MEMORANDUM

TO: File

FROM: Angie Kim
Division of Corporation Finance

RE: Meeting with representatives of the life and annuity insurance industry

DATE: November 22, 2017

On August 30, 2017, Commission staff met with representatives of the life and annuity insurance industry to discuss the Business and Financial Disclosure Required by Regulation S-K concept release.

The following Commission staff participated: Barry Miller, William Kotapish, Keith Carpenter, Harry Eisenstein, Brian Johnson, Matt DeLesDernier, Jennifer McHugh, Ryan Moore and Alison Staloch of the Division of Investment Management and Robert Evans, Karen Garnett, Kyle Moffatt, Suzanne Hayes, Jim Rosenberg, and Lindsay McCord of the Division of Corporation Finance.

The following representatives of the life and annuity insurance industry participated: Stephen Roth, Stewart Gregg, Carl Wilkerson, Dodie Kent, Sarah Patterson, Ryan Logsdon, Kara Roe, Jason Berkowitz, Lee Covington, John Deitelbaum, James Rodolakis, Judy Bartlett, Charles Whites, and Jacqueline Veneziani.

The attached materials were circulated during and as a follow-up to the meeting.

ACLI

THE Committee OF Annuity Insurers
www.annuity-insurers.org

IRI
Insured Retirement Institute

NON-VARIABLE INSURANCE PRODUCTS

MEETING WITH THE STAFF OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

August 30, 2017

Meeting Attendees

AMERICAN COUNCIL OF LIFE INSURERS (ACLI)
Carl Wilkerson, Vice President & Chief Counsel
Securities & Litigation

THE COMMITTEE OF ANNUITY INSURERS (CAI)
Stephen Roth, Partner, EVERSHEDS SUTHERLAND (US) LLP
Dodie Kent, Partner, EVERSHEDS SUTHERLAND (US) LLP

INSURED RETIREMENT INSTITUTE (IRI)
Lee Covington, Senior Vice President & General Counsel
Jason Berkowitz, Vice President and Counsel, Regulatory Affairs

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA
Stewart Gregg, Second Vice President & Senior Securities Counsel

GLOBAL ATLANTIC FINANCIAL COMPANY
Sarah M. Patterson, Senior Vice President, Associate General Counsel

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY
Ryan Logsdon, Associate General Counsel, Products & Corporate
Kara Roe, Controller

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
John Deitelbaum, Senior Vice President & Deputy General Counsel
James Rodolakis, Vice President & Senior Counsel

NEW YORK LIFE INSURANCE COMPANY
Judy Bartlett, Vice President & Associate General Counsel
Charles Whites, vice President & Associate General Counsel

SYMETRA LIFE INSURANCE COMPANY
Jacqueline Veneziani, Senior Vice President & Deputy General Counsel

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Overview of Topics

I. The retirement crisis and the need for guaranteed lifetime income solutions

II. SEC disclosure reform priorities

III. Relief sought from current disclosure requirements

IV. Company perspectives on disclosure effectiveness and burdens

V. Further discussion of requested relief

VI. Possible avenues for obtaining relief

I. THE NEED FOR GUARANTEED LIFETIME INCOME SOLUTIONS

Accumulation for Retirement and Guaranteed Lifetime Income Solutions

- Investors are not saving enough for retirement and lack sufficient longevity protection

- To meet investor needs, insurance companies have focused on diversifying their mix of investment products offering guaranteed lifetime income solutions

- Diversification means:
  - Investors are able to choose from a wider range of products with different risk/return characteristics (e.g., MVA annuities and index-linked annuities); and
  - Insurers are able to spread risks across various products that react differently in different market conditions.

Traditional Insurance Products

- Exempt from regulation under the federal securities laws

Registered Non-variable Products

- Registered under the 1933 Act

Variable Insurance Products

- Investment company securities regulated under the 1933 and 1940 Acts

II. SEC DISCLOSURE EFFECTIVENESS PRIORITIES

Regulation S-K Concept Release

- “[H]igh levels of immaterial disclosure can obscure important information or reduce incentives for certain market participants to trade or create markets for securities.

- “The benefits associated with disclosing certain items of information may be greater in some cases than in others, such as when an item of disclosure reflects an important part of one registrant’s operations but an immaterial part of another’s. In this context, it may be important to consider various approaches to trigger disclosure where it is more likely to be important, rather than in all cases. It may also be useful to have disclosure requirements, or guidance in fulfilling these requirements, that are specific to certain industries or other subsets of registrants.”

- “In the S-K Study, the staff recommended consideration of the criteria used to determine eligibility for potential further scaling of disclosure requirements and, in particular, whether it would be appropriate to scale for companies other than EGCs.”

Business and Financial Disclosure Required by Regulation S-K, Release Nos. 33-10064; 34-77599 (Apr. 13, 2016)

Chairman Clayton

- “How does the SEC assess whether we are being true to our three-part mission? The answer: the long-term interests of the Main Street investor. Or, as I say when I walk the halls of the agency, how does what we propose to do affect the long-term interests of Mr. and Ms. 401(k)? Are these investors benefitting from our efforts? Do they have appropriate investment opportunities? Are they well informed? Speaking more granularly: what can the Commission do to cultivate markets where Mr. and Ms. 401(k) are able to invest in a better future?”

- “The Commission . . . should continue to strive to ensure that investors have access to a well-crafted package of information that facilitates informed decision-making.”

- “There are circumstances in which the Commission’s reporting rules may require . . . disclosures that are burdensome to generate, but may not be material to the total mix of information available to investors. Under Rule 3-13 of Regulation S-X, issuers can request modifications to their financial reporting requirements in these situations. I want to encourage companies to consider whether such modifications may be helpful in connection with their capital raising activities and assure you that SEC staff is placing a high priority on responding with timely guidance.”

SEC Chairman Jay Clayton, Remarks at the Economic Club of New York (July 12, 2017)

Office of the Investor Advocate

"An S-1 or 10-K can be hundreds of pages long, and the length and complexity of the disclosures has led many to question whether the disclosure requirements are properly calibrated to effectively communicate all material information to investors while eliminating immaterial, outdated, or duplicative data that may dilute the impact of the more meaningful disclosures."

Office of the Investor Advocate, Report on Objectives (2017)

III. RELIEF SOUGHT FROM CURRENT DISCLOSURE AND FINANCIAL STATEMENT REQUIREMENTS

Relief Sought

- Specific relief from extensive company-related disclosure requirements in Regulation S-K/Form S-1 for general securities offerings
  - Extensive company financial information and analysis
  - Management information

- Maintain Rule 7-02(b) GAAP relief and extend GAAP relief to stock insurance companies that do not otherwise prepare GAAP financial statements for SEC filings

- Exemption from quarterly/interim financial statement requirements

- Include limited financial statement information in prospectus and provide full financial statements in Part II available upon request

IV. COMPANY PERSPECTIVES ON DISCLOSURE EFFECTIVENESS AND BURDENS

Company Perspectives and Experiences

- Allianz Life Insurance Company of North America
- Global Atlantic Financial Company
- Great-West Life & Annuity Insurance Company
- Massachusetts Mutual Life Insurance Company
- New York Life Insurance Company
- Symetra Life Insurance Company

V. DISCUSSION: SPECIFIC RELIEF FROM BURDENSOME DISCLOSURE AND FINANCIAL STATEMENT REQUIREMENTS THAT ARE IMMATERIAL TO STATE-REGULATED INSURANCE CONTRACT PURCHASERS

Relief from Certain Items Required by Regulation S-K/Form S-1 for General Securities Offerings

- Life insurance companies are subject to extensive state regulation, ensuring their ability to meet obligations to contract owners
  - Solvency regulation
  - Product standards and approvals
  - Reserving requirements
  - Other protections and processes

- Knowledgeable insurance professionals at the state level regularly assess whether insurance companies can meet their contractual obligations

- The disclosure required by certain S-K items obscures information that *is* important to investors

- Insurers are deterred from offering registered non-variable products because of the costs associated with preparing these S-K disclosures, leading to anticompetitive effects and limiting investors' retirement income choices

Items Required by Regulation S-K/Form S-1

- Management and Security Holder Information
  - Item 401: (professional information about executives);
  - Item 402: (executive compensation);
  - Item 403: (security holdings of executives and large scale owners);
  - Item 404: (executive transactions); and
  - Item 407: (corporate governance procedures and information about directors).

- Company Financial Information and Analysis
  - Item 101(b): (financial information about segments);
  - Item 301: Selected Financial Information (net sales, income, assets);
  - Item 302: Supplementary Financial Information (additional financial data for certain filers);
  - Item 303: MD&A (liquidity; capital resources; results of operations; off-balance sheet arrangements; contractual obligations); and
  - Item 305: Quantitative and Qualitative Disclosures About Market Risk.

These items do not provide state-regulated insurance contract investors with information that is material to their investment decision given the "total mix" of information and overall regulatory framework**.**

Rule 12h-7

- Rule 12h-7 under the 1934 Act generally exempts insurance companies offering state-regulated insurance products registered under the 1933 Act from the 1934 Act periodic reporting requirements

- In adopting Rule 12h-7, the SEC recognized relief from its generally applicable disclosure requirements is appropriate for regulated insurance products

Now is the time to provide similar relief from the 1933 Act disclosure framework applicable to general securities offerings so that the state-regulated insurance companies, as well as the investors purchasing registered products, are not burdened by prospectuses stuffed with unnecessary, immaterial and irrelevant company-related information.

The Commission's Rule 12h-7 Analysis

- "[I]nvestors who purchase these securities are **primarily affected by issues relating to the insurer's financial ability to satisfy its contractual obligations – issues that are addressed by state law and regulation**."
- "State insurance regulation, like Exchange Act reporting, relates to an entity's financial condition. We are of the view that, as a general matter, it may be unnecessary for both to apply in the same situation, which may result in **duplicative regulation that is burdensome . . .** Our **conclusion** in this regard is strengthened by the general absence of trading interest in insurance contracts."
- "A key basis for the exemption is that **investors are already entitled to the financial condition protections of state law** and that, under **our federal system of regulation**, Exchange Act reporting **may be unnecessary**."
- "Furthermore, we believe that rule 12h-7 will not impose any burden on competition. Rather, **we believe that the rule will enhance competition among insurance products and between insurance products and other financial products because the exemption may encourage insurers to innovate and introduce a range of new insurance contracts that are securities, since the exemption will reduce the regulatory costs associated with doing so.** We also anticipate that the innovations in product development could **promote capital formation** by providing new investment opportunities for investors."

Indexed Annuities and Certain Other Insurance Contracts, Release Nos. 33-8976; 34-58769 (Oct. 10, 2008);
Indexed Annuities and Certain Other Insurance Contracts, Release Nos. 33-8996; 34-59221 (Jan. 8, 2009)

Relief from GAAP Financial Statement Requirements

- The GAAP relief provided by Rule 7-02(b) of Reg S-X for mutual life insurance companies and their subsidiaries should be preserved

- But all life insurance companies that do not otherwise have to prepare GAAP financial statements for SEC filings should be permitted to use statutory (SAP) financial statements

- GAAP financial statements provide no material information to purchasers of regulated insurance products beyond what SAP financials provide; SAP accounting principles focus on what is material – the ability of the insurer to meet its contractual obligations

- By conditioning 1934 Act relief on filing financial statements with state insurance regulators, Rule 12h-7 already recognizes the appropriateness of SAP financial statements

Allowing stock insurance companies to use SAP financials is consistent with the relief the SEC has already provided for mutual insurance companies and variable contract issuers, and eliminates a major obstacle facing non-GAAP insurers who want to offer registered products.

Quarterly/Interim Financial Statements

- Currently, issuers of non-variable insurance products registered on Forms S-1 or S-3 must include or incorporate quarterly financial statements for off-cycle 1933 Act filings and in 1934 Act reports

- Quarterly financial information does not provide meaningful information to purchasers of regulated insurance contracts and is not required for other insurance contract offerings

- The life insurance business is a long-term business and is managed accordingly
  - It does not experience short-term changes that would make quarterly/interim financials meaningful in this context
  - State solvency regulation and reserving requirements make such information unnecessary

Requiring interim financial statements is burdensome, limits the introduction of new products and/or enhancements to existing products, and such information is not material to these investors.

Financial Statements Required in Prospectus

- Issuers of registered, non-variable contracts should be permitted to:
  - Include only limited financial statement information in the prospectus - e.g., comparative balance sheets;
  - Include full financial statements in Part II of the registration statement

- Full financials will always be available to contract owners on request, free of charge

This is consistent with the SEC's emphasis on providing investors with the most important information and making other information available upon request. And it is consistent with the rigorous state monitoring of insurance company solvency and financial condition.

VI. DISCUSSION OF AVENUES FOR OBTAINING RELIEF

August 30, 2017

CHAIRMAN CLAYTON LETTER

EVERSHEDS SUTHERLAND

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July 11, 2017

The Honorable Walter J. Clayton III
Chairman
Securities and Exchange Commission
100 F St, N.E.
Washington, DC 20549

Dear Chairman Clayton:

On behalf of the Committee of Annuity Insurers (the "Committee"), we welcome you to your important new leadership role as Chairman of the U.S. Securities and Exchange Commission.

The Commission is a primary regulator governing the offering of many of the annuity contracts that our member companies issue to investors and retirement savers across the country. As we describe in more detail below, the annuities that our member companies develop and offer to investors play a prominent and unique role in assisting the public in saving for retirement and, most importantly, not outliving their assets. Because there is a compelling public interest both in facilitating the availability of these retirement solution products and in ensuring that investors receive effective disclosure and recommendations that are in their best interest, we would like to take this opportunity to set forth certain important policy and regulatory goals affecting the offering of these products. We urge you to accord these goals a high priority as you begin your tenure at the Commission and the process of setting the Commission's regulatory agenda.

The Committee

The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. The Committee's current 29 member companies represent over 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A. For over 35 years, the Committee has been actively involved in shaping and commenting upon many elements of the SEC regulatory framework as it applies to annuity products registered with the SEC under the Securities Act of 1933 (the "1933 Act") and, with respect to variable annuities, which are also regulated under the Investment Company Act of 1940 (the "'1940 Act").

The Importance of Annuities and Lifetime Income Guarantees

Annuities play a crucial role in the private retirement system and are vital to the retirement security of millions of Americans. Other than Social Security and defined benefit plans, annuities are the only investment products that offer Americans lifetime income benefits that guarantee they will not outlive their retirement income. That protection alone makes them vital components of an individual's retirement security. In addition, however, annuity contracts can also protect against other significant risks to which individuals are exposed in retirement, including inflation risk, investment risk, interest rate risk, and liquidity risk, thereby allowing middle class individuals to acquire, in a single integrated holding, insurance against a number of different risks to their investment and retirement security.

The U.S. annuity market is very substantial. Total assets held in reserves for all types of annuities (including individual, group, fixed and variable) has grown steadily in recent years, with an estimated $3.3 trillion held in reserves as of the end of 2015. However, today's annuity industry is unrecognizable from the one that only offered traditional fixed annuities at the time the federal securities laws were originally enacted. It now offers a wide spectrum of fixed, fixed indexed and variable annuities in the retail and retirement markets, and it continually innovates, in response to market conditions and investor preferences, in order to offer retail investors a wide spectrum of annuities that provide attractive investment choices, up-to-date contract feature functionality and cutting edge lifetime income guarantees.

Variable annuities have evolved considerably since they were first determined by the U.S. Supreme Court in 1959 to be securities subject to the 1933 and 1940 Acts. Today, they typically offer a wide array of investment styles and managers to choose from, provide a range of death benefit guarantees, and provide innovative guaranteed lifetime income options that afford customers the flexibility to take specified periodic withdrawals from their contracts for life without the sacrifice of liquidity associated with traditional annuity payout options. Our member companies also offer an array of annuity products registered with the Commission under the 1933 Act that are not variable annuities subject to the 1940 Act but offer more upside potential than traditional fixed annuities and different types of downside protection. These products include market value adjusted fixed annuities, index-linked annuities, and contingent deferred annuities. For your reference, Appendix B briefly outlines the different types of SEC-registered annuity products, including both variable and non-variable products.

Key Policy and Regulatory Goals

1. Improving Disclosure Effectiveness for Registered Annuity Products

We ask that the Commission accord the highest priority to advancing a more rational and accommodating SEC disclosure framework for annuity products -- with respect to both variable annuities and SEC-registered general account (non-variable) products.

Variable Annuity Summary Prospectus Initiative. With respect to variable annuity products, we believe that it is critical for the Commission and its staff to prioritize rulemaking that would serve to significantly improve the effectiveness of variable annuity disclosure and promote and enhance investors' understanding of the operation and utility of variable annuity contracts. In 1985, the Commission adopted combined registration statement forms for registering variable annuities under the 1933 and 1940 Acts. Importantly, those forms have only been modified in minor respects since then. Meanwhile, the registration statement form for mutual funds (Form N-1A) was substantially revised in 2009, permitting fund shares to be offered using a summary prospectus. Yet, the Committee and other industry groups have been advocating for a variable annuity summary prospectus for a number of years – in fact, since before the Commission approved a summary prospectus for mutual funds. Simply put, making variable annuity disclosure more effective through a layered disclosure approach and in synch with the mutual fund disclosure regime is long overdue.

In recent meetings with the Division of Investment Management staff we have advocated for:

- A user-friendly Summary VA Prospectus that clearly explains key information regarding the VA contract, enabling investors and their financial advisors to make reasoned, informed purchase decisions.
- A notice plus access equals delivery model for in-force contract owners.
- A Statutory Prospectus & Statement of Additional Information that is streamlined and updated annually (or more frequently) and is available on-line at any time—both for new investors and in-force contract owners.

We strongly encourage you to accord the variable annuity summary prospectus rulemaking initiative the highest priority as part of the Commission's overall efforts to improve disclosure effectiveness.

Relief From Certain Regulation S-K Requirements for Annuity Contracts Registered on Forms S-1 and S-3. As noted above, much of the recent annuity product innovation has been in the area of SEC-registered annuity products that are not investment company securities – i.e., non-variable products. However, to register these products under the 1933 Act, currently the same amount of company-related information that is required for common equity or debt offerings by public operating companies must be included in the prospectuses for these products. In 2010, the Commission recognized the specialized nature of these regulated insurance product offerings when it adopted Rule 12h-7 under the Securities Exchange Act of 1934 (the "1934 Act"), generally exempting insurance companies offering these registered products from the periodic reporting requirements of the 1934 Act to which they otherwise would be subject. Now is the time to provide similar relief from the 1933 Act disclosure framework so that the state-regulated insurance companies wanting to register these products, as well as the investors purchasing them, are not burdened with prospectuses stuffed with unnecessary, immaterial and irrelevant company-related information.

In this regard, last year in response to the Commission's Concept Release on Business and Financial Disclosure Required by Regulation S-K (S7-06-16), the Committee and other life insurance industry trade groups submitted comment letters advocating that the Commission provide relief from these unnecessary and burdensome disclosure requirements. In particular, we urged that insurers registering these regulated insurance products with the Commission be exempt from the following:

- Certain company-related disclosure requirements currently imposed by Forms S-1 and S-3 through Regulation S-K, such as executive compensation and MD &A , that were designed for prospectuses for equity investors, but are both irrelevant and immaterial in the context of regulated insurance product offerings and impose unnecessary cost burdens on insurance company issuers.
- Requirements to file quarterly reports and/or include quarterly financial statements in Form S-1 filings for regulated insurance products; such information is not required for variable annuity offerings.
- Requirements to include financial statements in Form S-1 prospectuses; instead include them in part 2 as is now done through the Statement of Additional Information for variable annuities.

We believe this relief should be relatively simple and straightforward. More importantly, it will remove what have been significant impediments to more companies offering these investment products to retirement savers – which ultimately will increase the number and variety of offerings and therefore will inure to the benefit of investors. We therefore ask that you prioritize this relief from Regulation S-K, as well as from related Form S-1 and S-3 requirements, as needed. We urge that this relief be included in the proposed regulations that the Commission staff has been working on in connection with the above Concept Release, or in some other initiative that could be proposed this year.

Use of SAP Financial Statements in Insurance Product Offerings. We also believe that insurance companies issuing annuity products registered only under the 1933 Act should be permitted to include financial statements in their Form S-1 or S-3 registration statements that are prepared on the basis of statutory accounting principles (SAP) adopted by the National Association of Insurance Commissioners rather than GAAP financial statements. The Commission has long permitted insurance companies issuing variable annuities to include SAP financial statements in their variable annuity registration statements. Regardless of the type of product, when investors purchase regulated insurance products they should look to the insurance company's financial condition to answer one key question: will the insurance company be able to pay its claims and meet its contractual obligations. SAP financial statements are designed to present just that type of financial information. The added costs that insurance companies must incur to prepare GAAP financial statements when they are not otherwise required to do so is very substantial – so much so that the current requirement to include GAAP financials in the registration statements for these annuity products is impeding more carriers from offering these types of products. Providing GAAP relief in this space would not, in fact, deprive investors of any material financial information – and, indeed, it would provide such investors with the same financial information that the Commission already explicitly permits variable annuity investors to receive. Therefore, we urge the Commission to help facilitate and further stimulate this growing retirement space by proposing and adopting GAAP relief for non-GAAP insurers this year.

2. *Adopting a Best Interests Standard of Conduct*

The Committee applauds your recently released statement requesting public comment on the standards of conduct for investment advisers and broker-dealers. We support efforts to advance a workable framework for imposing a uniform standard of conduct on broker-dealers and advisers that would be applicable to all retail investor accounts, including retirement and non-retirement accounts.

As you know, Section 913 of the Dodd-Frank Act authorized the Commission to establish a standard of care for broker-dealers that would be the same as that for investment advisers. That section is designed to preserve investors' choice among distribution channels, products, services, and the form and means of compensation. It does so, for example, by providing that the receipt of sales based compensation or limiting investments available to proprietary products or a limited range of products shall not in and of itself constitute a violation of that standard.

In contrast to the principles set forth in Section 913, the fiduciary rules and related exemptions recently adopted by the U.S. Department of Labor ("DOL") reflect a hostility toward sales-based compensation. DOL's fiduciary rule has and will continue to adversely impact retirement security by reducing access to, and use of, guaranteed lifetime income options. Unlike Section 913, which protects longstanding and appropriate compensation arrangements, the DOL rules in practice provide a disincentive to the sales of annuities and lifetime income guarantees because the rules impose major burdens on current compensation models, particularly commissions, which are an accepted and appropriate compensation model for annuities that aligns inherently with the nature of the product. Put simply, this is at odds with the needs of the American investing public.

As the Commission considers a possible uniform standard of care for broker-dealers and investment advisers, the Committee urges that the standard fully and carefully embrace investors' choice among distribution channels, products, services and the form and means of compensation. In contrast to the DOL rules, the standard put forth by the SEC should not serve as a disincentive to sell lifetime income guarantees.

Secretary of Labor Acosta has stated publicly that the Commission has "critical expertise" in this area and hopes that the Commission will be a "full participant" in considering the standard of care for brokers and advisers. We applaud this spirt of cooperation, and along these same lines we note that given the Commission's role as a primary regulator of brokerage and advisory accounts, it is uniquely positioned to ensure a workable standard that serves all retail investors, while at the same time avoiding confusion and inconsistency.

Other Initiatives

E-Delivery of Reports and Prospectuses. We urge the SEC to undertake a rulemaking that would permit the use of e-delivery by investment product issuers, broker-dealers and investment advisers. Under existing guidance (established almost 20 years ago), these parties are generally unable to rely on e-delivery to satisfy disclosure delivery obligations because the investor e-delivery enrollment process, as prescribed by the now antiquated guidance, is virtually unworkable, i.e., investors must actively consent to delivery in a manner that connotes their ability to receive documents via the delivery method to which they are consenting. Accordingly, paper delivery, which is the default option, continues overwhelmingly to be the method of delivery, despite persistent investor complaints, significant environmental waste and the indisputable explosive growth of internet usage and reliance. The Committee urges the Commission to advance a rulemaking that would make e-delivery the default option, with paper documents available at all times upon request. Further, as the Committee has advocated, the rulemaking should provide that delivery is satisfied by posting required reports and prospectuses on the relevant website, and by providing investors notice of such posting along with information regarding how to access the site.

Substitution Transactions. As noted above, variable annuity contracts (and variable life insurance policies) offer a wide array of mutual funds as underlying investment options. Variable contracts have always provided for the right of insurance companies to substitute the shares of the mutual fund options underlying such contracts for other mutual funds. While Section 26(c) of the 1940 Act was enacted in 1970 and did not contemplate variable contract substitution transactions, the Commission and the staff to date have interpreted Section 26(c) as requiring that such variable contract substitutions be approved by the Commission before they can be effected. That process is a comprehensive and lengthy one. The Committee encourages the Commission to consider whether a safe harbor rule could be adopted or a no-action letter issued that would facilitate all or at least many of the mutual fund substitution transactions that now must be submitted to the Commission staff in advance for individual approval.

Other Matters. The existing federal securities law framework governing the offering and regulation of annuity products is complex. A patchwork of applicable statutory requirements and exemptions, as well as implementing, interpretative and exemptive rules adopted by the Commission over the years, govern how the Commission regulates our members' annuity products, particularly under the 1933 and 1940 Acts. Yet markets and technology have evolved considerably, as have the other federal and state regulatory frameworks that apply to our members and their annuity products and to those who offer and recommend these products. Accordingly, there are several other areas where the Committee believes that improvements can be made to the current federal securities regulatory framework in order to better level playing fields and address anomalies that have emerged. We look forward to discussing these other areas with the Commission and the staff.

Conclusion

We appreciate your consideration of the regulatory and policy goals highlighted above, and we stand ready to provide you with any further information that may further your consideration. The Committee is prepared to meet with you and the other Commissioners on any or all of these initiatives in an effort to ensure they are accorded the high priority we believe they are due. As a significant regulator of these products, the Commission can contribute materially to improving investors' access to the unique benefits these products provide while fulfilling its investor protection mission. In that regard, we would also note that in order for the Commission to effectively fulfill its regulatory role with respect to annuities and other SEC-regulated insurance products, it is critical for it to maintain and focus staff expertise regarding these products and how they uniquely fit into the statutory and regulatory framework that the Commission administers.

We look forward to constructive dialogue on these and other matters during your tenure as Chairman.

Sincerely,

THE COMMITTEE OF ANNUITY INSURERS

Stephen E. Roth

Stephen E. Roth
Eversheds Sutherland (US) LLP

cc: The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
David W. Grim, Director, Division of Investment Management
Heather Seidel, Acting Director, Division of Trading and Markets
William H. Hinman, Director, Division of Corporation Finance

Appendix A

2017
THE COMMITTEE OF ANNUITY INSURERS
MEMBER LIST

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
National Life Group
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
Symetra Financial Corporation
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.

Appendix B

TYPES OF ANNUITY CONTRACTS REGISTERED WITH THE SEC

Variable annuity contracts

Variable annuity contracts are investment company securities. Most variable annuity contracts are deferred annuities with a deferral period during which contributions to the contract can be made, and an annuitization period during which the insurance company makes scheduled annuity payments. The contract values during the deferral period reflect the investment experience of the insurance company's separate investment account. The separate account can be actively managed, but more typically it invests in a number of designated underlying mutual fund options that the contract owner can choose from, with there often being between 60 and 80 such options. The separate account is registered as an investment company under the 1940 Act. In addition to traditional annuitization options, variable annuity contracts typically provide significant additional insurance guarantees in the form of guaranteed death benefits and guaranteed living benefits that are available during the contract's deferral period. The living benefit guarantees provide either guaranteed lifetime withdrawal benefits, guaranteed minimum income benefits, or guaranteed minimum account value benefits. Most variable annuities sold over the past decade or more have included guaranteed lifetime withdrawal benefits which guarantee that the contract owner can take prescribed periodic withdrawal amounts from their contracts for as long as they live regardless of the actual investment experience of the mutual fund options to which their contract values are allocated.

Market value adjusted (MVA) fixed annuity contracts

Like other annuity contracts, MVA fixed annuity contracts provide annuity income options and may provide some form of a death benefit. During the contract's accumulation period, these contracts typically offer a number of guaranteed interest rate options for different terms of years. The contracts guarantee the prescribed interest rates if the amounts remain in the contract at the end of the period, but if the owner of an MVA contract surrenders the contract or withdraws amounts before the end of a period, the MVA feature adjusts proceeds payable to reflect changes in prevailing market interest rates. Proceeds payable to the contract owner increase when those interest rates have declined but decrease when interest rates have risen. The MVA feature enables the insurance company to offer higher guaranteed interest rates by shifting to the contract owner the interest rate risk associated with having to prematurely liquidate the assets that the insurance company holds to fund the guaranteed interest rates.

Index-linked annuity contracts

Like other annuity contracts, index-linked annuity contracts provide annuity income options and may pay a death benefit. During the accumulation period, these contracts credit interest based on a formula that references the performance of one or more securities or other indices. Often the formulas used to calculate the interest are subject to caps on performance gains and buffers from, or floors on, performance losses. If the contract owner surrenders the contract before the end of the specified term, the proceeds payable to the contract owner are adjusted up or down to reflect whether the referenced index has gained or lost value since the beginning of the specified period, subject to the stated caps and buffers/floors. Like the MVA feature of a fixed annuity, these index-linked contracts enable the insurance company to offer contract owners the potential for higher contract values over the periods specified in the annuity contract by shifting certain market risks to the contract owners.

Contingent deferred annuity contracts

Some life insurance companies offer annuity contracts that provide lifetime income guarantees related to assets investors hold in their retail brokerage or investment advisory accounts. Specifically, these contracts guarantee that the contract owner will receive minimum lifetime payments from those assets without regard to the investment performance of the assets so long as the contract owner does not take withdrawals from the associated account in excess of the annual minimum lifetime payment. Any such excess withdrawal typically results in a proportional reduction in the contract owner's annual minimum lifetime payment. The Contract owner's withdrawals are deducted from assets held in the associated account. If the withdrawals combined with poor investment performance deplete the assets held in the associated account and the contract owner has satisfied the conditions of the guarantee, the life insurance company will continue to make the minimum payments to the contract owner. These contracts are designed to insure the contract owner against outliving the assets held in the associated account. The lifetime guarantees provided by these contracts are very similar to guaranteed lifetime withdrawal benefits that are frequently offered as optional benefits in variable annuity contracts.

CONCEPT RELEASE COMMENT LETTERS

THE Committee OF Annuity Insurers
www.annuity-insurers.org

SUTHERLAND

July 21, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20149-1090

Re: Concept Release on Business and Financial Disclosure Required by Regulation S-K, File Number S7-06-16[1]

Dear Mr. Fields:

We are writing on behalf of the Committee of Annuity Insurers (the "Committee"). The Committee very much appreciates the initiative taken by the Securities and Exchange Commission ("SEC" or "Commission") to raise important questions about the appropriate scope and application of business and financial disclosure items required by Regulation S-K because it provides a timely opportunity to draw attention to the overly burdensome and unnecessary disclosure requirements for a class of insurance products that are registered as securities with the SEC on Forms S-1 or S-3.

For the reasons explained below, the Committee believes that Forms S-1 and S-3 require disclosure of certain information items about the life insurance company issuers of these insurance products that are not material or relevant to investors who purchase regulated insurance products. Disclosures in response to these information items, which were designed for investors in equity or debt securities, lengthen the prospectuses used to offer these products, operate to obscure the material information about the product itself, potentially confuse investors purchasing the products, and impose significant costs and administrative burdens on the issuing insurance companies. In fact, these costs and burdens have deterred many life insurance companies from offering products that provide attractive lifetime income solutions and retirement savings and income benefits.

The Committee, therefore, requests that the SEC consider adding instructions to Regulation S-K or publishing some other form of guidance that would excuse life insurance company issuers of these registered insurance products from requirements in Form S-1 and S-3 to disclose information that is not material to investors in these insurance products and imposes the heaviest burdens on the insurance company. Specifically, the Committee recommends the following actions:

[1] See Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 F.R. 23,916 (April 22, 2016).

(1) Add instructions to Regulation S-K that would excuse such issuers from the requirement to disclose management's discussion and analysis, executive compensation and certain other information items designed to enable investors to evaluate the issuer's corporate governance, financial results and future prospects;

(2) Discontinue requirements to file quarterly reports under the 1934 Act for insurance companies that are subject to reporting obligations solely because they have registered insurance products on Form S-1 or S-3 and to file unaudited interim financial statements in the prospectuses for such products;

(3) Permit such issuers to include only the most relevant portions of the insurance company's financial statement in the product prospectus while making the full financial statements available to investors upon request and permit the use of financial statements prepared in accordance with statutory requirements.

Background

The Committee of Annuity Insurers is a coalition of 29 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 80% of the annuity business in the United States. A list of the Committee member companies that support this letter are is attached as Appendix A.

The Committee's member companies issue several types of general account insurance products that have been registered as securities on Form S-1 or S-3.[2] These products include:

- market value-adjusted fixed annuity contracts and investment options (MVAs), which guarantee an interest rate for assets that remain invested for a specified period(s) and adjust proceeds payable to contract owners who make a withdrawal or surrender prior to the end of the specified period, in order to reflect changes in prevailing interest rates;

- certain index-linked annuity contracts and investment options that credit interest based on the performance of one or more referenced securities or other indices and provide some level of downside protection; and

[2] Additional information about the key distinguishing features of each of these types of insurance products is provided in Appendix B. MVA annuity contracts and index-linked annuity contracts can be offered on a "standalone" basis or structured as investment options in contracts that offer both general account options and variable options. Whether offered on a standalone basis or as an investment option, the contracts are registered on Form S-1 or S-3.

- living benefit guarantee contracts that insure the contract owner against outliving assets held in an associated mutual fund, brokerage or investment advisory account.[3]

These products are distinguishable from variable annuity or variable life insurance products both because they do not pass through to contract owners the performance of an insurance company separate account and because the contract values, benefits and guarantees provided by the contracts are paid out of assets held in the life insurance company's general account or a non-insulated separate account which is subject to the claims of the insurance company's general creditors. As a result, these insurance products are not investment company securities required to register under the Investment Company Act of 1940 ("1940 Act") and are not eligible to register under the Securities Act of 1933 ("1933 Act") on one of the specialized forms for variable insurance products.[4] Due to the absence of a form designed to specifically accommodate these general account insurance products, the contracts must be registered under the 1933 Act on Form S-1 or S-3.

The Concept Release on Business and Financial Disclosure Required by Regulation S-K continues the SEC's Disclosure Effectiveness Initiative by requesting comment on a wide range of issues regarding Parts 1 (Business) and 3 (Financial) of Regulation S-K as well as Risk Factors (Item 503(c)) and other specific item requirements. The request for comments is designed to elicit information that will enable the SEC to determine whether the disclosure requirements continue to be necessary and how best to present information to improve its usefulness to investors. While the Concept Release focuses principally on disclosure in periodic reports required by the Securities Exchange Act of 1934 ("1934 Act" or "Exchange Act"), Regulation S-K also forms the building blocks for disclosure required in Forms S-1 and S-3. Furthermore, a stated purpose of the Concept Release is to elicit information by which the SEC can assess whether specific disclosure requirements are important or useful to making investment decisions and whether the current requirements appropriately balance the costs of disclosure with the benefits. Consequently, the Committee believes that responding to the SEC's request for comment on the Concept Release is an appropriate vehicle for sharing its members' views and concerns regarding the scope and application of Regulation S-K items required to be included in prospectuses for securities registered on Forms S-1 and S-3, as well as in reports filed under the 1934 Act.

Life insurance companies that register their products on Forms S-1 or S-3 deliver disclosure to investors who purchase the products in one of several contexts. Many life

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[3] These living benefit guarantees are sometimes referred to as "contingent deferred annuities" or "CDAs."

[4] Variable annuity contracts register on Form N-4; variable life insurance policies register on Form N-6. A third form, Form N-3 for variable annuity contracts funded by separate accounts registered as management investment companies, is no longer used widely.

insurance companies that register their products on Form S-1 take advantage of an exemption under the 1934 Act from the requirement to file periodic reports and disclose all information required by Form S-1 in their product prospectuses. Other life insurance companies disclose company-related information in 1934 Act reports and incorporate that information by reference into the product prospectus. The Committee believes that the disclosure relief it is requesting should apply to all life insurance companies with products registered on Forms S-1 or S-3, including those subject to 1934 reporting obligations solely because they have registered insurance products,[5] and relieve these companies from these irrelevant and unnecessary disclosure requirements whether the information would appear in the product prospectus or in a 1934 Act report.

I. The Committee requests that the SEC add instructions to Form S-K or provide some other form of guidance that would exempt insurance products registered on Form S-1 and S-3 from requirements to disclose information that is not material to investors who purchase the products.

Among the issues identified in the Concept Release for comment is eligibility for scaled disclosure requirements. The discussion in the Concept Release refers to reduced disclosure requirements that originally provided relief to certain smaller registrants to facilitate their access to the capital markets.[6] The SEC now seeks comments on whether additional classes of registrants should be eligible for scaling. The Committee believes that scaled disclosure requirements would be appropriate for life insurance companies that issue regulated insurance products registered on Forms S-1 and S-3. Much of the information now required to be disclosed in Forms S-1 and S-3 is not material to investors who purchase general account insurance products and imposes unwarranted burdens on such securities offerings.

In fact, the SEC has already exempted such general account insurance products from certain otherwise generally applicable disclosure requirements imposed by the federal securities laws. Specifically, in 2009, the SEC adopted Rule 12h-7 under the 1934 Act, which exempt insurance companies from 1934 Act's periodic reporting requirements with respect to insurance products that are registered under the 1933 Act, provided certain conditions are satisfied.[7] The

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[5] Insurance companies required to file periodic reports under the 1934 Act because they have outstanding equity or debt securities would not be relieved from these requirements.

[6] See Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 F.R. 23916 at pages 23,985-23,986.

[7] Index Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8996, Exchange Act Release No. 59,221, 74 F.R. 3138 (adopted Jan. 8, 2009). The exemption requires that both the insurance company and the security it issues be subject to state insurance regulation; that the insurance company file an annual statement of its financial condition with its state insurance regulator; that the security not be listed on any exchange, other trading or quotation system or other electronic communication network; that the insurance company take steps to ensure that a

SEC adopted the rule because state insurance regulation, like Exchange Act reporting, relates to an entity's financial condition. Exchange Act reporting enables investors independently to evaluate an issuer's income, assets and balance sheet. State insurance regulation takes a different approach, instead relying on regulators to supervise the insurer's financial condition - in the form of required capital levels, restrictions on investments and valuation requirements - with the goal that the company be financially able to meet its insurance contract obligations. Because of these protections, the SEC determined that exempting insurers from Exchange Act reporting with respect to state-regulated insurance contracts was consistent with the federal system of regulation, which generally has allocated oversight of insurance company solvency to state regulators.[8]

Life insurance companies are subject to extensive state regulation that is designed to ensure the company is able to meet its obligations to its contracts owners. Companies must obtain a state license authorizing them to issue insurance products. Once authorized, a company must maintain minimum levels of capital and surplus. State regulation prescribes the types of financial assets that may be counted towards capital and surplus as well as the procedures by which the company values its investments. These requirements limit the financial risk the company may assume. In addition, the company must file with state regulators an annual report on its financial condition and is subject to periodic examination by its principal state regulator to verify the reported information. In the event an insurance company is determined to be financially impaired, the company's principal state regulator works with the company to strengthen its financial condition or, if necessary, to oversee its liquidation in a manner that prioritizes meeting the company's obligations to its contract owners.[9]

State regulators also impose requirements on the insurance products that life insurance companies may offer. Companies generally must obtain approvals of new annuity or life insurance policy forms in each state where it plans to offer the products. This state regulatory review and the applicable state insurance laws and regulations set forth required policy form provisions, contain nonforfeiture requirements prescribing either minimum amounts payable or maximum charges that can be assessed if the contract is fully surrendered, prescribe the methodologies that the company must use to compute the reserves it holds to back up its insurance contract liabilities, and generally require actuarial assessments regarding the adequacy

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trading market in the security does not develop; and that contract prospectus disclose the insurance company is relying on the exemption.

[8] Id., at page 3155.

[9] In the event of the liquidation of an insurance company, state law assigns policyholder claims one of the highest priorities. Generally, policyholder claims are subordinate only to approved expenses of administering the liquidation and reasonable guaranty association expenses. The claims of all other creditors of the insurance company have lower priority. See Section 801 of the Insurance Receivership Model Act (Model 555).

of reserves backing up the policy guarantees and benefits.[10] Together with the solvency regulation of life insurance companies, the state insurance product requirements are designed to ensure that insurance companies meet their obligations to their contract owners.[11] This robust state regulatory framework obviates the need for individual contract owners to make their own assessment of the company's management and business operations based on the SEC's generally applicable public company-related disclosure requirements.

In the context of Rule 12h-7 under the Exchange Act, the SEC determined that periodic reporting is not necessary for life insurance companies whose only SEC-registered securities are state regulated insurance contracts because the solvency of such insurance companies issuing those contracts is subject to regulation and supervision by a state agency. For similar reasons, the Committee believes that certain information now required to be disclosed by Forms S-1 and S-3 is not material or relevant to an investor's decision to purchase the general account insurance product and should not be required in the contract prospectus. Forms S-1 and S-3 were designed to elicit information relevant to investment in equity or debt securities whose future value depends on the skill and strategic vision of the company's management. In contrast, information about a life insurance company and its management would be material to an investor in a state-regulated insurance product only to the extent it would provide material comfort to the investor that the insurance company can meet its contractual obligations. However, much of the disclosure required in Forms S-1 and S-3, including narrative descriptions of the company's operations and financial results, the identity and business experience of the company's directors and principal officers and extensive detail about the company's compensation structure, fails this materiality standard.

Among the disclosure items that members of the Committee believe are unnecessary for investors in general account insurance products registered on Forms S-1 or S-3 are several of the items in Regulation S-K on which the Concept Release specifically requests comment. These include: Select Financial Data (Item 301), Supplementary Financial Information (Item 302), Management Discussion and Analysis (Item 303) and Quantitative and Qualitative Disclosure about Market Risk (Item 305). Information elicited by all these items is designed to enable investors to evaluate the issuer's operations, financial results and prospects for the future. Among these Items, Management Discussion and Analysis is the most time-consuming and costly to prepare. The information is intended to provide a narrative explanation of the issuer's

[10] The NAIC Model Standard Valuation Law (Model 820) requires that every life insurer doing business in the state annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the insurance commissioner are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of the state. The NAIC Model Actuarial Opinion and Memorandum Regulation (Model 822) sets forth the detailed requirements for such an actuarial opinion.

[11] State guarantee funds provide further protection in the event that an insolvent insurance company is unable fully to meet its obligations to contract owners.

financial statements that enables investors to look at the issuer through its management's eyes, to provide context for analyzing the financial statements and to enable investors to ascertain how indicative the issuer's past performance is of its future prospects. Among the information required is management's analysis of the expected effects of known material trends and uncertainties and the reasons underlying management's expectations, which often requires forward looking information about events and developments to take place in the future. While management's analysis of its financial results and future prospects provides valuable information to investors in a company's equity securities, it is not material to the assessment by an investor in state-regulated insurance product as to whether the issuing insurance company can meet its contractual obligations.

Other disclosure Items in Regulation S-K that the Committee believes should not be required in the prospectus for insurance contracts include Executive Compensation (Item 402), Officers and Directors (Item 401), Security Ownership by Certain Beneficial Owners and Management (Item 403), Transactions with Related Persons (Item 404) and Corporate Governance (Item 407). Of these Items, Executive Compensation disclosure is the most burdensome to prepare. This item requires extensive information about all compensation paid by the issuer to its executive officers and directors and an in-depth analysis of all material elements of the issuer's compensation programs. In 2015, a requirement to disclose the ratio of the annual total compensation of the issuer's principal executive officer ("PEO") to the median annual total compensation of all its employees, except the PEO was added to the item. The new requirement will require issuers to calculate the total compensation (including benefits) paid to every employee.[12] Executive Compensation disclosure typically runs 12 pages or more. Such detailed information about the insurance company's executive compensation structure is not relevant to an investor who purchases a state-regulated insurance product because it does not enhance the investors understanding of the insurance product or the risks associated with the insurance company's ability to fulfill its contractual obligations. Nor do investors in registered insurance products have any voting rights with respect to the issuer to which such disclosure would relate.

Meanwhile, these disclosure requirements impose unwarranted costs and administrative burdens on insurance companies that must register their insurance contracts on Forms S-1 and S-3. Preparing the disclosure required by Management Discussion and Analysis (Item 303) and Executive Compensation (Item 402) is particularly burdensome. The Committee, therefore, requests that the SEC recognize that insurance companies' cost to prepare the disclosure clearly outweighs any possible benefits the disclosure provides to investors who purchase the insurance contracts and to take action – either by adding instructions to Form S-K or by providing some other formal guidance – to exempt the class of issuers that are eligible to take advantage of Rule 12h-7, whether they do or do not, from these disclosure requirements.

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[12] The comparative compensation disclosure requirement is scheduled to become effective in 2017.

II. Interim financial statements required by Rule 3-12 of Regulation S-X do not provide meaningful information to investors who purchase regulated insurance products, and the Committee encourages the SEC to discontinue the requirement for general account insurance products registered on Forms S-1 or S-3.

The Concept Release also requests comment on the continued need for quarterly reporting under the Exchange Act. Noting broad disagreement about the value of quarterly reporting, the Concept Release specifically questions whether such frequent reporting benefits investors, registrants and the markets and whether the reporting requirements should be different for different types of issuers.

The Committee believes that filing quarterly reports under the 1934 Act is not necessary for insurance companies that are subject to 1934 Act reporting obligations solely because they have general account insurance products registered as securities on Forms S-1 or S-3.[13] Similarly, the Committee believes it should not be necessary for such companies to include unaudited interim financial statements in the prospectuses for these products. Quarterly reporting is intended to reflect seasonal patterns and other variations in corporate activities during the fiscal year by disclosing financial results over segments of time that are sufficiently short to reveal business turning points. The life insurance business usually is not subject to such short term changes that make such disclosure meaningful. This view is already reflected in SEC Forms N-4 and N-6, used by Committee members to register their variable insurance products, which except in rare situations,[14] require the insurance company to make available to variable contract owners only its audited annual financial statements. In contrast, insurance companies offering general account insurance products registered on Form S-1 or S-3 must include or incorporate by reference quarterly financial statements for all 1933 Act initial registration statements and post-effective amendments filings at any time during the year except during a short window between March and May after the audited annual financial statements become available. The cost associated with preparing these interim financial statements operates to discourage many insurance companies from entering the market and, for those companies that offer products registered on Form S-1, effectively limit their introduction of new contracts or new contract features to the few months when interim financial statements are not required.

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[13] Insurance companies required to file periodic reports under the 1934 Act because they have outstanding equity or debt securities would not be relieved from these requirements.

[14] Forms N-4 (variable annuity contracts) and N-6 (variable life insurance policies) require interim financial information from insurance companies when the balance sheet shows a combined capital surplus of less than $1 million or when financial statements have not previously been included in an effective registration statement of a separate account that funds a variable insurance product.

III. The Committee also encourages the SEC to move the insurance company financial statements out of the insurance product prospectus and to permit the use of financial statements prepared in accordance with statutory requirements.

The Committee also notes for the SEC's consideration two additional aspects of the treatment of insurance company financial statements in 1940 Act Forms N-4 and N-6 that it believes are appropriate for insurance products registered on Forms S-1 and S-3.

First, Forms N-4 and N-6 require only that comparative balance sheets of the insurance company for the most recent two fiscal years, which provides investors with significant information about the insurance company's financial condition, be included in the Statement of Information ("SAI"), which is not delivered to contract owners, but made available to them on request free of charge.[15] Other financial statements of the insurance company may be included in Part C of the registration statement rather than the SAI, and likewise are made available to investors upon request, free of charge. The SEC should permit insurance companies that register general account insurance products on Forms S-1 and S-3 to take a similar approach by limiting the financial information that must be included in the prospectus, moving most of the audited annual financial statements to Part II of the registration statement and making them available to investors upon request. This approach would continue to provide adequate information about the company's financial condition in the prospectus and would significantly reduce the size of the prospectus that the insurance company delivers to its contract owners, thereby providing investors with prospectuses that set forth the information most relevant and material to their investment decision. Such a layered approach to disclosing the insurance company's financial information would also be consistent with the Commission's goal of emphasizing the most important information, while making more detailed information available to investors who request it.

Second, both Forms N-4 and N-6 provide that if the life insurance company issuing the variable contract would not have to prepare financial statements in accordance with generally accepted accounting principles ("GAAP"), except for use in a registration statement filed on Form N-3, N-4 or N-6, the company may file financial statements prepared in accordance with statutory ("STAT") requirements. This exception from the requirement to file GAAP financial statements, which is designed to alleviate the cost and administrative burden on life insurance companies that do not otherwise produce GAAP financial statements, recognizes that statutory financial statements may adequately inform insurance contract owners about the financial condition of the issuing insurance company. Arguably, STAT financial statements, which focus on insurer solvency, provide information that is even more relevant to insurance contract owners than GAAP financial statements. In contrast to GAAP financial statements, which focus on measurements that are of primary importance to equity investors, such as earnings trends from

[15] Registration Form for Insurance Company Separate Accounts that Offer Variable Life Insurance Policies, Securities Act Release No. 8088, Investment Company Act Release No. 25522 (adopted Apr. 12, 2002).

period to period, STAT financial statements focus on measures that relate to the insurer's claims paying ability, including the insurer's regulatory assets, liabilities, capital and surplus. The requirement to include GAAP financial statements in Form S-1and S-3 filings imposes a very substantial time and cost burden on life insurance companies that otherwise are not required to prepare GAAP financial statements or information. This time and cost burden has been a major impediment to many life insurance companies' entry into the registered general account insurance product marketplace and has likely served to limit the choices among this suite of products for investors. For these reasons, Committee members strongly believe that STAT financial statements should be permitted in Form S-1 and Form S-3 registration statement for general account insurance products.

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The members of the Committee very much appreciate your consideration of the views expressed above. The Committee stands ready to provide any additional information that would be helpful at this juncture and to assist the staff in any way that would facilitate the changes that would improve the effectiveness of the current 1933 and 1934 Act disclosure framework as it applies to registered general account insurance products. Please do not hesitate to contact the undersigned at (202) 383-0158 or by e-mail at steve.roth@sutherland.com

Respectfully submitted,

Stephen E. Roth

Stephen E. Roth
Counsel to the Committee of Annuity Insurers

cc: William J. Kotapish, Securities and Exchange Commission
Barry D. Miller, Securities and Exchange Commission

Appendix A

THE COMMITTEE OF ANNUITY INSURERS MEMBER LIST

July 2016

AIG Life & Retirement
Allianz Life Insurance Company
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
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
Symetra Financial
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.

Appendix B

General account insurance products registered with the SEC on Forms S-1 and S-3

Market value adjusted (MVA) fixed annuity contracts

Like other annuity contracts, MVA contracts provide guaranteed annuity income options and may provide some form of a death benefit. During the contract's accumulation period, these contracts typically offer a number of interest rate options for different guarantee periods. If the owner of an MVA contract surrenders the contract or withdraws amounts before the end of a guaranteed period, the MVA feature typically adjusts proceeds payable in response to changes in prevailing market interest rates. Proceeds payable to the contract owner increase when those interest rates have declined and decrease when the interest rates have risen. The MVA feature enables the insurance company to offer higher guaranteed interest rates by shifting to the contract owner the interest rate risk associated with having to prematurely liquidate the assets that the insurance company holds to fund the guaranteed interest rates.

Index-linked annuity contracts

Like other annuity contracts, index-linked annuity contracts provide guaranteed annuity income options and may pay a death benefit. During the accumulation period, these contracts credit interest based on a formula that references the performance of one or more securities or other indices. Often the formulas used to calculate the interest are subject to prescribed caps on performance gains and buffers from, or floors on, performance losses. If the contract owner surrenders the contract before the end of the specified period, the proceeds payable to the contract owner are adjusted up or down to reflect whether the referenced index has gained or lost value since the beginning of the specified period, subject to prescribed caps and buffers/floors. Like the MVA feature of a fixed annuity, these index-linked contracts enable the insurance company to offer contract owners the potential for higher contract values over the periods specified in the annuity contract by shifting certain market risks to the contract owners.

Minimum lifetime withdrawal benefit guarantees

Some life insurance companies offer standalone contracts that guarantee the contract owner will receive minimum lifetime payments on that investor's assets held in an associated mutual fund(s), brokerage or investment advisory account without regard to the investment performance of the assets as long as the specified conditions of the guarantee are satisfied. Minimum lifetime payments are determined by reference to the performance of the assets held in the associated account during the accumulation period of the contract. At the end of the accumulation period, payments are guaranteed for contract owner's lifetime so long as the contract owner does not take withdrawals from the associated account in excess of the annual minimum lifetime payment. Any such excess withdrawal typically results in a proportional reduction in the contract owner's annual minimum lifetime payment. The Contract owner's withdrawals are deducted from assets held in the associated account. If the withdrawals combined with poor investment performance deplete the assets held in associated account and the contract owner has satisfied the conditions of the guarantee, the life insurance company will continue to make the minimum payments to the contract owner out of its general account assets. These contracts are designed to insure the contract owner against outliving the assets held in the associated account. The lifetime guarantees provided by these contracts are similar to living benefit guarantees that are frequently offered as optional benefits in variable annuity contracts.

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July 21, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20149-1090

Re: Concept Release on Business and Financial Disclosure Required by Regulation S-K
File Number S7-06-16

Dear Mr. Fields:

On behalf of our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission's (the "SEC" or "Commission") regarding the SEC's Concept Release on Business and Financial Disclosure Required by Regulation S-K (the "Concept Release"). The Concept Release is the latest step in the Commission's "Disclosure Effectiveness Initiative." IRI fully appreciates the importance of effective and meaningful disclosure with respect to financial product offerings. With this in mind, we enthusiastically support this important initiative, and we applaud and commend the SEC for the disclosure improvements it has already implemented.

In this letter, we offer suggestions regarding the disclosure obligations applicable to products manufactured by life insurance companies, including general account insurance products.[2] We will also

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[1] The Insured Retirement Institute (IRI) is the leading association for the retirement income industry. IRI proudly leads a national consumer coalition of more than 40 organizations, and is the only association that represents the entire supply chain of insured retirement strategies. IRI members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement. Learn more at www.irionline.org.

[2] At the outset, we would like to express our full endorsement of the comments expressed by the Committee of Annuity Insurers (the "Committee"), in its letter to you, dated July 21, 2016 (the "Committee Letter"). In order to avoid the Commission's review of duplicative comments and explanations, we reference as applicable the Committee Letter herein, in support of our comments. We have also adopted the Committee Letter's use of the term "general account insurance products," as defined at page 2 and in Appendix B in the Committee Letter.

briefly reiterate our request that the SEC prioritize the variable annuity summary prospectus and annual update rulemaking initiative (the "VA Summary Prospectus Initiative").

The Concept Release seeks comments on a wide range of issues regarding Parts 1 (Business) and 3 (Financial) of Regulation S-K, as well as Risk Factors (Item 503(c)) and other specific item requirements. While the Concept Release focuses primarily on disclosure in periodic reports required by the Securities Exchange Act of 1934 ("1934 Act" or "Exchange Act"), Regulation S-K also forms the foundation for disclosure required in Forms S-1 and S-3 (together, the "Forms"), which are used by life insurance companies to register general account insurance products (in addition to other financial instruments). Accordingly, many of our member companies that manufacture and/or distribute such insurance products rely on these Forms, and we would be remiss if we did not take this opportunity to register our concern with certain unnecessary disclosure requirements, and the ensuing resource burdens and costs, presented by Regulation S-K in the context of these insurance products.

In this regard, we respectfully request the Commission to consider the following:

1. **As the Commission has done for other classes of registrants, we encourage the Commission to reduce the disclosure requirements applicable to life insurance companies that issue regulated insurance products that are registered with the SEC on the Forms.** [3]

Certain disclosure items required by Regulation S-K were designed for investors in equity or debt securities, not general account insurance products. Simply put, these disclosures not only significantly lengthen the prospectuses used to offer these products but they serve to obscure material product information, potentially confuse investors, and impose significant costs and administrative burdens on the insurance companies. Fortunately, many of the disclosure items that we believe are unnecessary for investors in general account insurance products include several of the Regulation S-K items on which the Commission has specifically requested comment. These items are as follows: Select Financial Data (Item 301), Supplementary Financial Information (Item 302), Management Discussion and Analysis (Item 303) and Quantitative and Qualitative Disclosure about Market Risk (Item 305).

Information elicited by these items is designed principally to enable investors to evaluate the issuer's financial results and prospects for the future. We submit that such information is relevant to investments in financial instruments whose current and future value may depend on the issuer's earnings and on the skill and strategic vision of the company's management. In contrast, information about a life insurance company and its management would be material to an investor in a state regulated insurance product only to the extent it would provide material comfort to the investor that the insurance company can meet its contractual obligations. We respectfully suggest that the disclosure required by these items fails this materiality standard.

We also believe the following disclosure items in Regulation S-K (and required by the Forms), which are similarly burdensome and costly to prepare, do not enhance the investors' understanding of the

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[3] For a more detailed discussion of these points, see the Committee Letter at pages 4-8.

insurance product or the risks associated with the insurance company's ability to fulfill its contractual obligations: Executive Compensation (Item 402), Officers and Directors (Item 401), Security Ownership by Certain Beneficial Owners and Management (Item 403), Transactions with Related Persons (Item 404) and Corporate Governance (Item 407).

2. **Quarterly reporting should not be necessary for insurance companies that are subject to 1934 Act reporting obligations solely due to the registration of general account insurance products on the Forms.**

The Concept Release also requests comment on whether quarterly reporting, as required under the Exchange Act, benefits investors, registrants and the markets and whether the reporting requirements should be different for different types of issuers. For certain life insurance companies, the obligation to file quarterly reports under the 1934 Act is triggered solely due to their registration of general account insurance products on the Forms. Quarterly reporting is intended to reflect seasonal patterns and other variations in corporate activities during the fiscal year by disclosing financial results over segments of time that are sufficiently short to reveal business turning points. The life insurance business usually is not subject to such short term changes that make such disclosure meaningful, and the burden and cost associated with preparing these quarterly financial statements operates to discourage many life insurance companies from entering the general account insurance product market and/or making timely product enhancements and changes. Such unnecessary impediments are wholly inconsistent with facilitating the availability of a robust panoply of retirement products in the marketplace, and we urge the Commission to excise such requirements for such life insurance company filers.[4]

3. **Insurance companies that register general account insurance products on the Forms should be permitted to file financial statements that are prepared in accordance with statutory requirements and make such financial statements available upon request only.**

We fully support the position that statutory financial statements, as opposed to ones prepared pursuant to generally accepted accounting principles ("GAAP"), should be permitted, where an insurance company is not otherwise required to prepare GAAP financials. In addition, such financial statements should be made available free of charge, as opposed to included in the prospectus itself. Both of these accommodations are afforded to other life insurance company products that are registered on other registration forms, and we do not see any reason why general account insurance products registered on the Forms should be subject to different requirements. [5]

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[4] Similarly, we fully endorse the Committee's position that it should not be necessary for such companies to include unaudited interim financial statements in the prospectuses for these products. Prospectuses for products registered on the Forms currently must include or incorporate by reference quarterly financial statements in all 1933 Act initial registration statements and post-effective amendments filings made at any time during the year except during a short window between March and May after the audited annual financial statements become available. See the Committee Letter at pages 8 -9.

[5] See Committee Letter at pages 9-10.

4. **We respectfully renew our request that the Commission issue a proposal to allow the use of a summary prospectus for variable annuities.**

Understanding the Commission's active agenda, we believe many compelling reasons exist for the Commission to place a high priority on this rulemaking and issue a rule for comment at the earliest possible time. With more than a quarter million Americans reaching retirement age every month, the need for clear and concise disclosure about the critically important retirement income guarantees provided by VAs has never been greater.

In addition, both Congress and the Administration are proponents of increasing access to guaranteed lifetime annuity income and adopting a rule to bring the VA Summary Prospectus Initiative to fruition would do exactly that. According to an IRI study, six out of every 10 individuals said they would be more likely to talk to their financial advisor about and consider a variable annuity if they had access to a VA summary prospectus.

In that same study, 95% of investors said they want a VA summary prospectus. We, as an industry, would like to serve the needs of our investors by giving them better, clearer disclosure as soon as practicable. We believe this rulemaking would serve the Commission's Strategic Plan, which includes high quality disclosures as a top goal/objective among its Dodd-Frank priorities.

High investor demand for a variable annuity summary prospectus is understandable given full variable annuity prospectuses can range from 150 to 300 pages, and contain voluminous legal, actuarial, and regulatory language that is difficult for investors to comprehend. As a result, full prospectuses are not used by most investors, with less than 3% of investors saying they always read some part of the prospectus and questions by most consumer experts as to whether these investors may be confusing other product informational materials with the prospectus.[6]

The Variable Annuity Summary Prospectus Rule would address these issues by providing a layered approach to disclosure starting with a concise, plain-English summary prospectus document that provides investors with key information about a products' benefits, costs, and risks in an easy-to-read format that enhances the investors' decision-making process. An investor who wants more details at any point can either ask his or her financial advisor for additional information, the approach most investors will take, or access the full prospectus online or in hard copy upon request.

We also note that VA investors have had the positive experience of receiving mutual fund summaries with the full prospectuses for their VAs for some time now. We believe VA investors likewise would experience significant benefits from receiving a VA summary prospectus and having access to layered disclosure online.

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[6] Variable Annuity Summary Prospectus--High in Demand by Consumers: Examination of Consumer Preferences, Industry Perspectives (IRI, June 2011).

Given the state of readiness of the VA Summary Prospectus Initiative, we respectfully submit that there should be no further delay in proposing a rule. Accordingly, we request that a proposed rule be issued for comment and finalized during 2016 to enable investors and financial advisors to obtain the benefits of short, plain-English disclosures for variable annuities during 2017, the same benefits that have been available to mutual fund investors since 2009.

If a variable annuity summary prospectus rule is not finalized during 2016, as a practical matter, variable annuity summary prospectuses will not be available to investors and financial advisors until at least early to mid-2018, more than nine years after IRI submitted its variable annuity summary prospectus proposal to the SEC and more than eight years after then-Chairman Mary Schapiro voiced support for the development of the rule.[7]

* * * * *

As always, we welcome and appreciate the opportunity to present our members' views on SEC initiatives and proposals. We hope you will seriously consider the issues we have raised in this letter and in the Committee Letter. Please feel free to contact Lee Covington, our Senior Vice President and General Counsel (lcovington@irionline.org) or Jason Berkowitz, our Vice President and Counsel for Regulatory Affairs (jberkowitz@irionline.org) if you have any questions or would like to discuss this matter further.

Sincerely,

Catherine J. Weatherford
President & CEO
Insured Retirement Institute (IRI)

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[7] Speech by SEC Chairman Mary Schapiro, "The Consumer in the Financial Services Revolution", Consumer Federation of America 21st Annual Financial Services Conference, Washington, D.C. (December 3, 2009).

Carl B. Wilkerson
Vice President & Chief Counsel, Securities & Litigation

July 19, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20149-1090

Re: Concept Release on Business and Financial Disclosure Required by Regulation S-K, File Number S7-06-16[1]

By Electronic Submission

Dear Mr. Fields:

The American Council of Life Insurers (ACLI) is a national trade association with 280 member companies that represent 95 percent of industry assets, 92 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Our members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance that 75 million American families rely on for financial and retirement security.

ACLI has long and actively participated in comprehensive endeavors to encourage streamlined, simplified, plain-English disclosure under the Federal securities laws, particularly as they apply to life insurance products.[2] Relevant readable disclosure and financial information enables consumers to make informed purchase decisions about financial products. Accordingly, we support the SEC's

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[1] *See* Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 F.R. 23,916 (April 22, 2016).

[2] ACLI filed a rulemaking petition that was significantly reflected in Form N-6, the first registration and disclosure form designed specifically for variable life insurance; *See* Wilkerson, *Administrative History of Variable Life Insurance Registration Form N-6: Purpose, Design and Intent*, ALI-ABA CONFERENCE ON LIFE INSURANCE COMPANY PRODUCTS: CURRENT SECURITIES AND TAX ISSUES (2002). ACLI also developed a comprehensive, plain-English, user friendly disclosure initiative for fixed, index, and variable annuities that was shared with the SEC and FINRA; *See*, Wilkerson, *ACLI Disclosure Initiative for Fixed, Index, and Variable Annuities: Constructive Change on the Horizon*, ALI-ABA CONFERENCE ON LIFE INSURANCE COMPANY PRODUCTS (2007) (Cited in Wirth, *What's Puzzling You… Is the Nature of Variable Annuity Prospectuses,* 34 W. New England L. Rev. 127 (2012) at 153 note 53). ACLI commented extensively on Form N-3 and N-4 to help improve and enhance registration and disclosure forms for variable annuities organized as managed accounts and unit investment trusts, respectively, under the Investment Company Act of 1940. These were the first disclosure and registration forms designed specifically for variable annuities under the Federal securities laws. ACLI has also actively supported and contributed to annuity disclosure initiatives under state insurance laws and regulations, such as the NAIC Annuity Buyers' Guide (2015), which provides streamlined, plain-English and uniform disclosure information comparing fixed, index and variable annuities.

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endeavors to improve the content and quality of required disclosure under the Federal securities laws.

The SEC's Concept Release on Reg. S-K provides an opportunity to reduce burdensome financial and business disclosure for a category of non-variable insurance products registered under the federal securities laws on Forms S-1 and S-3 under the Securities Act of 1933. This includes market value-adjusted fixed annuity contracts and investment options (MVA) contracts, index linked annuity contracts and living benefit guarantee contracts held in an associated mutual fund, brokerage or investment advisory account. We recommend relief from certain disclosure and financial information that has limited relevance to these products and the consumers evaluating them. In this way, disclosure and financial information would be more relevant and accessible to consumers, particularly for products that do not have custom tailored registration and disclosure forms for use under the Federal securities laws.

Statement of Position

We support and endorse the recommendations and rationale in the comment letter submitted by the Committee of Annuity Insurers that will be entered in the concept release record. Consistent with that submission, ACLI respectfully requests that the SEC add instructions to Regulation S-K or publish other forms of guidance that would excuse life insurance company issuers of these registered insurance products from requirements in Form S-1 and S-3 to disclose information that is not material to investors in these insurance products and imposes the heaviest burdens on the insurance company. Specifically, therefore, we support the following actions:

- Adding instructions to Regulation S-K that would excuse such issuers from the requirement to disclose management's discussion and analysis, executive compensation and certain other information items designed to enable investors to evaluate the issuer's corporate governance, financial results and future prospects[3];

- Discontinuing requirements to file quarterly reports under the Securities Exchange Act of 1934 for insurance companies that are subject to reporting obligations solely because they have registered insurance products on Form S-1 or S-3 and to file unaudited interim financial statements in the prospectuses for such products[4]; and,

[3] Among the disclosure items that are unnecessary for investors in general account insurance products registered on Forms S-1 or S-3 are several of the items in Regulation S-K on which the Concept Release specifically requests comment. These include: Select Financial Data (Item 301), Supplementary Financial Information (Item 302), Management Discussion and Analysis (Item 303) and Quantitative and Qualitative Disclosure about Market Risk (Item 305). Additional disclosure items in Regulation S-K that should not be required in the prospectus for insurance contracts include Executive Compensation (Item 402), Officers and Directors (Item 401), Security Ownership by Certain Beneficial Owners and Management (Item 403), Transactions with Related Persons (Item 404) and Corporate Governance (Item 407).

[4] The Concept Release elicits comment on the continued need for quarterly reporting under the Exchange Act and asks such frequent reporting benefits investors, registrants and the markets and whether the reporting requirements should be different for different types of issuers. As noted in the Committee of Annuity Insurers' submission, life insurance business usually is not subject to short term changes that make quarterly disclosure meaningful. Indeed the required circulation of marginally useful disclosure inundates consumers with excessive disclosure that competes with and thwarts meaningful disclosure. The SEC incorporated these concepts in adopting Forms N-3, N-4 and N-6.

- Permitting such issuers to include only the most relevant portions of the insurance company's financial statement in the product prospectus while making the full financial statements available to investors upon request and permit the use of financial statements prepared in accordance with statutory requirements[5].

ACLI supports and endorses the more extensive discussion and explanation of these requests that appears in the Committee of Annuity Insurers submission. The recommendations above comport with "scaled" disclosure requirements discussed in the concept release. Likewise, they reflect the SEC's action in adopting Rule 12h-7 under the 1934 Act, which exempts insurance companies from 1934 Act's periodic reporting requirements with respect to insurance products that are registered under the 1933 Act, provided certain conditions are satisfied.[6] These suggestions are also consistent with the SEC's actions in developing streamlined, simplified, plain-English disclosure and registration forms for variable life insurance and variable annuities in Forms N-6, N-3, and N-4 respectively. The recommendations above follow the commendable "layered" disclosure initiatives recently developed by the SEC.

We commend the SEC and its staff for providing an opportunity to improve and enhance financial information and disclosure for financial product consumers. The Concept Release is the first step in an ongoing dialog between the public, registrants and the SEC that can produce a constructive and effective upgrading to many outdated or poorly fitting requirements in Regulation S-X, especially for non-variable insurance products registered on Forms S-1 and S-3.

Conclusion

Thank you for your attention to our views. If any questions develop, please let me know.

Sincerely,

/s/

Carl B. Wilkerson

[5] In adopting Forms N-3, N-4 and N-6, the SEC implemented a parallel concept limiting the financial information that must be included in the prospectus, moving most of the audited annual financial statements to Part II of the registration statement and making them available to investors upon request. As noted in the Committee of Annuity Insurers submission, the requirement to include GAAP financial statements in Form S-1and S-3 filings imposes a very substantial time and cost burden on life insurance companies that otherwise are not required to prepare GAAP financial statements or information. These burdens are a major impediment to many life insurance companies' entry into the registered general account insurance product marketplace and has limited the choices among this menu of products for investors.

[6] Among other things, the SEC adopted this rule because state insurance regulation, like Exchange Act reporting, relates to an entity's financial condition; *see*, Index Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8996, Exchange Act Release No. 59,221, 74 F.R.3138 (adopted Jan. 8, 2009). The exemption requires that both the insurance company and the security it issues be subject to state insurance regulation; that the insurance company file an annual statement of its financial condition with its state insurance regulator; that the security not be listed on any exchange, other trading or quotation system or other electronic communication network; that the insurance company take steps to ensure that a trading market in the security does not develop; and that contract prospectus disclose the insurance company is relying on the exemption.

DUSTR COMMENT LETTERS

THE Committee OF Annuity Insurers
www.annuity-insurers.org

SUTHERLAND

October 11, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Disclosure Update and Simplification, File Number S7-15-16**

Dear Mr. Fields:

We are submitting these comments on behalf of the Committee of Annuity Insurers (the "Committee").[1] The Committee appreciates the opportunity to comment on the above-referenced release dated July 13, 2016 (the "July 13th Release"), which proposes amendments to a broad range of disclosure requirements imposed under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act").

While the Committee supports the overall goal of the July 13th Release, it respectfully disagrees with the characterization of the proposed elimination of Rule 7-02(b) of Regulation S-X as a technical amendment of a requirement that may have become "redundant, duplicative, overlapping, outdated or superseded in light of other disclosure requirements, U.S. GAAP, IFRS or changes in the information environment." Rule 7-02(b) currently permits mutual life insurance companies and wholly-owned stock insurance subsidiaries of mutual life insurance companies to include financial statements based on statutory account principles ("SAP Financial Statements") in any SEC filing, including a registration statement for a regulated insurance product. Eliminating the relief provided by Rule 7-02(b) would require mutual companies that do not otherwise prepare financial statements based on generally accepted accounting principles ("GAAP financial statements") to include GAAP financial statements in any registration statements for insurance products that are not investment company securities and, therefore, are registered on Forms S-1 or S-3 ("general account insurance products").[2] Requiring insurance companies to prepare GAAP financial statements *solely* for the purpose of issuing insurance

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[1] The Committee is a coalition of 29 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 80% of the annuity business in the United States. A list of Committee member companies is attached as Appendix A.

[2] Forms N-3, N-4 and N-6 for variable insurance products permit the insurance company depositor of a registered separate account to file SAP financial statements if it would not otherwise have to prepare GAAP financial statements except for use in a registration statement on Forms N-3, N-4 or N-6. The elimination of Rule 7-02(b) would not impact this GAAP relief.

products that are registered as securities on Form S-1 or S-3 would impose a substantial financial burden that will deter such companies from participating in the growing markets for these products.

Like mutual insurance companies and their wholly-owned stock life insurance subsidiaries, some stock life insurance companies that are not subsidiaries of a mutual insurance company do not otherwise have any legal or regulatory obligation to prepare GAAP financial statements. For these companies, like mutual insurance companies, the requirement to prepare GAAP financial statements *solely* for insurance products registered on Forms S-1 or S-3 imposes substantial financial burdens that significantly deters these companies from offering these products.

In the July 13th Release, the SEC has not considered the impact that eliminating Rule 7-02(b) will have on mutual companies that do not currently prepare GAAP financial statements. As just noted, it could substantially increase their costs or even prevent them from offering certain types of registered general account insurance products. Therefore, the proposed elimination of Rule 7-02(b) should not be included in the technical amendments that the SEC ultimately adopts insofar as that rule currently permits mutual insurance companies that do not otherwise prepare GAAP financial statements to include SAP financial statements in the registrations statements for insurance products registered on Forms S-1 and S-3. Furthermore, the Committee advocates that the SEC extend the relief provided by Rule 7-02(b) to permit the use of SAP financial statements in registration statements on Forms S-1 and S-3 for general account insurance products to any life insurance company that does not otherwise prepare GAAP financial statements for use in SEC filings.

The SEC should preserve the relief provided by Rule 7-02(b) for mutual insurance companies that do not otherwise prepare GAAP financial statements for use in SEC filings.

The July 13th Release suggests that Rule 7-02(b) is no longer relevant to mutual insurance companies.[3] While no mutual insurance company currently may file SAP Financial Statements in reliance on Rule 7-02(b), elimination of the rule could have a significant impact on the companies' future business strategies and product development plans. Eliminating Rule 7-02(b) may effectively prevent mutual insurance companies that do not already prepare GAAP financial statements from issuing general account annuity and other fixed insurance products that are registered with the SEC.

If Rule 7-02(b) were eliminated, a mutual insurance company issuing a general account insurance product would have to comply with the requirement in Form S-1 or S-3 to provide GAAP financial statements, which would impose significant financial and administrative

[3] The release states that accounting guidance issued in 1995 obviated the purpose of Rule 7-02(b) and that no issuer under the Securities Act or the Exchange Act relies on the rule as a basis to report under statutory accounting requirements. July 13th Release at page 129.

burdens on mutual companies that do not otherwise prepare financial statements on a GAAP basis. Based on estimates provided by large mutual companies, building the infrastructure necessary to prepare GAAP financial statements could cost as much as $100 million. For mutual companies, this cost would be borne entirely by policyholders. If Rule 7-02(b) were eliminated, any mutual company that does not already prepare GAAP financial statements would have to choose between foregoing any participation in the market for registered general account insurance products or imposing on its policyholders the cost associated with building the infrastructure for preparing GAAP financial statements.

From the investing public's perspective, the market is best served by facilitating the availability of a wide array of lifetime income and protection products offered by a large number of insurance companies. The Committee submits that, insofar as the elimination of Rule 7-02(b) would operate to prevent a significant segment of the life insurance industry from offering registered general account insurance products that are not investment company securities, such as products with market value adjustment features or index-linked (structured) insurance products, it would adversely impact the development of that market.

The proposed elimination of Rule 7-02(b) requires a thorough cost-benefit analysis to ensure that it strikes the right balance to further the SEC's public policy objectives. The Committee believes that such analysis, which is missing from the July 13th Release, would reveal that the proposal would impose significant unwarranted costs on mutual companies that do not currently prepare GAAP financial statements. The Committee urges the SEC to preserve the relief provided by Rule 7-02(b) insofar as it permits mutual insurance companies that do not otherwise prepare GAAP financial statements to use SAP financial statements in registration statements for insurance products registered on Forms S-1 and S-3.

The SEC should permit all insurance companies that do not otherwise prepare GAAP financial statements to file SAP financial statements in Securities Act registration statements for their insurance products.

Requiring GAAP financial statements for general account insurance products registered on Forms S-1 or S-3 also deters many stock life insurance companies from offering such products. Like mutual life insurance companies, some stock life insurance companies do not have a legal or regulatory obligation to prepare GAAP financial statements. Requiring any life insurance company to prepare GAAP financial statements *solely* for the purpose of issuing registered general account insurance products imposes a substantial financial burden on those companies that choose to issue the products despite the added costs, and discourages many other companies from participating in the market. The Committee has members in both situations – companies that have incurred the cost to prepare GAAP financial statements solely for general account products and companies that do not issue general account products because of the additional cost -- that are deeply concerned about this issue. For this reason, the Committee advocates that the SEC extend to all life insurance companies that do not otherwise prepare

GAAP financial statements for SEC filings the relief provided by Rule 7-02(b) to use SAP financial statements in registration statements on Forms S-1 and S-3 for general account insurance products.[4]

Forms N-3, N-4 and N-6 for variable insurance products all permit life insurance companies that do not otherwise prepare GAAP financial statements for SEC filings to file SAP financial statements in registration statements for variable products. No similar relief, however, is currently provided for general account insurance products, which do not pass through to contract owners the performance of an insurance company separate account and whose contract value, benefits and guarantees are paid out of the insurance company's general account. Such products are not investment company securities eligible to register on one of the specialized forms for variable insurance products (Forms N-3, N-4 or N-6) and, in the absence of a specialized registration form, must be registered under the Securities Act on Forms S-1 or S-3.

By providing GAAP relief in the specialized forms for variable insurance products, the SEC has already acknowledged the cost and administrative burden of producing GAAP financial statements. In the adopting release for Forms N-3 and N-4, the SEC explained that GAAP relief was provided solely to reduce the disclosure burden on such issuers of variable insurance products.[5] The SEC later reaffirmed this position when it adopted Form N-6 in 2002, again citing the cost burdens that would otherwise be imposed on issuers if the insurance companies would not have to prepare GAAP Financial Statements except for use in a variable product registration statement.[6]

Permitting insurance companies that do not otherwise prepare GAAP financial statements to use SAP financial statements for insurance products registered on Forms S-1 or S-3 will not harm investors. At the time the SEC fashioned the disclosure requirements for Forms N-3 and N-4, it observed that the receipt of annuity payments and other guarantees provided by the contract depends upon the solvency of the insurance company and that contract owners, participants, and annuitants who invest in the contracts may not want or need disclosure about the investment performance of the insurance company, but instead may be interested *only* in the company's solvency.[7] SAP financial statements are designed to facilitate regulatory oversight of insurance

[4] The Committee previously advocated this position in its comment letter dated July 21, 2016 on the Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 F.R. 23,916 (April 21, 2016). The Committee believes that limiting the relief to insurance companies that do not otherwise prepare GAAP financial statements for use in SEC filings would effectively preclude the relief from being relied upon by any company that issues other types of registered securities, such as stocks, bonds or notes.
[5] Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Securities Act Release 6588, Investment Company Act Release 14575, 50 FR 26145 (June 25, 1985) at footnote 9.
[6] Registration Form for Insurance Company Separate Accounts that Offer Variable Life Insurance Policies, Securities Act Release No. 8088, Investment Company Act Release No. 25522, 67 FR 19848 (April 23, 2002) at 19856.
[7] Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts (proposing release), Securities Act Release No. 6502, Investment Company Act Release 13689, 49 FR 614 (Jan. 5, 1984)

company solvency by focusing on measurements that relate to the insurance company's ability to meet its obligations to contract owners, such as the company's liquid assets available for paying policy holder claims and the amount of regulatory capital and surplus it maintains as a financial cushion against unexpected losses. Consequently, SAP financial statements should provide investors in insurance products registered on Forms S-1 and S-3 sufficient financial information about the insurance company issuing the product to assess its solvency and its ability to fulfill its contractual guarantees. With respect to those insurance companies that do not otherwise prepare GAAP financial statements, GAAP financial statements do not provide additional disclosure value to investors in registered insurance products that warrants the cost and administrative burden of preparing and auditing an additional set of financial statement solely for this purpose.

The rationale for providing GAAP relief in registration statements for variable products applies equally to general account insurance products registered on Forms S-1 or S-3. Requiring an insurance company to prepare GAAP financial statements solely for a registered general account insurance product imposes a heavy financial burden that deters many insurance companies from offering such products. Furthermore, owners of general account insurance products, like owners of variable products, are principally concerned about the insurance company's solvency and its ability to fulfill its contractual obligations. For these reasons, the Committee advocates that the SEC extend the relief already provided to insurance products registered on Forms N-3, N-4 and N-6 to insurance products that are registered on Forms S-1 or S-3.

The SEC has already determined that insurance companies issuing general account insurance products warrant relief from certain disclosure requirements that generally apply to other types of securities registered on Forms S-1 or S-3. Rule 12h-7 under the Exchange Act exempts insurance companies from the periodic reporting requirements of the Exchange Act insofar as Securities Act registration of insurance products otherwise would trigger such periodic reporting, provided certain conditions are satisfied. Among the conditions required by Rule 12h-7 is that each year the insurance company file its SAP financial statements with its domiciliary state regulator.[8]

("Form N-4 Proposing Release"). Forms N-3 and N-4 require only that the sponsoring insurance companies provide a two-year comparative balance sheet in the Statement of Additional Information ("SAI"). To limit the size of the SAI, the full financial statements of the insurance company are included in Part C of the registration statement and provided to the contract owner upon request.

[8] The conditions required to rely on Rule 12h-7 relief from filing periodic reports under the Exchange Act include that:(1) the issuer of the security be subject to state insurance regulation, (2) the security does not constitute an equity interest in the issuer and that the security be subject to insurance regulation, (3) the insurance company file an annual statement of its financial condition with and its financial condition be examined periodically by its domiciliary state insurance regulator, (4) the security not be listed on any exchange or other trading system, (5) the insurance company take steps to ensure that a trading market in the security does not develop and (6) the prospectus for the security disclose the insurance company's reliance on the exemption. See Index Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8996, Exchange Act Release No. 59,221, 74 F.R. 3138 (adopted Jan. 8, 2009).

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In conclusion, the Committee urges the SEC to reconsider its proposed elimination of Rule 7-02(b) of Regulation S-X. The plain language of the rule currently permits at least some insurance companies – those companies that are owned by their policyholders – to use SAP financial statements in the Securities Act registration statements for general account insurance products. Rather than eliminate the ability of mutual life insurance companies to use SAP financial statements for insurance products registered on Forms S-1 or S-3, the Committee requests that the SEC extend similar relief to all insurance companies that do not otherwise prepare GAAP financial statements for use in SEC filings so that they also can use SAP financial statements in Form S-1 or S-3 registration statements for general account insurance products that are not investment company securities.

Members of the Committee very much appreciate your consideration of their views. The Committee stands ready to provide any additional information that would be helpful to you and to assist the staff in any way. Please do not hesitate to contact the undersigned at (202)383-0158 or at steve.roth@sutherland.com.

Respectfully submitted,

Stephen E. Roth

Stephen E. Roth

cc: Barry Miller, Securities and Exchange Commission
Matthew Giordano, Securities and Exchange Commission
William Kotapish, Securities and Exchange Commission

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life Insurance Company
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
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
Symetra Financial
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.

Mike Monahan
Senior Director, Accounting Policy

Via Email: rule-comments@sec.gov

October 21, 2016

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SEC Release 33-10110; 34-78310; IC-32175; File Number S7-15-16 ("SEC Release")

Dear Mr. Fields:

The American Council of Life Insurers ("ACLI" or "we")[1] appreciates the opportunity to comment on the SEC Release which describes the proposed changes as technical amendments of requirements that may have become "redundant, duplicative, overlapping, outdated or superseded in light of other disclosure requirements. The Release reflects a thorough analysis of disclosure requirements and we are generally supportive of the SEC's initiative. However, we believe the proposal to eliminate Rule 7-02(b) may result in unintended consequences. In addition, the potential to increase disclosure requirements under Accounting Principles Generally Accepted in the United States ("GAAP") related to overlapping disclosures – where the Commission's requirements are more expansive than those of GAAP, could create additional burdens on SEC-registered insurers at a time when several significant new accounting rules are in the process of being implemented.

Elimination of Rule 7-02(b)

ACLI respectfully disagrees with the characterization of the elimination of Rule 7-02(b) as a requirement that may have become "redundant, duplicative, overlapping, outdated or superseded in light of other disclosure requirements." Rule 7-02(b) currently permits any mutual insurance company or wholly-owned stock subsidiary of a mutual insurance company to prepare their financial statements included in filings under the Securities Act of 1933 (the "1933 Act"), and the Securities Exchange Act of 1934 (the "1934 Act") in accordance with statutory accounting requirements (cf. pages 130-131 of the Release). While the

[1] The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 280 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 92 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Learn more at www.acli.com.

American Council of Life Insurers
101 Constitution Avenue, NW, Washington, DC 20001-2133
[redacted] ([redacted] *f* [redacted]
www.acli.com

proposed elimination of Rule 7-02(b) in the Release would not have any direct impact of the ability of insurance companies to use statutory-basis financial statements in registration statements for variable insurance products on Forms N-3, N-4, and N-6 (based on relief provided in the instructions for those forms), and while it appears no mutual insurance companies are presently relying on Rule 7-02(b) as a basis to report statutory-basis financial statements, ACLI is concerned about the indirect impact the Commission's proposal to eliminate Rule 7-02(b) would have for other types of insurance products. ACLI believes the consequences are significant and very likely unintended.

Mutual insurance companies, which exist for the benefit of their policy owners and clients, would potentially bear significant burdens in the wake of the elimination of Rule 7-02(b). The substantial financial and administrative burdens that would be imposed by having to prepare and file audited GAAP financial statements – solely because a mutual insurance company or its wholly-owned stock subsidiary (hereafter collectively referred to as "mutual companies") decides to issue certain life insurance products that would need to be registered as securities on Form S-1 or Form S-3 (e.g., market value-adjusted fixed annuity contracts, certain index-linked annuity contracts, among others) – would have an adverse effect on both current and prospective policy owners. In the absence of Rule 7-02(b), such companies, in this case, would need to prepare and file audited GAAP financial statements, the financial costs of which alone could run into the hundreds of millions of dollars (per company), not only upon making the initial transition to GAAP reporting, but on an ongoing basis. These costs would, given the mutual structure, be borne entirely by the policy owners. Though all mutual companies would suffer as a result, smaller mutual companies would suffer disproportionate harm.

The elimination of long-standing Rule 7-02(b) may also have the unintended consequence of limiting the product offerings available to America's retirees (or increasing their cost) at a time when those products appear to be most needed by the consuming public. Mutual companies may decide to limit their offerings of general account insurance products if the costs of doing so would force them to prepare and file audited GAAP financial statements when they would otherwise not be required to do so. Thus, ACLI disagrees with the characterization of the elimination of Rule 7-02(b) as simply being part of an attempt to, in the words of the Release, "eliminate redundant or duplicative requirements." Such an undertaking, we submit, should involve a full analysis of the potential costs and benefits that the elimination of Rule 7-02(b) would have on mutual companies, their products, and the markets in which these companies operate.

Moreover, it is far from clear that the Release has justified a preference for GAAP filings in this context, especially in light of the long-standing and widely-held understanding that statutory filings are not only a legitimate and appropriate method of accounting for certain insurance products, but that they actually fulfill the Commission's stated goal of effective disclosure. In other words, statutory filings can and do provide investors with the information most material and most relevant to their investment decisions in the context of general account insurance products, given that they are reflective of factors most appropriate when evaluating the strength of an insurance company offering insurance guarantees (e.g., the manner in which estimates of policy owner dividend liability and policy benefit reserves are made). Conservative statutory-basis financials focus on an insurer's solvency and other measures relating to an insurer's ability to meet its obligations to policy owners, including the assets, liabilities, capital and surplus that state insurance regulators require of an insurer.

The Commission recognized this basic point about the appropriateness of statutory-basis financial statements as far back as 1974 when it allowed mutual companies to use an alternative to GAAP financials when filing their products. (cf. Federal Register, vol. 39, no. 53, March 18, 1974.) The Commission again noted the costs and administrative burdens associated with the production of GAAP financial statements in allowing issuers of variable insurance products to use an alternative to GAAP statements when filing variable annuities on Form N-4 (in 1985) and then again in 2002 when releasing Form N-6 for variable life insurance products. (cf. 50 FR 26145 (June 25, 1985); 67 FR 19848 (April 23, 2002). Again, as recently as 2010 in the passage of the Dodd-Frank Wall Street Reform and Consumer

Protection Act, Congress has also acknowledged accounting reporting regimes other than GAAP in certain contexts (e.g., the Collins Amendment and for the Federal Reserve's determination of concentration limits).

Overlapping Disclosures where the Commission's Requirements are More Expansive

Request for Comment: III E. 17 Overlapping Requirements – Potential Modifications, Eliminations or FASB Referrals

Paragraph 71. Should we retain, modify, eliminate or refer the foregoing incremental Commission disclosure requirements to the FASB for potential incorporation into GAAP?

ACLI member companies' resources are currently confronted with the implementation of several new accounting standards. In particular, classification and measurement of financial instruments, impairment of financial instruments, lease accounting, as well as revenue recognition for businesses within the holding company structure. In addition, the life insurance industry is currently evaluating a proposed Accounting Standards Update that proposes several significant recognition, measurement and disclosure changes to the models for life insurance accounting under GAAP, specifically impacting deferred acquisition costs and reserves, as well as additional related financial statement line items and disclosures. In summary, a significant portion of life insurers' balance sheets are affected with the new and proposed GAAP guidance.

With respect to the overlapping requirements for which the Commission's required disclosures are more expansive than the GAAP footnote disclosures, we recommend that these items be put on hold at this time. Given the significance of all changes currently being implemented and evaluated, the timing is inopportune for the life insurance industry to study and recommend or debate the ultimate disposition of overlapping disclosures. It would greatly benefit our industry if recommendations regarding these identified items be postponed. For the reasons the Commission identified in the Release, compliance with the additional footnote disclosure required by GAAP adds additional costs related to annual audit and interim review, scope of internal control over financial reporting, and XBRL. In addition, disclosures under GAAP previously made under S-K would no longer qualify for safe harbor protection afforded under the Private Securities Litigation Reform Act of 1995. We respectfully request that this portion of the project be deferred at this time, as we are not aware of any significant reporting issues related to these overlapping disclosures; i.e., if S-K requirements continue to be more expansive until such time as it would be most appropriate to address these items, the investors/users are not impacted, and the preparers continue under the current reporting requirements with respect to these items.

In summary, ACLI is concerned about the unintended consequence of eliminating Rule 7-02(b) and, at a minimum, requests that the SEC undertake a full analysis of the potential costs and benefits of doing so. More preferably, we request that the SEC postpone the elimination of Rule 7-02(b) until similar relief provided in the instructions of Forms N-3, N-4 and N-6 can be extended for insurance product offerings on Forms S-1 and S-3. In addition, we respectfully request postponing at this time the addressing of overlapping disclosures where the Commission's requirements are more expansive, as the life insurance industry is currently in the process of implementing and analyzing several significant new GAAP accounting pronouncements.

We appreciate the opportunity to express our views. Should you have any questions regarding our comments, please do not hesitate to contact me ([redacted]).

Sincerely,

M Monahan

Mike Monahan
Senior Director, Accounting Policy

REGISTERED NON-VARIABLE INSURANCE PRODUCTS

Information Supporting Requested Relief from Regulations S-K and S-X

Submitted to the Staff of the U.S. Securities and Exchange Commission

October 6, 2017

1. The pressing need to increase the number of guaranteed lifetime income products, like registered non-variable annuities, available to "Main Street" investors justifies making the requested relief a top Commission priority

The General Retirement Income Crisis

Fewer and fewer Americans will have access to pensions in retirement, an evolving and fundamental change to the U.S. retirement system that effectively shifts responsibility for retirement savings from employers to individuals.

- Approximately 80% of current retirees (overwhelmingly those generations before Baby Boomers) receive *some* income from a pension plan, and of those retirees, 40% get *most* of their income from their pension.[1] In stark contrast, 75% of Baby Boomers and GenXers (generally considered to cover the age group that spans from 35-69) do not expect to receive *any* income from a pension in retirement. In keeping with this seismic shift away from reliance on pension-generated retirement income, even *fewer* Millennials (ages 18-34) expect to have access to *any* pension income in retirement.[2]

- It does not appear that the growing number of retirees who will not have pensions will be able to instead rely on Social Security for adequate retirement income. The Social Security Administration itself says that, absent changes by Congress, Social Security will pay only 75% of promised benefits starting in 2035.[3] Not surprisingly, 80% of respondents to one study do not believe Social Security will provide them with sufficient retirement income.[4]

"Main Street" Investors Have Limited Access to 401(k) Plans

While 401(k) plans are widely perceived as a retirement savings replacement for pensions, 401(k) plans alone are not capable of filling the looming retirement gap.

- Not all Americans have access to employer-sponsored 401(k) plans – indeed, only 14% of employers offer retirement plans.[5]

- Two-thirds of all American workers do not contribute anything to a 401(k) plan.[6]

The Need for Lifetime Income Guarantees

Main Street investors' need for access to lifetime income continues to grow as advances in medicine, nutrition, and education all lead to Americans enjoying longer lifespans.

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[1] INSURED RETIREMENT INSTITUTE, IT'S ALL ABOUT INCOME: INAUGURAL STUDY ON THE AMERICAN RETIREMENT EXPERIENCE (2016).
[2] INSURED RETIREMENT INSTITUTE, THE LANGUAGE OF RETIREMENT (2017).
[3] *See* BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS, 2017 ANNUAL REPORT 5 (2017), https://www.ssa.gov/OACT/TR/2017/tr2017.pdf.
[4] INSURED RETIREMENT INSTITUTE, *supra* note 1.
[5] Ben Steverman, *Two-Thirds of Americans Aren't Putting Money in Their 401(k)*, BLOOMBERG (Feb. 21, 2017, 4:00 AM), https://www.bloomberg.com/news/articles/2017-02-21/two-thirds-of-americans-aren-t-putting-money-in-their-401-k.
[6] *Id.*

- Even when retirees have access to 401(k) plans, once their 401(k) assets are depleted, the 401(k) is no longer a source of retirement income. 401(k) plans are appropriate for the accumulation of assets on a tax-deferred basis, but they are not designed to provide guaranteed lifetime income to retirees.

- A recent survey showed that 26% of current retirees are experiencing basic living expenses that are higher than expected, and 41% reported higher than expected health-care and long-term care expenses.[7]

- These financial stresses have taken their toll on retirees: a recent poll showed that older people are more worried about running out of money than dying.[8] As pensions phase out and anxieties grow about Social Security, many retirees will increasingly focus on financial products that offer guaranteed lifetime income.

The Role of Annuities in Meeting That Need

Annuities play a *vital* role in the U.S. private retirement system The reason for this is clear: annuities are the only investment products that offer the very thing Main Street investors are losing access to due to the demise of the pension system and the possibility of diminished Social Security benefits: *a source of income that allows an annuity investor to convert her accumulated assets into an income stream that is guaranteed for her lifetime, or her lifetime and the lifetime of a joint owner*. Unlike 401(k) plans, annuities are available to *all* individuals who are ready to start saving for their retirement, not just individuals lucky enough to have an employer that offers a plan. Accordingly, annuities are *singularly* positioned to help Americans meet their income goals in retirement, and, as such, they are likely to continue to serve as keystones in the retirement savings plans of millions of current and future retirement savers.

- At the end of the first quarter of 2017, there were nearly $2 trillion of assets under management in variable annuities alone.[9] Total annuity sales in the US topped $220 billion in 2016.[10]

- Annuity owners represent the full range of Main Street investors. Current annuity owners represent a broad swath of the American population, both in terms of education and income:

    - One survey found that annuity owners have a wide range of educational achievement: 23% of annuity owners had a high school degree or less; 23% completed some college or vocational training; 27% were college graduates; and 26% had post-graduate degrees.[11]

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[7] LIMRA Secure Retirement Institute, Sources of Retirement Income: A Study of Retirees 53 (2017).
[8] *See* Mary Jordan and Kevin Sullivan, *The New Reality of Old Age in America*, Wash. Post (Sept. 30, 2017), https://www.washingtonpost.com/graphics/2017/national/seniors-financial-insecurity/?utm_term=.18ebcdbb8c4e.
[9] Morningstar, Variable Annuity Sales and Assets Survey: First Quarter 2017 7 (2017).
[10] LIMRA Secure Retirement Institute, U.S. Individual Annuities Sales Survey Participant's Report: First Quarter 2017 (2017).
[11] The Committee of Annuity Insurers, Survey of Owners of Individual Annuity Contracts (The Gallup Organization & Mathew Greenwald & Associates) (2013).

- That same survey also revealed the breadth of annual income levels represented by annuity owners: 5% of annuity owners had an annual household income less than $20,000; 35% had $20,000-49,999; 45% had $50,000 to $99,999, and 20% had $100,000 or more.

- As fewer Millennials expect to have access to pensions and meaningful Social Security benefits, they are poised to increasingly rely on annuities for lifetime income solutions. One survey showed 93% of Millennials are potential annuity purchasers, with 21% committed to using annuities for their retirement plans and 72% open to their use.[12]

Main Street Investors Need the Full Spectrum of Lifetime Income Choices that Insurance Companies Can Provide

Not all Main Street investors are alike, and factors like risk tolerance, retirement income goals, and the desire to leave a legacy are deeply personal ones.

- Respondents to one survey have indicated varying priorities, including guaranteed income (43% of respondents); estate building (34% of respondents); and principal protection (23%).[13]

- Even within those broad buckets, retirement savers have complex sets of personal characteristics and investment preferences, including a range of risk tolerances, desire for control over their investments, and desire for investment flexibility.[14]

Today's annuity marketplace has evolved substantially from the one that once offered only traditional fixed annuities. Insurance companies continue to innovate and respond to changing investor needs and preferences so that a wide spectrum of annuity offerings with different risk/return characteristics can be made available to Main Street investors.

- That spectrum includes not just fixed and fixed indexed annuities that are exempt from the Securities Act of 1933 (1933 Act), or variable annuities that are registered as investment company securities under the Investment Company Act of 1940, but also non-variable products, such as market value adjustment and index-linked annuity contracts that are registered under the 1933 Act.

- These products provide a multitude of features and functionalities that are designed to help all types of retirement investors with their individual goals. In addition to guaranteed income, many annuities offer protection against inflation through exposure to equities, and varying levels of downside protection for those who wish to protect principle.

[12] INSURED RETIREMENT INSTITUTE, MILLENNIALS AND RETIREMENT: SECOND BIENNIAL REPORT ON MILLENNIALS AND RETIREMENT PLANNING 15 (2017).
[13] LIMRA SECURE RETIREMENT INSTITUTE, A NEW PERSPECTIVE ON RETIREMENT PLANNING: AFFLUENT INVESTORS MARKET SEGMENTATION (2015).
[14] *Id.*

There is Strong Evidence That Investors are Looking for the Risk/Return Characteristics Found in Registered Non-Variable Products

There has recently been strong investor interest in registered non-variable products, particularly index-linked annuity contracts. In years past, in different interest rate curve environments, there was similar strong interest in market value adjusted annuities.

Registered index-linked products fill a gap between unregistered fixed index annuities and variable annuities. Developed by insurance companies primarily in response to the 2008 financial crisis, index-linked annuities generally have a medium risk/medium return profile, and they can be attractive to investors who are seeking market exposure and some downside protection, along with investment flexibility.

To this end, the contracts currently available in the market provide investors with a range of reference indices, different levels and kinds of downside protection, a variety of investment term lengths, and other features that allow investors to customize their investment experience.

In addition, index-linked annuities provide investors with the same guaranteed lifetime income options available with all annuities (and some offer guaranteed death benefits).

Because index-linked contracts are a relatively new entrant to the annuity marketplace, and because only a few insurance companies are currently offering them, index-linked annuities at present have a small overall share of the annuities market. However, investor demand for index-linked annuities is reflected in their notably strong year over year sales growth.

- Despite the limited number of offerings, index-linked annuities have enjoyed double-digit year-over-year sales growth in 2017. Registered indexed-annuities issued by AXA Equitable Life Insurance Company, Allianz Life Insurance Company of North America and Brighthouse Life Insurance Company (three primary issuers of registered index-linked contracts) experienced a year over year sales growth of 29.27%. Year to date sales growth (compared to 2016) is even more impressive, up 37.54%.[15]

- Combined sales for all index-linked annuities (there are four companies currently offering index-linked annuities) grew from $1.4 billion in 2012 to $7.4 billion in 2016.[16]

The burgeoning popularity of index-linked annuities should be driving faster market growth, active product development, and greater insurer competition. Yet, expansion is being artificially constrained by some of the undue burdens associated with registering index-linked products on Form S-1 or S-3. The relief from Regulation S-K and Regulation S-X that we discussed during our meeting of August 30, 2017 would foster additional insurer participation in the registered index-linked market and solidify the position of another much needed guaranteed lifetime income retirement product for the next generations of retirement savers.

[15] These figures are based on data from Morningstar/MARC, LIMRA, and Beacon.
[16] *Id.*

Chairman Clayton's Recent Remarks

Chairman Clayton emphasized in his October 4th, 2017 testimony before the House Committee on Financial Services the particular importance of "the long-term interests of the Main Street investor" as a guiding principle for the SEC's activity. He urged:

> [SEC's] analysis starts and ends with the long-term interests of the Main Street investor . . . . At a time when greater responsibility is shifting to Main Street investors to save for their own retirement, I am confident that this is the correct metric for our analysis of success in meeting our tripartite mission.[17]

Annuities are by their very nature focused on the long-term needs of investors and should, as Chairman Clayton advocated, help retirement savers "invest in a better future."[18] As discussed above, annuities in general and registered non-variable annuities in particular are poised to assist Main Street investors as responsibility for retirement income shifts to their shoulders. By making registered non-variable annuity products more widely available through the regulatory relief we are seeking, the SEC will indeed be serving Main Street investors well.

[17] Jay Clayton, Chairman, SEC, Testimony on "Examining the SEC's Agenda, Operations, and Budget" before the Committee on Financial Services, United States House of Representatives (Oct. 4, 2017).
[18] *Id.*

2. **The comprehensive, robust state insurance regulatory framework distinguishes insurance contracts from other "guarantees" registered on Forms S-1 and S-3 and warrants the relief requested**

Introduction

Insurance companies that register non-variable insurance contracts on Forms S-1 and S-3, as well as the insurance contracts themselves, are categorically different from other Form S-1 and S-3 registrants and their registered guaranteed products:

- Insurance companies and insurance contacts are subject to a comprehensive, robust system of insurance regulation in each state where they do business.
- Indeed, while insurance companies and their products do not have the same broad statutory exemption from 1933 Act registration contained in Section 3(a)(2) for bank products and guarantees, in fact the system of state insurance regulation provides protections that are at least similar, if not more comprehensive than, those provided by the federal banking regulatory regime.

At the August 30 meeting, we discussed relief that would exempt state-regulated insurance companies from preparing and including in Form S-1/S-3 insurance contract registration statements, certain types of disclosure items otherwise required by Regulation S-K, generally as follows:

- Information that is immaterial to the purchase of a regulated insurance contract and burdensome to prepare.
    - Unlike other Form S-1/S-3 registrants, insurance companies are in the business of issuing insurance contracts; they are not seeking to raise capital through debt and equity offerings that then become publicly traded
    - In making their investment decisions, insurance contract investors should assess two types of information: (i) the terms and features of the insurance contract; *and* (ii) items related to the insurance company's ability to satisfy its obligations under the contract
- Information that is otherwise already available to insurance contract investors pursuant to duplicative state insurance regulation.

Accordingly, the predicate for the requested relief is the comprehensive, robust state insurance regulatory framework, which is inapposite to other guaranteed products registered on Forms S-1 and S-3.

The Insurance Regulatory Framework

As the Commission did when it adopted Rule 12h-7, which provides relief from 1934 Act periodic reporting for insurance companies issuing regulated insurance contracts registered on Form S-1/S-3, the SEC should once again look to the century-old legal framework governing state regulation of insurance companies in connection with the current proposed relief.

Role of the States. In the United States, insurance is regulated, for the most part, by the various states. Each state and the District of Columbia has its own set of robust insurance statutes, regulations and other guidance, and its own supervisory authority, typically referred to as the state insurance department. State insurance departments are staffed by professional, trained individuals, and have well financed budgets. Although the insurance statutes and regulations vary from state to state, with respect to financial solvency regulation, there is a comprehensive set of model statutes and regulations promulgated by the National Association of Insurance Commissioners (NAIC) that all states follow.

Role of the NAIC. The NAIC is an affiliation of all of the U.S. State Insurance Departments and Insurance Commissioners. Its members include the Commissioners of the 50 states, the District of Columbia and the five US territories (American Samoa, Guam, Puerto Rico, Marianna Islands, US Virgin Islands). Although the NAIC has no lawmaking or rulemaking authority on its own, following a collaborative, transparent and time consuming process, it develops Model Laws and Regulations that can be enacted by the individual states and implemented by state insurance regulators. It also promulgates insurance accounting rules, develops reporting forms for financial statements, and adopts procedures and best practices for insurance departments.

NAIC State Accreditation Program. Importantly, the NAIC maintains a state accreditation program that is designed to establish and maintain stringent, uniform standards to promote sound insurance company financial solvency regulation in the United States.[19] Its objectives include ensuring that NAIC accredited states have adopted adequate solvency laws and regulations to protect consumers and state insurance guarantee funds, and effective and efficient financial analysis and examination processes. In order to qualify for and maintain their accredited status, the NAIC requires that states' insurance laws and their insurance departments meet certain minimum standards. In particular, states are required to adopt a comprehensive set of NAIC Model Laws and Regulations in "substantially similar form" in order the maintain "accredited status," and they also must use NAIC prescribed forms for their financial statements.

Currently, all 50 states, the District of Columbia and Puerto Rico are accredited.

Overview of Key Elements of the State Insurance Regulatory System

The comprehensive state regulatory framework cuts across the broad spectrum of insurer operations: (i) insurance company licensing requirements; (ii) policy form filing and approval requirements; (iii) minimum capital and surplus requirements; (iv) risk-based capital requirements; (v) valuation of assets and establishment of reserves for insurance contract liabilities; (vi) investment limitations; (vii) conservative accounting requirements; (viii) financial reporting; (ix) regulation of reinsurance; (x) periodic examinations of insurers; (xi) own risk solvency and assessment; (xii) early warning monitoring and resolution process; (xiii) regulation of holding companies; and (xiv) guaranty associations. This state regulatory framework is summarized below.

We would be pleased to provide more information about any of these elements or to answer any questions.

[19] The NAIC has done this by adopting a Financial Regulation Standards and Accreditation Program.

I. Insurance Company Licensing Requirements

Entry into the insurance business is a rigorous and time consuming process.

Every state has statutes requiring that insurers generally be licensed in order to transact the business of insurance in the state. To become licensed to transact insurance in a state, an insurer must fulfill many requirements and submit an application to state's Department of Insurance. Such an application must attach a plan of operation that describes the types of business to be written, how it will be marketed and administered, and must include pro forma financial projections. Additionally, the application must attach biographical affidavits on behalf of all directors and executive officers of the insurer and all persons who control the insurer, including its ultimate parent.[20] Some states also conduct background investigations, and require that fingerprints be submitted. The state insurance department may reject an application if it determines a director or executive officer has been convicted of any crime involving fraud, dishonesty, or moral turpitude, or is an untrustworthy person.

II. Policy Form Filing and Approval Requirements

States generally require that a life insurance policy or annuity contract be filed with, and approved by, the state insurance department prior to such policy or contract being issued in the state. Each state also has statutes and regulations setting forth required policy or contract provisions. If the required provisions are not included in the policy or contract, it will not be approved and, therefore, cannot be issued in the state. Further, a state insurance department may disapprove a policy or contract if it determines that its issuance would be prejudicial to the interests of policyholders or it contains provisions which are unjust, unfair or inequitable.

III. Minimum Capital and Surplus Requirements

Each state also has minimum capital and surplus requirements that an insurer must satisfy in order to become licensed in the state. The amount of minimum capital and surplus is dependent on the types of insurance the insurer will write in the state. Any licensing application must include proof that the insurer meets the state's minimum capital and surplus requirements.

IV. Risk-Based Capital Requirements

Risk-based capital (RBC) is a prescribed method of measuring the required amount of capital appropriate for an insurer to support its overall business operations in consideration of its size and risk profile. RBC limits the amount of risk an insurer can accept by requiring an insurer with a high amount of risk to hold a higher amount of capital. This methodology is set forth in the NAIC Risk-Based Capital (RBC) for Insurers Model Act (Model 312), which is a model law required to be adopted in substantially similar form by states in order to maintain "accredited" status.

An insurer is required to submit an RBC report each year to the state insurance departments in the states in which it is licensed. This report details the insurer's RBC level as of the end of the preceding year. If the RBC levels fall below certain statutory thresholds, regulators are permitted and, at times, required, to take certain actions. For example, a state insurance department may require that the insurer submit an RBC plan containing proposals of corrective actions which the insurer intends to take.

[20] A person is typically presumed to "control" an entity if it owns or controls 10% or more the entity's voting securities.

If the RBC levels decrease significantly, a state insurance department may be required to place the insurer under regulatory control.

V. Valuation of Assets and Establishment of Reserves for Insurance Contract Liabilities

State insurance laws in each jurisdiction require that insurers establish contract liabilities (called “reserves”) that are properly valued with respect to each type of insurance contract issued. Additionally, state insurance laws in each jurisdiction require that insurers set aside assets, which must also be properly valued, that are sufficient to meet the specific insurance contract liabilities. These laws assure that this significant component of an insurer’s financial condition is subject to adequate regulation.

- The process by which reserves are established and properly valued is subject to standardized reserving rules and actuarial guidelines, and is governed by the NAIC Standard Valuation Law (Model 820), which is a model law required to be adopted in substantially similar form by states in order to maintain accreditation.

- Reserve requirements mandate the annual filing of actuarial certifications by the insurer as to the adequacy of the insurer’s reserves. This requirement is set forth in the NAIC’s Actuarial Opinion and Memorandum Regulation (Model 822), which is a model regulation required to be adopted in substantially similar form by states in order to maintain accreditation.

- When an insurer undergoes a financial examination, as discussed in Item X below, the reserves of the insurer and its reserving practices are closely reviewed and evaluated.

- Securities owned by insurance companies are valued in accordance with the standards of the NAIC’s Standard Valuation Office (SVO), and other invested assets must be valued in accordance with the standards of the NAIC’s Financial Condition (E) Committee. Individual states must mandate these standards in order to maintain accreditation.

VI. Investment Limitations

States each have their own statutes limiting the types of permissible investments and the maximum amount that can be invested in certain assets. If an insurer holds investments other than permitted under the state insurance law, those investments will not be considered admitted assets.[21] For example, many states limit the percentage of non-investment grade securities that can be held. States also limit the percentage of admitted assets that may be invested in a single issuer. Accordingly, these statutes act so as to prevent an insurer from holding risky investments that could adversely affect their ability to keep their contractual obligations to policyholders.

VII. Conservative Accounting Requirements

Insurance accounting is a matter of state law. The accounting principles that govern the annual and quarterly financial statements of insurance companies are called Statutory Accounting Principles, or SAP. Although SAP follows and adopts many Generally Accepted Accounting Principles (GAAP) principles and practices, SAP is generally viewed by insurance regulators and the accounting profession as a more conservative method of accounting than GAAP.

[21] If an asset becomes non-admitted, the company’s balance sheet assets are reduced. The offsetting entry on the balance sheet results in a reduction of surplus.

SAP principles are designed to assist state insurance departments in the regulation of the solvency of insurance companies. SAP is developed in accordance with the concepts of consistency, recognition and conservatism. 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 insurance companies maintain capital and surplus at all times and in such forms as statutorily required to provide a margin of safety.

VIII. Financial Reporting

Life insurance companies are required to file annual (SAP) financial statements, as well as quarterly financial statements, with their domiciliary state insurance regulator and each state where it is licensed to do business.[22] Such statements must be prepared using the appropriate NAIC annual and quarterly statement forms and be prepared in accordance with the NAIC's Accounting Practices and Procedures Manual.[23] These financial statements are public. In addition to these statements, insurers are required to file supplemental statements and reports, on a prescribed schedule, or as demanded from time to time by the state regulator.

In the annual statement, insurers are generally required to report "compensation" payable to certain executive officers and others, which is publicly available through state insurance department websites. Additionally, insurers are required to include a management's discussion and analysis of financial condition and results of operations in the annual statement.

Insurers are also required to file a Corporate Governance Annual Disclosure that contains the material information necessary to permit the state insurance commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices.

IX. Regulation of Reinsurance

States often limit the amount of reinsurance that may be effected without prior state insurance department approval. This requirement assures that the insurer does not write an inordinate amount of new business that could jeopardize its ability to meet its contractual obligations.

Each state also sets forth requirements specifying when a ceding insurer may take credit (i.e. reduce its balance sheet liabilities) for reinsurance purchased by it.[24] Credit may be taken only if the reinsurer is licensed in the ceding insurer's state of domicile; the reinsurer has been "accredited" by the state insurance regulator; the reinsurer has satisfied prescribed surplus requirements and is domiciled in a state that has credit for reinsurance standards substantially similar to those in the ceding insurer's state of domicile; or the reinsurer posts collateral in one of several prescribed forms (such as a letter of credit or trust fund).

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[22] The requirement to file financial statements is set forth in The Annual Financial Reporting Model Regulation (Model 205), which is a model regulation required to be adopted in substantially similar form by states in order to maintain accreditation.

[23] In order to maintain accreditation, a state insurance department must require that all reporting insurers follow the accounting procedures and practices prescribed by the NAIC's Accounting Practices and Procedures Manual.

[24] The requirements as to when credit may be taken for reinsurance is set forth in The Credit for Reinsurance Model Law (Model 785) and Regulation (Model 786), which are required to be adopted in substantially similar form by states in order to maintain accreditation.

X. Periodic Examinations of Insurers

The domiciliary state insurance department is statutorily required to conduct a financial examination of a domestic insurer, typically no less often that every five years.[25] The examiner is given access to the books, records, files, securities and other documents of such insurer, including those of any affiliated or subsidiary companies thereof, which are relevant to the examination, and has the power to administer oaths and to examine under oath any officer or agent of such insurer or other person, and any other person having custody or control of such documents, regarding any matter relevant to the examination. Once completed, a final report on examination is published and available for public inspection.[26]

XI. Own Risk Solvency and Assessment

Nearly every state has adopted a statute and/or regulation requiring that insurers conduct an Own Risk Solvency and Assessment (ORSA).[27] Specifically, the ORSA requirement applies to any individual U.S. insurer that writes more than $500 million of annual direct written and assumed premium, and/or insurance groups that collectively write more than $1 billion of annual direct written and assumed premium. An insurer that is subject to the ORSA requirements is expected to: a) regularly, but no less than annually, conduct an ORSA to assess the adequacy of its risk management framework, and current and estimated projected future solvency position; b) internally document the process and results of the assessment; and c) provide an ORSA Summary Report annually to the lead state commissioner if the insurer is a member of an insurance group and, upon request, to the domiciliary state regulator.

XII. Other State Insurance Regulatory Tools

Early Warning Monitoring and Resolution Process. The NAIC organized the Financial Analysis Working Group (FAWG) to monitor the financial status of insurers that are or could be in financial distress to provide early intervention, conservation and rehabilitation. The FAWG enables various domiciliary regulators and lead states to advise on coordinated regulatory strategies, methods and actions for a particular insurer. Further, the FAWG supports and coordinates multi-state efforts to address solvency problems, including the identification and monitoring of adverse industry trends.

The existing state insurance regulatory framework in the U.S. is designed to ring-fence an insurance company and protect it from risk in other parts of its holding company group by subjecting the insurance company to separate, stand-alone capital requirements under specified statutory accounting principles and imposing significant capital mobility constraints and other regulatory protections. Each of these elements, combined with active regulatory oversight and early intervention authority, provides a conservative framework that has functioned well through normal and stressed markets, and has served to severely curtail instances of insurance company failures.

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[25] The specific requirements with respect to examinations are set forth in the Model Law on Examinations (Model 390), which is a model law required to be adopted in substantially similar form by states in order to maintain accreditation. The NAIC has also developed a Financial Condition Examiners Handbook and a Market Regulation Handbook.

[26] In addition to financial condition examinations, state insurance departments also periodically perform market conduct examinations of insurers. The purpose of these examinations is to determine whether an insurer has followed laws relating to the distribution of products to consumers and settlement of claims. Additional focused examinations (such as privacy) may also be conducted.

[27] The ORSA requirement is set forth in the Risk Management and Own Risk and Solvency Assessment Model Act (Model 505), which will become a state accreditation requirement as of January 1, 2018.

The regulatory requirements regarding minimum capital and surplus, RBC and affiliate transactions (see discussion below under XIII) together effectively protect U.S. insurance companies from financial difficulty arising from financially troubled affiliates. A regulator may prohibit an insurer in financial distress from transferring assets or capital to affiliates. A financially strong insurance company could not be raided by an affiliate, or compelled by its holding company parent to transfer assets or capital in excess of a statutorily determined threshold without prior notice and approval, or lack of disapproval, by its domiciliary commissioner.

Depending on the severity of the insurer's condition, the insurer may be placed (sometimes informally) under administrative supervision (which is the least severe action), placed under conservation or rehabilitation pursuant to court order, or finally, liquidated pursuant to court order (which is the most severe action).

Regulation of Holding Companies. Insurance companies that are members of holding company systems are protected in a number of ways. First, before an insurer becomes "controlled", such acquisition of control must be approved by the domiciliary state insurance regulator. Further, certain transactions between the insurer and any member of the enterprise are subject to fairness standards, and depending on the nature or size, must be filed or approved by the state regulator.

Each state has adopted a Holding Company Act that regulates transactions involving a domestic insurer, and, in some circumstances, a licensed insurer in an "insurance holding company system." An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

- The Holding Company Act requires prior notice and approval of a direct or indirect acquisition of a domestic insurance company, with approval focused on whether the acquiring party is capable of controlling an insurance company and whether the acquisition will have a hazardous effect on the insurance buying public.

- Another requirement under the Holding Company Act is for prior notice and non-disapproval of certain transactions (such as loans, investments, reinsurance, service or management agreements) between the domestic insurer and any of its affiliates.

- Other requirements under the Holding Company Act include the filing of an annual registration statement and an annual enterprise risk report that identifies the material risks within the insurance holding company system that could pose enterprise risk to the insurer.

Guaranty Associations. Each state has adopted laws providing for a life and health insurance guaranty association. Upon a determination that a life insurance company is insolvent, each state guaranty association will provide coverage to resident covered policyholders, up to statutory limits set forth in the applicable state guaranty association laws. Under the Life and Health Insurance Guaranty Association Model Act (Model 520), guaranty association coverage is generally limited, with respect to one life, to $300,000 for life insurance death benefits, $250,000 for annuity benefits and $100,000 for surrenders of policies.[28]

[28] State guaranty association laws generally provide that the association does not provide coverage for the portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner.

Guaranty association obligations are funded as incurred through an assessment mechanism in which all licensed life and health insurance companies in the state must participate as members. The amount of an assessment against a member insurer is a function of the amount of the insurer's direct written premium in the state, subject to an annual limiting cap on such assessments. Typically, the cap on assessments in any year is 2% of the member insurer's average annual premium for the prior three years. The cap on guaranty association assessments, as well as the caps on benefits payable, protects member insurers from the risk of shouldering a significant financial burden while still providing policyholders of insolvent insurers with protection.

3. SAP financial statements are appropriate financial statements for use in registration statements for non-variable insurance products

Summary

Life insurance companies offering registered non-variable products should be permitted to use SAP financial statements in lieu of GAAP financial statements in their registration statements for those products.

- Non-variable insurance products contain guarantees that are subject to the insurance company's general claims paying ability. Investors purchasing the products are concerned with the insurance company's financial condition and the answer to one key question: will the insurance company be able to pay its claims and meet its contractual obligations?

- Financial statements prepared in accordance with statutory accounting principles ("SAP financials") amply answer that question for policyholders by providing an accurate view of the company's ability to meet its contractual obligations.

- The Commission has already recognized this: for decades it has permitted the use of SAP financials, in lieu of GAAP financial statements, in registration statements for variable insurance products that provide guaranteed benefits.

- The Commission again acknowledged SAP financials when in 2010 it adopted Rule 12h-7 under the 1934 Act, which relieves state-regulated insurance companies issuing registered non-variable products from filing 1934 Act reports. The Commission conditioned that relief on the insurance company issuer filing an annual statement of its financial condition (i.e., SAP financials) with, and its financial condition being examined periodically by, the insurance commissioner of the insurance company's domiciliary state.

- The Commission should follow the precedent established by permitting SAP financials to be used for variable insurance products and permit use of SAP financials in registration statements for non-variable insurance products.

SAP Financial Statement Concepts

The purposes, processes and concepts related to the development of statutory accounting principles support permitting the use of SAP financials in registration statements for non-variable insurance products.

- As the NAIC states in the Preamble to its Accounting Principles and Procedures Manual, "SAP stresses measurement of ability to pay claims in the future." That same Preamble states that "[t]he cornerstone of solvency measurement is financial reporting. Therefore, the statement of financial condition is of paramount importance to the protection of policyholders."

- Statutory accounting principles are developed by the NAIC based on the same criteria used to develop GAAP, including:

- conservatism (judgements and estimations that avoid adverse variations and sharp fluctuations)

- consistency (development and application of accounting principles), and

- recognition (liabilities as incurred and assets that can be liquidated to pay policyholder claims).

- The ability of an insurance company to meet its policyholder obligations, including obligations related to registered non-variable contracts, is predicated on the availability of readily marketable assets when both the current and future obligations are due.

  - Statutory accounting principles do not recognize certain classes of assets that cannot be liquidated to pay policyholder claims on their contracts, including claims related to registered non-variable contracts. Such "non-admitted" assets include deferred acquisition costs, goodwill greater than 10% of statutory surplus and deferred tax assets.

  - Statutory accounting principles record most investments at amortized cost and require insurance companies to hold additional capital based on their risk levels, which avoids volatility associated with short term market fluctuations. Use of amortized cost is appropriate because insurance companies purchase and hold long term investments that match cash inflow (investment income to expected outflow (payments to policyholders).

- Statutory accounting principles are updated regularly to keep up with changes in the insurance industry and accounting practices.

  - The NAIC recently adopted a new standard valuation law that establishes principle based reserving as the new method for determining life insurance company reserves. The new standard is designed to align reserves more closely to an insurance company's actual risk profile and to address risks associated with new types of insurance products.

  - The NAIC is recommending changes to statutory accounting principles that will reflect recent GAAP guidance on measuring and recording credit losses on financial instruments.

- Given their fundamental regulatory purpose tied to solvency, SAP financial statements influence how insurance companies manage their business. They are the only such financial statements that relate directly to how insurance companies manage their business to meet their contractual obligations to policy holders.

  - The SAP balance sheet is used to calculate the amount of risk-based capital and statutory surplus that an insurance company holds, which calculations regulators use to ensure that the company remains solvent and maintains an adequate cushion to cover its contractual obligations to policyholders.

- Due to rules governing the recognition of assets and liabilities, statutory financial principles generally require insurance companies to hold greater reserves for insurance contracts than GAAP.

- Rating agencies use data from SAP financial statements to determine insurance company ratings, which creates a separate incentive for the insurance company to manage its business to achieve certain SAP results. These are several ways in which SAP financial information relate directly to how insurance companies manage their business to meet their contractual obligations to policy holders.

SAP Financials Meet the Commission's Standards for Relief in This Context

SAP financials should be permitted in lieu of GAAP financial statements in registration statements for non-variable products. For the reasons briefly summarized above, SAP financials are "appropriate statements of a comparable character" that satisfy the criteria that the Commission established in Rule 3-13 of Regulation S-X for an order permitting financial statements to be substituted for GAAP financials. The Commission effectively made this determination decades ago for variable insurance products when it permitted the use SAP financials in variable product registration statements in lieu of GAAP financial statements. That same analysis now supports permitting insurance companies to use SAP financials in lieu of GAAP financials in their registration statements for non-variable products – either through rule and form amendments or through a Rule 3-13 order.