

December 23, 2008

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Comments on Rule 22e-3T (File No. S7-32-08)

Dear Ms. Murphy:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee").¹ The Committee is pleased to have the opportunity to offer its comments in response to the request of the Securities and Exchange Commission (the "Commission") in Release No. IC-28487 (November 20, 2008) for comments on interim final temporary Rule 22e-3T under the Investment Company Act of 1940, as amended (the "Rule").

Rule 22e-3T permits open-end management investment companies that have an investment objective of maintaining a stable net asset value (typically \$1.00 per share) by investing in short-term, high quality securities ("money market funds"), to temporarily suspend redemptions of their outstanding shares and postpone the payment of redemption proceeds, in the event that they determine to liquidate their assets in connection with a temporary guarantee program (the "Guarantee Program") established by the U.S. Department of Treasury.² The Rule does not provide an exemption for any investment companies other than money market funds participating in the Guarantee Program. The Committee believes that Rule 22e-3T should be extended to permit life insurance company separate accounts registered as investment companies to temporarily suspend certain types of redemption transactions under their outstanding variable annuity contracts or variable life insurance contracts when such transaction can only be carried

¹ The Committee of Annuity Insurers is a coalition of 33 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

² Most money market funds seek to maintain a stable net asset value per share of \$1.00, but a few seek to maintain a stable net asset value per share of a different amount (e.g., \$10.00 or \$100.00). For convenience, the discussion in this letter refers to a stable net asset value of \$1.00.

out by redeeming shares of a money market fund that has suspended redemption of such shares pursuant to the Rule.³

The Guarantee Program

To bolster investor confidence in money market funds and protect the stability of the global financial system, on September 19, 2008, the Treasury Department established the Guaranteed Program. Under the Guarantee Program, the Treasury Department guarantees the stabilized price (*e.g.*, \$1.00) of participating money market fund shares outstanding on September 19, 2008, in limited circumstances. In particular, the Guarantee Program provides that in the event that a participating money market fund cannot maintain a stable net asset value for its shares, it must initiate a liquidation plan and upon the fund's liquidation, the Treasury Department will pay to the fund the difference between the liquidation value of shares subject to the guarantee and \$1.00, thereby ensuring that holders of such shares receive \$1.00 for each. A requirement of the Guarantee Program is that from the time the money market fund determines that it can no longer maintain a stable net asset value for its shares until the completion of its liquidation, the fund must cease both the issuance and redemption of shares. The cessation of redemption requirement of the Guarantee Program is designed to facilitate orderly liquidations of money market funds pursuant to the Program and help prevent the sale of fund assets at "fire sale" prices. Rule 22e-3T is designed to permit money market funds liquidating under the Guarantee Program to suspend shareholders' right of redemption otherwise required by Section 22(e) of the 1940 Act.

Investment by Registered Separate Accounts in Money Market Fund Shares

Variable annuity contracts are insurance contracts issued to an investor purchasing the contract.⁴ Today most variable annuity contracts are issued through a two-tiered investment company structure. The top tier consists of a separate account of the issuing insurance company, which is a segregated investment account established under state insurance law that holds variable annuity contract assets and liabilities separate and apart from the assets and liabilities of the insurance company's general account. Separate accounts are usually divided into sub-accounts, with each sub-account investing in the shares of a single underlying open-end management investment company (a "mutual fund"), such as a money market fund. The underlying mutual funds are the bottom tier of the two-tier structure. Absent an applicable

³ Generally speaking, the facts about variable annuity contracts and the separate accounts through which they are issued are equally true of variable life insurance contracts and the separate accounts through which variable life insurance contracts are issued. Therefore, though this letter speaks in terms variable annuity contracts, the Committee's proposed extension of Rule 22e-3T would apply to variable life insurance separate accounts as well.

⁴ For ease of reference, this letter refers to insurance companies as issuers of variable annuity contracts although, under the federal securities laws, insurance company separate accounts are the primary issuers of the contracts, with the insurance company co-issuing the contracts. *See* Stephen E. Roth, Susan S. Krawczyk, and David S. Goldstein, *Reorganizing Insurance Company Separate Accounts Under Federal Securities Laws*, 46 Business Lawyer 546 (Feb. 1991).

exclusion from the definition of an investment company in the 1940 Act, separate accounts are required to register as investment companies under the Act. Where a registered separate account is the top tier of a two-tier structure, it is typically registered as a unit investment trust.

Purchase payments under variable annuity contracts are allocated by their owners among the various available sub-accounts and the proceeds are invested in shares of the corresponding mutual fund. On behalf of their separate accounts, insurance companies transmit orders to purchase or redeem shares of mutual funds on a daily basis based on the net results of purchase payments, redemption requests (*i.e.*, surrender or withdrawal requests under the variable annuity contracts) and transfer requests from owners (or annuitants or beneficiaries) of variable annuity contracts.

Because variable annuity contracts are themselves redeemable securities, the separate accounts through which they are issued are subject to Section 22(e) of the 1940 Act.⁵ As a result, insurance companies generally may not suspend the right of variable annuity contract owners to surrender their contracts or withdraw cash value from them. Likewise, insurance companies generally may not postpone payment of cash value to contract owners for more than seven days.

The Need to Extend Rule 22e-3T to Registered Separate Accounts

In the event that a money market fund participating in the Guarantee Program whose shares are held by registered separate accounts, in reliance on Rule 22e-3T, ceases redeeming outstanding shares, insurance companies issuing variable annuity contracts through the separate accounts would not be able to process certain surrender and cash value withdrawal requests from owners of the contracts because they would not be able to liquidate the money market fund shares. As a result, insurance companies could be in violation of Section 22(e) of the 1940 Act during the period that an underlying money market fund relies on Rule 22e-3T.

Given the public policy purposes of the Guarantee Program and Rule 22e-3T, members of the Committee do not believe that the Commission intended to expose insurance companies and their registered separate accounts issuing variable annuity contracts to potential violations of Section 22(e) of the 1940 Act. Therefore, the Committee requests that the Commission extend Rule 22e-3T to exempt insurance company separate accounts registered as unit investment trusts to the extent necessary to postpone any variable annuity (or variable life insurance) contract transactions that could not be carried out without redeeming shares of an underlying money market fund that has suspended redemption of such shares in reliance on the Rule. Such transactions would be postponed until such time as the money market fund is able to redeem the

⁵ Most registered separate accounts rely on the exemption from Section 27 of the 1940 Act found in paragraph (i) of that section. Paragraph (i)(2)(A) of Section 27 requires that variable annuity contracts issued through the separate account be redeemable securities.

shares.⁶ In particular, the Committee suggests adding a new paragraph to Rule 22e-3T following paragraph (a) that would read as follows:

(b) an insurance company separate account relying on Section 12(d)(1)(E) of the Act also is exempt from the requirements of Section 22(e) of the Act to the extent necessary to suspend transactions that would necessitate the redemption of shares of a fund relying on paragraph (a) of this rule.

The Committee believes that an extension of Rule 22e-3T to registered separate accounts, as described above, would be in the best interests of owners of variable annuity contracts that might be impacted by the Rule and would further the public policy goals of the Guarantee Program and the Rule. Consequently, the Committee maintains that such an extension of Rule 22e-3T is both necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and applicable provisions of the 1940 Act.

Conclusion

The Committee appreciates the opportunity to comment on Rule 22e-3T as it would apply to money market funds offering shares to registered insurance company separate accounts through which variable annuity contracts are issued and urges the Commission to consider carefully the Committee's proposal to extend the Rule's scope to cover such separate accounts and contracts. The Committee looks forward to assisting the Commission in this endeavor in any way possible.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY:


Stephen E. Roth

BY:


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⁶ Under the Guarantee Program, a money market fund could redeem its shares (and would discontinue relying on Rule 22e-3T) at the earliest of the time of its liquidation or the time it files a "guarantee cure event notice" with the Treasury Department.

APPENDIX A

Committee of Annuity Insurers

AEGON group of companies
Allstate Financial
AIG Life Insurance Companies
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, 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
Merrill Lynch Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
OM Financial Life Insurance Company
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
USAA Life Insurance Company