ACLI
Financial Security for Life

May 8, 2023

Via E-Mail
Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Safeguarding Advisory Client Assets, File No. S7-04-23, Release No. IA–6240

Dear Ms. Countryman:

On behalf of our members, the American Council of Life Insurers (ACLI) submits these comments regarding the Securities and Exchange Commission's (SEC or Commission) proposed new Rule 223-1 (the "Proposed Rule"), "Safeguarding Advisory Client Assets," under the Investment Advisers Act of 1940, as amended.[1] Thank you for the opportunity to present these comments for your consideration.

ACLI's member companies are issuers of registered variable annuity contracts ("VA Contracts"), registered index-linked annuities ("RILAs") and fixed annuities ("Fixed Contracts," and together with VA Contracts and RILAs, "Contracts") with underlying funds managed or advised by registered investment advisers ("Program Advisers") that recommend or purchase Contracts and/or provide advice to Contract owners through asset allocation or other investment advisory programs (collectively, "Programs"). As such, ACLI members share the concerns expressed by the Committee of Annuity Insurers (CAI) in its letter dated May 8, 2023 ("CAI Letter").

For many years, ACLI members have relied on the 2005 no-action relief granted by the SEC staff to American Skandia Life Assurance Corporation (the "American Skandia Letter").[2] ACLI respectfully requests the SEC explicitly confirm that the approach under the current custody rule[3] with respect to VA Contracts as reflected in the American Skandia Letter is preserved, and further, that the SEC recognize developments in the insurance industry since the American Skandia Letter was issued by expanding its scope to cover other common circumstances under which a Program Adviser has

[1] Safeguarding Advisory Client Assets, Release No. IA-6240 (Feb. 15, 2023), 88 Fed. Reg. 14672 (Mar. 9, 2023). The SEC's release on the proposed rulemaking is posted at https://www.govinfo.gov/content/pkg/FR-2023-03-09/pdf/2023-03681.pdf ("Proposing Release").

[2] *See* American Skandia Life Assurance Corp., SEC No-Action Letter (May 16, 2005), available at https://www.sec.gov/divisions/investment/noaction/asl051605.htm.

[3] *See* Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended.

custody, as well as to Programs involving non-VA insurance products, such as Fixed Contracts, RILAs, and fixed-indexed contracts, among others. In the alternative, ACLI requests the SEC codify the American Skandia Letter guidance by adding an explicit exception to the Proposed Rule that allows Program Advisers to use an issuing insurance company in lieu of a qualified custodian in connection with Contracts, as detailed in the CAI Letter.

In addition, ACLI would like to express our support for retaining the no-action relief granted by the SEC to CIGNA Capital Advisers, Inc. ("CIGNA Letter"),[4] which provides relief from certain obligations under Rules 206(4)-2 and 204-3 for investment advisers providing advice to certain affiliated clients. It is not unusual for insurers to use affiliate investment advisers to manage assets of the insurers' general account. For the reasons expressed in the original CIGNA Letter, we believe the reasoning behind the relief granted in the CIGNA Letter should continue to apply, regardless of any changes made as a result of the Proposed Rule. As you know, insurers have sophisticated and robust enterprise risk management programs, including asset-liability matching, which should be recognized in any rule adopted by the SEC.

ACLI appreciates the opportunity to comment on this Proposed Rule and would be happy to answer any questions the Commission may have.

Sincerely,

Jennifer M. McAdam
Associate General Counsel

[4] Letter from Stephanie M. Monaco, SEC, Office of Chief Counsel, Division of Investment Management, to CIGNA Capital Advisers, Inc. (Aug. 30, 1985), Ref. No. 85-389-CC, File No. 801-18094, wherein the SEC recommended not taking "enforcement action against CIGNA Capital Advisers, Inc. ("CCAI"), a wholly-owned subsidiary of CIGNA Corporation ("CIGNA"), if CCAI does not comply with Rule 206(4)-2 or Rule 204-3 under the Investment Advisers Act of 1940 for its clients that are wholly-owned subsidiaries of CIGNA."