

December 9, 2011

VIA ELECTRONIC MAIL

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

**Re: FINRA Regulatory Notice 11-48: Books and Records: FINRA Requests
Comment on Proposed New Rule Requiring Carrying/Clearing Member
Firms to Maintain and Keep Current Certain Records in a Central
Location**

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 11-48, "FINRA Requests Comment on a Proposed New Rule Requiring Carrying/Clearing Member Firms to Maintain and Keep Current Certain Records in a Central Location" (the "Proposal Notice"). The Proposal Notice seeks to establish new FINRA Rule 4516 (Readily Identifiable and Accessible Records) ("Proposed Rule 4516") which would require each "carrying" or "clearing" member firm to maintain and keep current certain records in a central location.

The Committee appreciates FINRA's efforts to develop regulatory changes to facilitate a more orderly transfer of customer accounts to another broker-dealer as well as a more orderly liquidation in the event a member firm can no longer continue to operate due to financial or operational problems. The Committee, however, has concerns regarding the scope and applicability of some of the requirements of the proposed rule and believes such requirements need revision or clarification. The Committee's specific comments are provided below.

¹ The Committee of Annuity Insurers is a coalition of 32 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1982 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee 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](#).

I. SUMMARY OF PROPOSED RULE 4516

Proposed Rule 4516 would require a “carrying or clearing” member firm to maintain in a designated area within its principal office electronic or hard copy records that correspond to a list of ten items set forth in paragraph (b) of the proposed rule (the “Required Records”). The Required Records list includes such items as a record describing all accounts and ranges on a general ledger, along with the names of the associated persons assigned primary and supervisory responsibility for each account. Pursuant to paragraph (c) of Proposed Rule 4516, Required Records would have to be immediately accessible to FINRA, the Securities and Exchange Commission (the “SEC”), and representatives of the Securities Investor Protection Corporation (“SIPC”). Pursuant to paragraph (d) of Proposed Rule 4516, clearing and carrying firms would also be required to enter into written agreements with their clearing firms, banks, and custodians, pursuant to which such institutions would be required to agree to make their electronic systems available to regulators on a read-only basis in the event the member firm is the subject of a liquidation proceeding. Paragraph (f) of Proposed Rule 4516 would require all member firms subject to the rule to designate a single contact person “responsible for maintaining and keeping current the records” required under the rule. The member firm would be required to report the contact information for the designated contact person to FINRA and to update the contact information pursuant to NASD Rule 1160.²

II. COMMITTEE COMMENTS

A. The Single Contact Person Requirement Should Be Amended.

The Committee believes that the proposed requirement that one person be designated as responsible for maintaining and keeping current the Required Records should be amended in light of current member firm recordkeeping and risk management practices. The ten types of records listed under paragraph (b) of Proposed Rule 4516 cover records traditionally kept in and by a number of different areas of a member firm, including areas such as operations, finance and risk management. The business areas responsible for these records may be and frequently are located in different geographic areas. Thus, the likelihood that one person in a member firm is the owner or has the requisite physical and electronic access and responsibility to retain, oversee and keep current all of the Required Records is probably rare. To require member firms to make personnel and risk management changes in order to have one person responsible for such diverse records would be overly burdensome.

The Committee also believes that the single contact requirement under paragraph (f) of Proposed Rule 4516 could be inconsistent with the allowance of multiple contacts under Rule 17a-3 of the Securities Exchange Act of 1934, as amended. Pursuant to paragraph (a)(21) of Rule 17a-3, member firms must keep a record for each office listing, by name or title, *each*

² In general, NASD Rule 1160 requires firms to update designated contact information promptly upon any material change, verify such information annually and comply promptly with any request for such information.

person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records” (emphasis added). Under Rule 17a-3, each firm must be able to promptly explain how it makes, keeps and titles its records. In order to comply with this requirement, a firm may identify *more than one* person and list which records each person is able to explain. Requiring member firms to designate one person with the responsibility to retain, oversee and keep current all of the Required Records in order to comply with Proposed Rule 4516 seems to conflict with Rule 17a-3’s allowance for multiple “responsible” contacts with personal knowledge of a firm’s records.

In addition, the Committee believes that the proposed requirement that one person be designated responsible for maintaining and keeping current the Required Records could potentially expose member firms to increased risk and potential fraud. Vesting in one person the sole authority to maintain and keep current all ten of the Required Records could increase the risk of potential fraud by individuals with record keeping control.

Accordingly, the Committee recommends that FINRA allow multiple contacts for the Required Records in order to mitigate undue costs of reorganizing member firm structures, sustain regulatory consistencies and support current risk management efforts. The Committee believes that the contact person for the Required Records should only be responsible for providing the records to regulators upon request, similar to other contact person responsibilities addressed in other FINRA Rules. Such contact person should not also have responsibility for maintaining and keeping current the records required under Proposed Rule 4516. The responsibility to maintain and keep the Required Records current should be the responsibility of each individual responsible for each Required Record. In this regard, the Committee believes that the member firm should have in place a periodic process for confirming and checking that each Required Record is current.

B. *The Proposed Single Contact and Principal Office Requirements Would, in Effect, Require Most Member Firms to Keep the Required Records Electronically.*

As noted above, the Proposal would require a clearing or carrying firm to maintain in a designated area within its principal office electronic or hard copies of the Required Records. If the member maintains Required Records by means of electronic storage media, paragraph (a) of Proposed Rule 4516 would require that the Required Records be uniquely tagged and appropriately indexed to be readily identifiable and accessible from the member’s principal office.

Given that it is rare for one person in a member firm to have physical access to and ultimate responsibility over all the Required Records, the Committee believes that Proposed Rule 4516 would indirectly require member firms to maintain electronic files of the Required Records (we believe that it would be impossible for member firms who keep paper records to keep all paper copies of the Required Records in one place unless the member firm has only one office; only electronic sharing of documents would provide multiple offices access to the Required Records). Thus, in order to comply with Proposed Rule 4516, the Committee requests that

FINRA permit member firms to use document-sharing platforms such as shared drives in order to meet the requirement that all Required Records be maintained in the member firm's principal office. The Committee recommends that electronic access to the Required Records via document-sharing platforms accessible at the firm's principal office be deemed to meet the requirements of Proposed Rule 4516, since actual record files may be located in offices outside of the principal office.

The Committee also requests that FINRA clarify that electronic recordkeeping is not a requirement of Proposed Rule 4516 and that member firms in fact may continue to comply with SEC record retention rules by the use of paper documents. We also request clarification that, under the rule, electronic files maintained for purposes of compliance with Proposed Rule 4516 need not meet the requirements of Rule 17a-4(f) of the Exchange Act if the member firm also maintains a paper copy (or another electronic copy) of the Required Record.

C. *The Type of Record Requested in Connection with General Ledger Accounts and Ranges to Firm's Trial Balances Is Unclear.*

Pursuant to paragraph (b)(2) of Proposed Rule 4516, each carrying or clearing member is required to maintain and keep current records containing, among other things, a "[m]apping of the general ledger accounts and ranges to the trial balance, including a list of all affiliated accounts[.]"

The Committee requests clarification concerning what type of record FINRA expects member firms to retain pursuant to paragraph (b)(2) of Proposed Rule 4516. Traditionally, a "trial balance" is a listing of the individual general ledger accounts and the corresponding balances as of a particular date. Since the trial balance already contains the individual general ledger accounts, the Committee requests clarification on the proposed requirement to provide a "mapping" of such accounts.

D. *Requiring Member Firms to Enter into Agreements with Any Clearing Agency, Clearing Bank or Custodian without Limitation Is Unnecessary and Overly Burdensome.*

Paragraph (d) of Proposed Rule 4516 would require that all member firms subject to the rule enter into an agreement with "any clearing agency, clearing bank or custodian with which the member does business." Such agreement would require that upon commencement of a liquidation of the member, any electronic systems provided to the member by the clearing agency, clearing bank or custodian be made available, on a read-only basis, to representatives or designees of FINRA, the SEC and SIPC.

The Committee believes that the proposed requirement that agreements be entered into with "any clearing agency, clearing bank or custodian" (emphasis added) could be narrowed without risk to FINRA. The Committee believes that this requirement should apply only to those agencies, banks or custodians over which FINRA does not already have jurisdiction. Otherwise,

member firms would have to enter into new agreements with entities that are already subject to FINRA's jurisdiction. Such a requirement seems overly burdensome and unnecessary from a regulatory standpoint.

E. *The Applicability of Proposed Rule 4516 to Clearing and Carrying Firms That Do Not Hold Customer Funds or Securities.*

Finally, we note that the rule as proposed would apply to all carrying and clearing firms, although these firms are not defined in the rule. In prior comment letters on other proposed FINRA rules, the Committee has noted that some member firms are being categorized as "clearing" or "carrying" broker-dealers for the purposes of some FINRA rules without regard to whether the member firm holds customer funds or securities. For example, some member firms are categorized as clearing or carrying firms even though the firms' policies direct customer checks to be made directly payable to a third party, e.g., an issuer or distributor. The Committee believes that firms such as these should be exempt from Proposed Rule 4516 because the firms do not fit within the member firm risk profile that the rule seems intended to reach. We would be happy to provide more information to FINRA staff with respect to this issue.

III. CONCLUSION

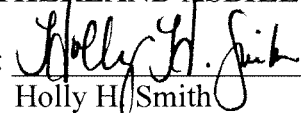
The Committee appreciates the opportunity to comment on Proposed Rule 4516. We are happy to provide more specific input on the issues raised in this letter and answer any questions the staff may have regarding our comments.

Please do not hesitate to contact Holly Smith (202.383.0245) or Susan Krawczyk (202.383.0197) if you have any questions regarding this letter.

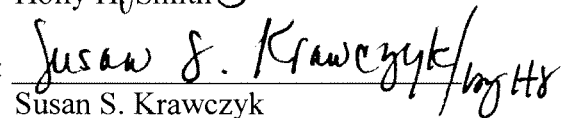
Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY:


Holly H. Smith

BY:


Susan S. Krawczyk

**FOR THE COMMITTEE OF ANNUITY
INSURERS**

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
(a Goldman Sachs company)
CNO Financial Group, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
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
RiverSource Life Insurance Company
(an Ameriprise Financial company)
SunAmerica Financial Group
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
TIAA-CREF
USAA Life Insurance Company