



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
INVESTMENT MANAGEMENT

September 28, 2018

**VIA ELECTRONIC MAIL**

RESPONSE OF CHIEF ACCOUNTANT'S OFFICE  
DIVISION OF INVESTMENT MANAGEMENT

Richard T. Choi  
Carlton Fields Jordan Burt, P.A.  
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Re: Midland National Life Insurance Company

By letter dated September 28, 2018, you request authority under Regulation S-X §3-13 ("Rule 3-13") for Midland National Life Insurance Company ("Company") to file audited financial statements of the Company prepared in accordance with statutory accounting principles<sup>1</sup> ("SAP"), in place of financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"), in registration statements submitted under the Securities Act of 1933 ("Securities Act") on Form S-1 for certain insurance contracts more particularly described below (the "Contracts"), in satisfaction of the requirements of Items 11(e), 11(f) and 11(g) and Item 16(b) of Form S-1, as described in your letter.

**Background**

**The Company**

You state that the Company is an Iowa-domiciled insurance company offering individual life and annuity products in 49 states and the District of Columbia. You state that the Company is an indirect wholly owned subsidiary of Sammons Enterprises, Inc., a privately held holding company for which the Company does not prepare GAAP financial statements or a GAAP reporting package.

You also state that the Company currently issues variable insurance products registered on Forms N-4 and N-6. You further state that, absent the relief requested herein, the Contracts would be the only registered security that the Company issues that would require it to prepare GAAP financial statements. In this regard, you note that those forms each contain instructions that permit the Company to file SAP financial statements if it would not have to prepare GAAP

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<sup>1</sup> You note that these principles are those that are prescribed or permitted by the Company's domiciliary state regulator.

financial statements except for use in registration statements for variable life and variable annuity contracts.

You also state that the Company is eligible for and will rely on relief provided by Rule 12h-7 under the Securities Exchange Act of 1934.<sup>2</sup> In this regard, you note that the Company is subject to supervision by the Iowa Insurance Division and that it files annual statements of financial condition with the Iowa Insurance Division, which periodically examines its financial condition.<sup>3</sup> In addition, you state that the Company files SAP financial statements, which are audited by an independent auditor,<sup>4</sup> with its domiciliary state regulator and the National Association of Insurance Commissioners.

### Contracts

You state that the Contracts are group funding agreements approved by the Iowa Insurance Division and regulated under Iowa insurance law. You state that offers investors a return based on the performance of a specified index such as the S&P 500 over a specified period, subject to caps on index performance gains and floors on index performance losses.

In addition, you state that the Contracts do not constitute equity interests in the issuer and are subject to regulation under the insurance laws of the State of Iowa. In addition, you state in this regard that the Contracts are not listed, traded or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network or any other similar system, network, or publication for trading or quoting.<sup>5</sup>

### Discussion

You note Rule 3-13 provides that the Commission “may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the

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<sup>2</sup> Rule 12h-7 exempts insurance companies from filing Exchange Act reports with respect to certain specified types of securities that are subject to state insurance regulation and are registered under the Exchange Act if certain other conditions are satisfied. 17 C.F.R. §240.12h-7 (2018).

<sup>3</sup> Rule 12h-7(a) and (c) specify that an issuer qualifying under that rule is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State (as defined in the Securities Exchange Act); and files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State (as defined in that Act). *Id.*

<sup>4</sup> You state that financial statements filed in registration statements for the Contracts will be audited by an auditor that will satisfy the independence standards in Regulation S-X, Article 2, and that the auditor will be registered with and subject to inspection by the Public Company Accounting Oversight Board.

<sup>5</sup> Rule 12h-7(b) specifies that the securities that would otherwise trigger Exchange Act reporting obligations must not constitute an equity interest in the issuer, and must either be securities subject to regulation under the insurance laws of the domiciliary State of the issuer or guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction. *Id.* Rule 12h-7(d) further requires that those securities must not be listed, traded, or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting. *Id.*

omission of one or more of the financial statements required by Regulation S-X or the filing in substitution therefore of appropriate statements of comparable character.” You assert that SAP financial statements audited by an independent auditor are appropriate statements of a comparable character for the Form S-1 registration statements for the Contracts.

In support of this claim, you assert that, because the obligations under the Contracts are backed by the Company’s general account, investors in the Contracts would be *most* interested in the type of information provided by statutory financial statements that will help enable them to evaluate the solvency of Midland.<sup>6</sup> In this regard, you state that SAP financial statements include statutory statements of admitted assets, liabilities and capital and surplus, and the related statutory statements of operations and changes in capital and surplus, and of cash flows. You assert that the principles used to develop these statements include conservative valuation procedures and that they facilitate an assessment by both investors and regulators of the availability of readily marketable assets to satisfy obligations when they are due.<sup>7</sup>

Based on the facts and representations set forth in your letter as summarized above, as well as the conditions outlined above, and without necessarily agreeing with all of your analysis, your request for permission under Rule 3-13 for the Company to file SAP financial statements, audited by an independent auditor, in lieu of GAAP financial statements in registration statements filed for the Contracts, as it relates to the accounting basis of those financial statements only and as described above, is granted.<sup>8 9</sup>

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<sup>6</sup> You note the Commission had recognized, in proposing variable annuity registration forms, that investors in those products may only be interested in the solvency of the account depositor with respect to the insurance benefits offered in those products by the depositor. Registration Form for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Securities Act Release No. 33-6502 and Investment Company Act Release No. 13689 (December 22, 1983).

<sup>7</sup> You also note that, while the use of GAAP assists investors in understanding an issuer’s going concern value, investors in the Contracts do not need information regarding the Company’s going concern value since there is no secondary market in the Contracts.

<sup>8</sup> The staff notes that it would be receptive to considering applications under Rule 3-13 from other registrants seeking to file SAP financial statements in lieu of GAAP financial statements in registration statements filed for products similar to the Contracts described here, under circumstances similar to those described above.

<sup>9</sup> Our analysis underlying this assurance has been developed in consultation with the staff of the Commission’s Office of the Chief Accountant.

If you have any questions regarding this letter, please call the Chief Accountant's Office of the Division of Investment Management at (202) 551-6918.

Sincerely,

A handwritten signature in black ink that reads "Alison Staloch". The signature is written in a cursive, flowing style.

Alison Staloch  
Chief Accountant  
Division of Investment Management

For the Commission, by the Division of Investment Management, pursuant to delegated authority.



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September 28, 2018

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Hartford  
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Orlando  
Tallahassee  
Tampa  
Washington, DC  
West Palm Beach

Alison Staloch, Chief Accountant  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: Midland National Life Insurance Company (“Midland”)  
Request Pursuant to Rule 3-13 of Regulation S-X**

Dear Ms. Staloch:

As discussed, Midland, through counsel, hereby respectfully requests permission to file audited financial statements prepared in accordance with statutory accounting principles prescribed or permitted by the Iowa Insurance Division (“statutory financials”), in lieu of financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP financials”), in satisfaction of the requirements of Items 11(e), 11(f), and 11(g) and Item 16(b) of SEC Form S-1 on which it will register its Collared Investment Option (“CIO”), as described below.

**RULE 3-13**

As you know, Rule 3-13 of Regulation S-X (“Rule 3-13”) provides that “[t]he Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character.”<sup>1</sup>

For the reasons discussed below, we respectfully submit that statutory financials are appropriate statements of comparable character, and that permitting Midland to file audited statutory financials in lieu of GAAP financials in connection with the registration of its CIO is consistent with the protection of investors, and will promote competition and investor choice.

**BACKGROUND**

1. **Midland.** Midland is a stock life insurance company domiciled in Iowa. As such, Midland is subject to the supervision of the Iowa Insurance Division, which periodically examines its financial condition and with whom it files an annual statement of its financial condition. Midland offers individual life and annuity products in 49 states and the District of Columbia. Midland prepares statutory financials that are audited annually by an independent auditor (*i.e.*, an auditor that satisfies the standards for independence set out in Rule 2-01(b) of

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<sup>1</sup> 17 C.F.R. §210.3-13.

Regulation S-X) that is registered with and subject to inspection by the Public Company Accounting Oversight Board (PCAOB) (“Independent Auditor”). Midland files its statutory financials with the Iowa Insurance Division and with the National Association of Insurance Commissioners (NAIC).

Although Midland historically has filed GAAP financials in connection with the registration of its variable annuity contracts and variable life insurance policies (collectively, “variable insurance products”) on Forms N-4 and N-6, respectively, those forms permit Midland to file statutory financials in lieu of GAAP financials and Midland intends to do so in the future.

2. **CIO.** The CIO is a group funding agreement approved by the Iowa Insurance Division and regulated under Iowa insurance law. The CIO does not represent an equity interest in Midland. The CIO offers investors a guaranteed return based on the performance of a specified index over a specified period or “cycle” (e.g., 1, 3, 5, and 7 years), subject to caps on index performance gains and floors on index performance losses. Each applicable index would be a mainstream index such as the S&P 500, MSCI EAFE, or Russell 2000. Investors in the CIO would be able to withdraw their investment prior to maturity of the cycle and would receive a “Cycle Interim Value” or “CIV,” which is based on an independent third party's fair market valuation of the underlying instruments supporting the Cycle, which may reflect changes in interest rates, changes in the index's implied volatility, changes in the index's level, and the time elapsed since the beginning of the investment. Midland contemplates offering the CIO as an investment option within a variable annuity or on a standalone basis.

## **BASIS FOR REQUEST**

We respectfully submit that the following provides a firm basis for Midland’s Rule 3-13 request for permission to file statutory financials.

1. **The use of statutory financials is consistent with the protection of investors.** The National Association of Insurance Commissioners (“NAIC”) has described the objective of statutory accounting principles as follows:

Statutory Accounting Principles are designed to assist state insurance departments in the regulation of the solvency of insurance companies. **The ultimate objective of solvency regulation is to ensure that policyholder, contract holder and other legal obligations are met when they come due** and that companies maintain capital and surplus at all times and in such forms as required by statute to provide a margin of safety. **With the objective of solvency regulation, SAP focuses on the balance sheet, rather than the income statement, and emphasizes insurers’ liquidity.**<sup>2</sup>

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<sup>2</sup> Statutory Accounting Principles (SAP), [www.naic.org/cipr\\_topics/topic\\_statutory\\_accounting\\_principles.htm](http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm) (emphasis added).

In addition, according to the NAIC, statutory accounting principles are developed in accordance with concepts of conservatism, recognition, and consistency, as follows:

- Conservatism:** Conservative valuation procedures provide protection to policyholders against adverse fluctuations in financial condition or operating results.
- Recognition:** The ability to meet policyholder obligations is predicated on the existence of readily marketable assets available when both obligations are due. Statutory accounting principles facilitate assessments by both regulators and investors of the availability of readily marketable assets to meet obligations when due.
- Consistency:** The regulators' need for meaningful, comparable financial information to determine an insurer's financial condition requires consistency in the development and application of statutory accounting principles.<sup>3</sup>

These statutory accounting principles serve the objective of solvency regulation discussed above.

Statutory financials, therefore, focus on what is arguably the chief investor protection consideration of a person investing in a state-regulated insurance contract, namely, the solvency of the insurer and its ability to meet its contractual obligations. Because the obligations under the CIO are backed by Midland's general account, CIO investors would be most interested in the type of information provided by statutory financials that will help enable them to evaluate the solvency of Midland. Statutory financials include statutory statements of admitted assets, liabilities and capital and surplus, and the related statutory statements of operations and changes in capital and surplus, and of cash flows. The statutory basis footnotes include an extensive discussion of the variances between statutory basis accounting and GAAP. Although GAAP financials provide investors with information on the going concern value of an issuer, CIO investors may not want or need that type of information<sup>4</sup> regarding Midland because there will be no secondary market for the CIO, as discussed below.

We respectfully note that the Commission currently permits life insurance companies to file statutory financials in lieu of GAAP financials in similar contexts that support the conclusion here that permitting the use of statutory financials is consistent with the protection of investors. For example, the Commission conditionally permits life insurance companies to file statutory financials in Forms N-3, N-4, and N-6, which are used to register variable insurance products.<sup>5</sup>

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<sup>3</sup> *Id.* (excerpts).

<sup>4</sup> The SEC reached a similar conclusion in the proposing release for variable annuity registration Forms N-3 and N-4, in which it noted, in the context of annuity payments that may be dependent on the solvency of the insurance company, that "contractowners, participants, and annuitants may not want or need disclosure about the investment performance of the insurance company, and instead may be interested *only* in the sponsor's solvency." Registration Forms for Insurance Company Separate Accounts That Offer Variable Annuity Contracts, Securities Act Release No. 6502 (Dec. 22, 1983) at 4.

<sup>5</sup> See Instruction 1 to Form N-3, Item 28(b), to Form N-4, Item 23(b), and to Form N-6, Item 24(b). The condition is that the life insurance company would not have to prepare financial statements in accordance with GAAP except for use in the registration statement or other registration statements filed on Forms N-3, N-4, or N-6, as applicable.

For another example, the Commission, through Rule 7-02(b) of Regulation S-X, permits mutual life insurance companies and wholly owned stock insurance company subsidiaries of mutual life insurance companies to file statutory financials. In both examples, the filing of statutory financials in lieu of GAAP financials is permitted, in effect, where the life insurance companies do not themselves issue equity securities to the public, which is the case here. Specifically, Midland is an indirect wholly owned subsidiary of Sammons Enterprises, Inc., a privately held holding company for which Midland does not prepare GAAP financials or GAAP reporting package, and the offering of the CIO does not relate to any equity security of Midland. In addition, in both examples the filing of statutory financials in lieu of GAAP financials is permitted in connection with the registration of state-regulated insurance contracts, which also is the case here, *i.e.*, the CIO.<sup>6</sup>

Accordingly, we respectfully submit that permitting Midland to file statutory financials in connection with the registration of the CIO will serve the purpose of protecting investors.

**3. Midland would not otherwise need to prepare GAAP financials.** Absent the relief requested herein, the CIO would be the only registered security that Midland issues that would require it to prepare GAAP financials. As noted above, Midland currently issues variable insurance products registered on Forms N-4 and N-6. Those forms each contain instructions that permit Midland to file statutory financials if it would not have to prepare GAAP financials except for use in “N” form registration statements. In the future, Midland intends to file statutory financials in lieu of GAAP financials in those registration statements.

**4. Midland will rely on Rule 12h-7 under the Exchange Act.** Midland will not be a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”) because the CIO will not be registered under Section 12 of the Exchange Act, and at no point will Midland become subject to the reporting requirements imposed by Section 15(d) of the Exchange Act because it will rely on the exemption from such requirements provided by Rule 12h-7 under the Exchange Act.

Midland is eligible to rely on Rule 12h-7 because, as noted above, (a) it is subject to the supervision of the Iowa Insurance Division, (b) the CIO does not constitute an equity interest in Midland and is subject to regulation under the insurance laws of Iowa, where Midland is domiciled, and (c) Midland files annual statements of financial condition with the Iowa Insurance Division, which periodically examines its financial condition. In addition, the CIO will not be listed, traded, or quoted on an exchange, alternative trading system (as defined in Rule 300(a) of Regulation ATS under the Exchange Act), inter-dealer quotation system (as defined in Rule 15c2-11(e)(2) under the Exchange Act), electronic communications network, or any other similar system, network, or publication for trading or quoting, and Midland will take steps reasonably designed to ensure that a trading market for the CIO does not develop. The prospectus for the CIO also will contain a statement indicating that Midland is relying on Rule 12h-7.

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<sup>6</sup> The statutory financials that Midland will file in its registration statement for the CIO will be audited by an Independent Auditor.



Rule 12h-7 reflects the Commission's broad policy judgment that Exchange Act reporting with respect to state-regulated insurance contracts does not enhance investor protection with respect to securities covered by the Rule.<sup>7</sup> The Commission explained that its policy judgment is strengthened where there is little, if any, market interest in the information required to be disclosed in Exchange Act reports.<sup>8</sup> In reaching its policy judgment, the Commission recognized the appropriateness of eliminating duplicative and burdensome regulation as follows:

**State insurance regulation, like Exchange Act reporting, relates to an entity's financial condition.** We are of the view that, in appropriate circumstances, **it may be unnecessary for both to apply in the same situation, which may result in duplicative regulation that is burdensome.** Through Exchange Act reporting, issuers periodically disclose their financial condition, which enables investors and the markets to independently evaluate an issuer's income, assets, and balance sheet. **State insurance regulation takes a different approach to the issue of financial condition, instead relying on state insurance regulators to supervise insurers' financial condition, with the goal that insurance companies be financially able to meet their contractual obligations.** We believe that it is consistent with our federal system of regulation, which has allocated the responsibility for oversight of insurers' solvency to state insurance regulators, to exempt insurers from Exchange Act reporting with respect to state-regulated insurance contracts.<sup>9</sup>

Rule 12h-7 gives effect to the Commission's policy judgment by exempting from that the Exchange Act's reporting requirements state-regulated insurance contracts like the CIO.

Moreover, the Commission expressly intended Rule 12h-7 to apply to indexed annuities, insurance contracts with market value adjustment features ("MVAs"), "insurance contracts that provide certain guaranteed benefits in connection with assets held in an investor's account, such as a mutual fund, brokerage, or investment advisory account," and "a guarantee of a security if the guaranteed security is subject to regulation under state insurance law," as well as to "types of contracts that are developed in the future and that are registered as securities under the Securities Act."<sup>10</sup> The foregoing Commission statements on the broad scope and future application of Rule 12h-7 support permitting Midland to file statutory financial statements in connection with the registration of the CIO.

In addition, Rule 12h-7 -- and Midland's ability to rely on it -- brings to bear Commission policy determinations that are not necessarily present in connection with the registration of other

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<sup>7</sup> See Indexed Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8996 (Jan. 8, 2009) at 70.

<sup>8</sup> *Id.* at 70-71.

<sup>9</sup> *Id.* at 70 (emphasis added).

<sup>10</sup> *Id.* at 74-76.

Ms. Alison Staloch  
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types of securities that are not state-regulated insurance contracts (or guarantees thereof) by issuers that are not state-regulated life insurance companies.

**5. Granting Midland's Request Will Promote Competition and Investor Choice**

Granting Midland's request will enable it to benefit from lower costs of auditing statutory financials, thereby enabling it to offer and sell the CIO. Midland believes that investors will find the CIO to be an attractive investment. Therefore, permitting insurers like Midland to file statutory financials in lieu of GAAP financials in the limited case of the filings for the CIO and other products should encourage competition in the marketplace and increasing investor choice.

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Thank you for considering Midland's request. Please contact me at the number above, or Brett Agnew, Associate General Counsel, at (515) 327-5890, if you have any questions regarding the above.

Very truly yours,



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Richard T. Choi

cc: Brett Agnew, Esq.  
Associate General Counsel  
Midland National Life Insurance Company