). The Notice requests comments under FINRA's retrospective rule review program on a "rule set" that includes the gifts and gratuities rule (FINRA Rule 3220) and the non-cash compensation rules, including in particular FINRA Rule 2320(g)(4) regulating non-cash compensation related to variable contracts such as variable annuities (the "non-cash compensation rule").

The Committee welcomes the opportunity to comment on FINRA Rule 2320 under the retrospective rule review program. The Committee commends FINRA on implementing its rule review program, and believes the program can provide opportunities to identify possible modifications to existing rules that would be beneficial to member firms without diminishing investor protection.

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](#).

COMMITTEE COMMENTS

When FINRA (then NASD) announced the approval of FINRA Rule 2320(g)(4) (then NASD Rule 2820) in Notice to Members (“NTM”) 98-75, it identified several policy goals with respect to the regulation of non-cash compensation. In particular, NTM 98-75 indicated that the increased use of non-cash compensation for variable contracts:

- Heightens the possibility for the loss of supervisory control over registered person sales practices;
- Increases the perception of inappropriate practices which could lead to a loss of investor confidence; and
- Creates “point of sale” incentives that might compromise the registered person’s decision with respect to the product recommended.

As a general matter, the Committee believes that the non-cash compensation rule as implemented and interpreted over the past fifteen years has provided a structure for regulating member firm non-cash compensation that effectively addresses the policy concerns articulated by FINRA in 1998. Given the measures set forth in FINRA Rule 2320 to limit the permissible types of non-cash compensation and the role played by offerors (as defined at FINRA Rule 2320(b)(3)(E)) with respect to such compensation, the Committee believes that the policy goals and issues announced in NTM 98-75 have been effectively met or addressed.

Potential Modifications to the Non-Cash Compensation Rule

The Committee does have several areas under the non-cash compensation rules where it believes modifications could be made to provide additional flexibility to members or offerors without sacrificing any of the protections afforded by the rules.

The Interpretive Position Effectively Banning the Combination of Training and Education Meetings with other Non-Cash Awards Should Be Eliminated or Modified. FINRA Rule 2320(g)(4)(C) sets forth the requirements with respect to training and education meetings (“T&E Meetings”) held by member firms or offerors for associated persons. Under the terms of that exception, reimbursement by an offeror is permitted provided that:

- Record keeping requirements are met;
- Associated persons receive the member firm’s approval to attend and attendance is not preconditioned on the achievement of a sales target;
- The location of the T&E Meeting is appropriate to the purpose of the meeting;
- Reimbursement is not made for any guests of the associated person attendees; and
- Reimbursement by an offeror is not conditioned on meeting sales targets.

The Committee believes that FINRA's position that an "offeror may not pay for golf outings, tours or other forms of entertainment while at a meeting it sponsors for the purpose of training or education" is overly broad and prescriptive.² The T&E Meetings are already subject to numerous safeguards that prevent them from becoming overly lavish such as:

- The limits on the appropriate location for the T&E Meeting;
- The prohibition on reimbursement of the costs for guests of the associated person;
- The limitations for paying for expenses incurred beyond the time necessary for the actual T&E Meeting;³ and
- The obligation for the training to occupy "substantially all of the workday."⁴

As a result of those limitations, the Committee believes that providing additional non-cash compensation during the T&E Meeting that complies with the FINRA Rule 2320(g)(4)(A) or (B) exception should be permissible. Allowing that type of measured entertainment should not impact the status of the T&E Meeting as "first and foremost intended to provide training or education,"⁵ nor should it impact any of the policy rationales or issues addressed with the adoption of the non-cash compensation rule under NTM 98-75.

The \$100 Limitation on Gifts Under FINRA Rule 2320(g)(4)(A) Should Be Raised or Indexed for Inflation. The current amount allowed for annual gifts paid to, or received by, an associated person is limited to \$100. The Committee believes that this amount should either be raised, or indexed to inflation, to allow for periodic adjustments. The Committee recommends that the annual limit be raised to around \$250.

Offeror Participation in Incentive Trips Under FINRA Rule 2320(g)(4)(D). The Committee believes that contributions by a non-member company made pursuant to FINRA Rule 2320(g)(4)(E) could be read to impose an obligation on the non-member company to ascertain whether a member's incentive trip under FINRA Rule 2320(g)(4)(D), for example, complies with FINRA rules. The Committee believes that there would be some benefit to clarifying that the non-member company does not have an obligation to confirm that the member's program conforms to the non-cash compensation rules.

² Letter from Mary Schapiro, President NASD (March 7, 2001) available here: <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P002667>. See also Regulatory & Compliance Alert (Summer 2000) at p. 13 ("reimbursement or payment for golf outings, tours or other forms of entertainment while at a location for the purpose of training or education would not be permissible.")("2000 RCA").

³ See 2000 RCA at 13.

⁴ *Id.*

⁵ *Id.*

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CONCLUSION

The Committee appreciates the opportunity to submit comments in response to RN 14-15. Please do not hesitate to contact Eric Arnold (202.383.0741, eric.arnold@sutherland.com) or Cliff Kirsch (212.389.5052, clifford.kirsch@sutherland.com) if you have any questions regarding this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 
Eric Arnold

BY:  EAA
Cliff Kirsch

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.