

March 23, 2012

VIA Electronic Mail

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

**Re: Release No. 34-66164; File Number 4-645
Comment Request for Study Regarding Financial
Literacy Among Investors**

Dear Ms. Murphy:

This letter is submitted on behalf of the Committee of Annuity Insurers¹ (the “Committee”), in response to *Comment Request for Study Regarding Financial Literacy Among Investors* (the “Request”).² The Request asks interested parties to submit comments to the U.S. Securities and Exchange Commission (the “Commission”) in connection with a study regarding financial literacy (“Study”) among investors. Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) requires the Commission to conduct the Study and submit a report on the Study to the Senate Committee on Banking, Housing and Urban Affairs and the House of Representatives Committee on Financial Services no later than July 21, 2012. The Committee appreciates the opportunity to comment on this important initiative.

The Request solicits comments on each of the components of Sections 917(a)(2)-(4) of the Dodd-Frank Act,³ which require that the Study identify:

- (i) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment

¹ The Committee of Annuity Insurers is a coalition of 31 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 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 The Request was published in Securities Exchange Act Release No. 34-66164, *Comment Request for Study Regarding Financial Literacy Among Investors* (Jan. 17, 2012), available at <http://www.sec.gov/rules/other/2012/34-66164.pdf>.

³ In April 2011, pursuant to Section 917(a)(5) of the Dodd-Frank Act, the Commission solicited public comment regarding the most effective existing private and public efforts to educate investors. See Securities Exchange Act Release No. 64306 (April 19, 2011) (76 FR 22740, April 22, 2011).

services;

- (ii) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of registered open-end investment companies (“mutual funds”); and
- (iii) methods to increase the transparency of expenses and conflicts of interest in transactions involving investment services and products, including shares of mutual funds.

In connection with these issues, the Committee offers the following comments.

1. BACKGROUND: CURRENT SEC-REGISTERED ANNUITY AND INTERMEDIARY DISCLOSURE REQUIREMENTS

As a threshold matter, it is very important for the Commission’s Study to recognize that annuity purchasers are an important category of “retail investors” that encounter certain special circumstances regarding appropriate disclosure. First, most variable annuities are offered through a two-tier structure, where the purchaser invests directly in an insurance company separate account. At this top tier, the annuity contract is a security registered under the Securities Act of 1933 (the “1933 Act”), and the separate account (usually composed of numerous sub-accounts) is registered as an investment company (a unit investment trust) under the Investment Company Act of 1940 (the “1940 Act”). The separate account in turn invests in shares of particular underlying mutual funds available in the contract (chosen at the direction of the purchaser), the bottom tier. These underlying mutual funds are registered as investment companies under the 1940 Act, and their shares are registered as securities under the 1933 Act. Commission interpretations and positions have resulted in variable annuity purchasers being treated, for disclosure (and certain other) purposes, as investors in the underlying mutual funds that they have chosen to invest in through their annuity contract.⁴ So the purchasers currently receive all of the disclosures mandated by the 1933 Act for the annuity contract and the disclosures mandated by the 1940 Act for the separate account. *In addition*, however, variable annuity purchasers also receive all of the disclosures mandated by the 1933 Act for the applicable underlying mutual funds *and* the disclosures mandated by the 1940 Act for those funds. This can be an enormous amount of disclosure, both at purchase and on an ongoing basis thereafter. In addition, investors in SEC-registered fixed annuities⁵ receive a prospectus based on disclosure requirements designed for

⁴ Nevertheless, it is clear that the insurance company is the owner of the underlying fund shares, and that the insurance company does not hold those shares in trust. Paragraph (a) of Rule 26a-2 under the 1940 Act recognizes that the insurance company is the owner of the fund shares, as required by state insurance laws, and that the shares are not held pursuant to a trust indenture or any such document. *See* SEC Release IC-13706 (Jan. 6, 1984), text at footnote 8 (proposing Rule 26a-2).

⁵ Certain types of annuities that are not variable annuities (such as certain fixed annuities with market value adjustments, and some indexed annuities) are registered as securities and also subject to multiple disclosure regimes.

completely different types of securities, containing significant amounts of information that is not relevant or material to annuity purchasers.⁶

Second, state insurance laws and regulations also mandate certain disclosures for annuity purchasers. In addition to the annuity contract itself (typically 20 or 30 pages), a “Buyer’s Guide” disclosure document may be mandated at purchase, and annual statements are required after purchase.

Third, annuity purchasers typically work with a financial adviser in connection with their purchase. In addition to the product disclosures noted above, financial advisers are required to deliver various disclosures depending on the types of services provided. These disclosures include account opening disclosures and notifications, transaction disclosures, and the Form ADV Brochure and Brochure Supplement.

The Study should recognize that the current disclosures received by a typical purchaser of an SEC-registered annuity are voluminous, cumbersome, and overly informative – they are full of information that is simply not meaningful or relevant to an investment decision, and are on a vastly different scale than the disclosures received by a typical retail investor who purchases stocks or shares of a mutual fund. American investors, including especially but not only annuity purchasers, generally receive a stack of paper in connection with their investment, due in part to various regulators’ desires to put their own stamp on required disclosures. The result is that while issuers and intermediaries comply with very significant (and burdensome) disclosure requirements, the disclosure materials are so voluminous, dense, and technical that most investors simply do not read them. This greatly impedes investors’ financial literacy regarding both products and intermediaries. The Study should recognize as a guiding principle that financial literacy would be advanced significantly if SEC and other required disclosures, taken together as a whole, were simple, clear, and short enough that they are actually read.

With that guiding principle in mind, the Committee respectfully submits the following specific recommendations.

2. THE COMMISSION SHOULD USE THIS OPPORTUNITY TO COMPREHENSIVELY CONSIDER THE MOST USEFUL INFORMATION A RETAIL ANNUITY INVESTOR REQUIRES

The Committee recommends that the Commission first assess what disclosures are currently provided to prospective purchasers and owners of SEC-registered annuities, by both the issuing insurance company and financial intermediaries, and whether annuity purchasers and owners find the current disclosures useful. The Committee believes that the Commission should re-examine and refocus the current disclosure framework into a simplified and unified system of relevant disclosures for annuity purchasers, with an important goal being to increase the likelihood that investors will read and learn from at least some of the material.

⁶ These disclosures are based on the Form S-1 or Form S-3 registration statements, which are generally designed for stocks or bonds and are ill-suited for annuities.

The Committee is of the view that a comprehensive assessment of each disclosure document that annuity purchasers receive is advisable in connection with any effort to improve the timing, content, and format of disclosures to annuity purchasers.

For instance, Committee members question the value of sending to each existing variable annuity owner in paper (or electronic) format the annual and semi-annual reports for each underlying mutual fund in which the contract owner indirectly invests. While the annual and semi-annual reports for the funds must be posted on the fund's website if the fund delivers a summary fund prospectus as permitted by Rule 498, such website posting does not constitute delivery of such reports. Rather, funds and insurers are required to deliver the fund reports in paper format (unless the contract owner has satisfied the cumbersome consent requirements for electronic delivery, as discussed below). As part of this Study, the Committee recommends that the Commission assess whether the annual and semi-reports of the funds are understandable and relevant to the average variable annuity investor, and if not, then the content and format of such reports should either be revamped or the Commission should rescind the requirement to send such reports altogether, and a fresh perspective applied in order to determine what disclosures variable annuity investors need to make informed financial decisions.⁷

3. THE COMMISSION SHOULD EMBRACE ELECTRONIC DELIVERY OF DISCLOSURE

The Committee recommends that the Commission modernize its electronic disclosure framework by taking into consideration technological and societal developments over the last two decades. In particular, the Committee recommends that the Commission allow required disclosures to be transmitted electronically (by both issuers and intermediaries) without the need for affirmative client consent, while continuing to allow investors to opt-in to paper delivery of disclosure documents.

The Committee notes that current Commission guidance governing the electronic delivery of documents was developed during the mid-1990s when use of the Internet for information delivery was still in its infancy.⁸ In most relevant part, the guidance requires as a practical matter that firms obtain an investor's affirmative consent to electronic delivery in advance.⁹ This affirmative consent requirement is unnecessarily burdensome given the current widespread use of the Internet, and has the unintended consequence in many circumstances of precluding the use of electronic delivery on a widespread and effective basis.

Since the Commission last issued general guidance focused on electronic delivery in 2000, the Internet has become the dominant provider of information and investors have embraced its "24/7" availability. The Investment Company Institute found that nearly 90% of U.S. households owning mutual funds had Internet access, and that of this group, 91% used the Internet to obtain access to e-

⁷ The Commission should also assess whether delivery of a complete new statutory prospectus to variable annuity owners every year is at all useful or helpful to the annuity contract owner (see section 4 below)..

⁸ See Securities Act Release No. 7856 (Apr. 28, 2000) (the "2000 Release"); Securities Act Release No. 7288 (May 9, 1996) (the "1996 Release"); Securities Act Release No. 7233 (Oct. 6, 1995) (the "1995 Release").

⁹ See 1995 Release, *supra* note 7; 1996 Release, *supra* note 7; 2000 Release, *supra* note 7.

mail and 82% used the Internet for financial purposes.¹⁰ Overall, eight in ten mutual fund owning households with Internet access used the Internet daily.¹¹ It should also be noted that older generations are making notable gains in online activity, and that a 2010 Pew Research Center publication states that “older cohorts *are more likely than Millennials* [ages 18 – 33] to engage in several online activities, including visiting government websites and getting financial information online.”¹²

The Committee believes that modernizing the Commission’s electronic disclosure framework to embrace electronic delivery of documents by both issuers and intermediaries will make disclosures more accessible to retail investors and more likely to be read and utilized. This increased accessibility will result in more seamless delivery of the information that retail investors (including investors in SEC-registered annuities) need to make informed financial decisions (about both products and financial intermediaries), and will generally increase transparency in the context of transactions involving investment services and products. This would certainly contribute to the financial literacy of American retail investors far more than the current disclosure regime.

4. THE COMMISSION SHOULD PERMIT LAYERED DISCLOSURE

The Committee believes that the Commission should embrace the use of layered disclosure for variable annuities (and other retail products including other SEC-registered annuities), as it has done for mutual funds. Such a platform would use an integrated system of summary documents delivered in paper and/or electronic format that are linked to more comprehensive web-based documents in order to give annuity investors continuous access to a range of user-friendly disclosures. It should begin with delivery of a brief “summary offering prospectus” that would describe the essential elements of the annuity. The summary offering prospectus would inform the investor that more detailed information can be found on a website and give the website address as well as a phone number to call to obtain paper copies of the documents. On the website, the insurer would post the summary offering prospectus, the statutory prospectus and the statement of additional information, using user-friendly links to allow investors to navigate among the documents and to find the information they seek. Layered disclosure would enable annuity purchasers to obtain answers to questions they have about their investment through access to ever-more detailed web-based disclosure documents.

With respect to variable annuities in particular, layered disclosure would benefit variable annuity investors both because of its simplicity and its comprehensiveness. The summary disclosures would communicate the most important information in a format that annuity investors would be more likely to read and understand, while the layered disclosure platform would give the investors continuous and instantaneous access to a broader wealth of information. Layered variable annuity disclosure could dramatically improve the timing, content, and format of disclosures to annuity investors, resulting in the dissemination of more useful and understandable relevant information to

¹⁰ INVESTMENT COMPANY INSTITUTE, 2011 INVESTMENT COMPANY FACT BOOK: A REVIEW OF TRENDS AND ACTIVITY IN THE INVESTMENT COMPANY INDUSTRY at 92-93 (51st ed. 2011), *available at* http://www.ici.org/pdf/2011_factbook.pdf.

¹¹ *Id.*

¹² “Generations Online in 2010,” at <http://pewresearch.org/pubs/1831/generations-online-2010> (emphasis added).

investors.

In addition to a summary offering prospectus, the Committee urges the Commission to permit the use of a “summary update prospectus” for variable annuities. Currently, every year each variable annuity owner receives a full statutory prospectus that includes a comprehensive description of the annuity contract and its many features. While insurers update the statutory prospectus each year, the annuity contract owner is not told what is new or updated, so the new or updated information is effectively obscured by repetitive disclosure. However, a summary update prospectus would provide the contract owner with a short, clear roadmap to what is new or updated in the statutory prospectus that has been posted on the website. The summary update prospectus would also be posted on a website and linked to the statutory prospectus. The summary update prospectus would be supplemented by fully complete information available on the Internet (or upon request, in paper).¹³

Although to date layered disclosure has been applied and discussed primarily in the context of issuer disclosure about products (mutual funds and variable annuities), it can and should also be applied to financial intermediary disclosure. Retail investors are likely to prefer and find more useful, shorter and more targeted financial intermediary disclosures with an opportunity for investors to obtain additional information through the financial intermediaries’ website or to request such information via written disclosure.

Layered disclosure, including its electronic delivery component, will result in disclosures that are significantly more likely to be read and utilized by investors than the current “one size fits all” disclosure regime, and this alone should make a significant contribution to Americans’ financial literacy regarding investment products and services typically sold to retail investors.

5. THE COMMISSION SHOULD TAKE INTO ACCOUNT OTHER DISCLOSURE REQUIREMENTS

State insurance regulations require that certain disclosures regarding annuities, including SEC-registered annuities, be provided to contract purchasers. These insurance-mandated disclosures overlap significantly with SEC-mandated disclosures. In addition, certain FINRA and Department of Labor requirements effectively require additional written or oral disclosures, particularly regarding financial intermediaries. The Committee urges the Commission to take such requirements into account and coordinate among these regulators when determining the relevant disclosure requirements for SEC-registered annuities.

The array of current disclosure requirements results in disclosures that, especially when taken together as a whole, are extremely complicated and intimidating and, unfortunately, ignored as just so much regulatory boilerplate. Clearly the current disclosure system is not working. The Committee recommends that the Commission permit (but not require) annuity issuers and distributors to integrate state-required information (such as information required by state insurance laws and regulations with

¹³ The Committee has been in discussions with the staff of the Division of Investment Management about such a layered disclosure framework for variable annuities.

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respect to insurance products), and FINRA required disclosures, into Commission-required disclosure. As noted above, the Committee believes that annuity purchasers already receive too many disclosure documents that lack meaning and are not easily understandable. Allowing annuity issuers and distributors to integrate other required information into Commission-required disclosure would result in the presentation to investors of more meaningful disclosures that annuity purchasers would be more likely to read and understand.

* * * * *

Disclosure documents that fulfill detailed regulatory requirements but that are ignored by most retail investors contribute nothing to financial literacy, and indeed detract from it. The suggestions made above will result in disclosures that actually are likely to be read and utilized by retail investors and therefore should contribute significantly to their financial literacy regarding investment products, services, and intermediaries.

The Committee appreciates the opportunity to provide comments in response to the Request. We would be happy to meet with you in order to provide more specific input on the comments offered in this letter and answer any questions that the staff may have regarding our comments. Please contact Stephen E. Roth (202.383.0158), Clifford Kirsch (212.389.5052) or Fred Bellamy (202.383.0126) if you have any questions regarding the comments provided in this letter.

Sincerely,

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**FOR THE COMMITTEE OF ANNUITY
INSURERS**

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance 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 (USA)
Life Insurance Company of the Southwest
Lincoln Financial Group
Massachusetts Mutual 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
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 Transamerica companies
TIAA-CREF
USAA Life Insurance Company