



Roberta Meyer
Vice President & Associate General Counsel

May 7, 2012

Via Electronic Filing

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: Release No. IC-29969; File No. S7-02-12; "Identity Theft Red Flags Rules"
Regulation S-ID: Identity Theft Red Flags

Ladies and Gentlemen:

The American Council of Life Insurers ("ACLI") is pleased to submit comments to the Securities and Exchange Commission (the "Commission") on its proposed identity theft red flags rules.¹ ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the United States.

ACLI member companies have long recognized the importance of protecting the confidentiality and security of their customers' personal information. They have strongly supported the confidentiality and security provisions of the Gramm-Leach-Bliley Act, and work hard to protect the confidentiality as well as the security of their customers' personal information.

ACLI is pleased to have the opportunity to comment on the Commission's proposed identity theft red flags rules. Many ACLI member companies sell variable life insurance policies and variable annuities, and may obtain investment advice from registered investment advisers for their separate accounts, to which funds are allocated to provide for life insurance and annuities, payable in fixed or variable amounts, or otherwise receive investment advice directly from investment advisers.

In the preamble to its proposed identity theft red flags rules, the Commission indicates that it "recognizes that most registered investment advisers are unlikely to hold transaction accounts and thus would not qualify as financial institutions."² ACLI agrees, and submits that investment advisers that provide investment advice to a separate account of a life insurance company or directly to a life insurance company, like the majority of other registered investment advisers, are particularly unlikely to qualify as "financial institutions"³ under the proposed rule. Under these circumstances, a registered

¹77 Fed. Reg. 13450 (March 6, 2012)

²77 Fed. Reg. at 13453

³Under the proposed rule, "financial institution" is defined as having the same meaning as in 15 U.S.C.1681a(t) which provides that "[t]he term 'financial institution' means a State or National bank, a State or Federal savings and loan

investment adviser does not provide investment advice to a consumer, and is very unlikely to either directly or indirectly hold a “transaction account.”⁴

Life insurers allocate funds to separate accounts to provide for life insurance and annuities (and incidental benefits), payable in fixed or variable amounts, or both. Separate accounts are investment companies established under the Investment Company Act of 1940. Section 2(a)(37) of the Investment Company Act of 1940 defines a “separate account” as “an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.”⁵

Life insurance company separate accounts are not “transaction accounts” as defined in section 19(b) of the Federal Reserve Act because life insurers’ separate account products typically do not permit owners of such products “... to make withdrawals [from the separate account] by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third parties or others.”⁶ The general assets of a life insurer also are not “transaction accounts.” Accordingly, an investment adviser that advises a life insurance company separate account or provides investment advice directly to a life insurer would not be a “financial institution” under the Commission’s proposed identity theft red flags rules.

Along the same lines, ACLI submits that life insurance company separate accounts also are very unlikely to be “covered accounts,” under the definition of that term in section 248.201(b)(3) of the proposed rules.⁷ A separate account product typically is not an “account offered or maintained primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a brokerage account with a broker-dealer or an account maintained by a mutual fund ... that permits wire transfers or other payments to third parties ...”⁸ Nor are life insurance company separate account products otherwise likely to be accounts “for which there is a reasonably foreseeable risk to customers or to the safety and soundness of ...”⁹ the insurer from identity theft. Accordingly, such life insurance company separate accounts should not be “covered accounts.”

association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 461(b) of Title 12) belonging to a consumer.”

⁴ 12 U.S.C. 461(b)(1)(C) defines the term “transaction account” to mean “... a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others...”

⁵ 15 U.S.C. 80a-2(a)(37)

⁶ 12 U.S.C. 461(b)(1)(C)

⁷ 77 Fed. Reg. at 13475 “Covered account” is defined to mean “(i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a brokerage account with a broker-dealer or an account maintained by a mutual fund ... that permits wire transfers or other payments to third parties; and (ii) any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.”

⁸ 77 Fed. Reg. at 13475

⁹ 77 Fed. Reg. at 13475

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ACLI appreciates and thanks the Commission for the opportunity to comment on its proposed identity theft red flags rules and would be pleased to discuss its comments with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Roberta B. Meyer". The signature is written in a cursive style with a large initial "R" and "M".

Roberta B. Meyer