

June 5, 2023

VIA E-Mail

Rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents
Release No. 34-97142; File Number S7-06-23**

Dear Ms. Countryman:

This comment letter is submitted on behalf of the Committee of Annuity Insurers (the “Committee”).¹ The Committee is pleased to have the opportunity to offer its comments in response to the request of the Securities and Exchange Commission (the “Commission”) in Release No. 34-97142 (March 15, 2023)(the “BD Cybersecurity Release”) for comments on the new cybersecurity risk management rules for Covered Entities² and Non-Covered Entities.

Committee members applaud the Commission’s goals in proposing the cybersecurity risk management rules and form. In the BD Cybersecurity Release, the Commission asks for comments on many aspects of the proposed rules in order to obtain

¹The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee’s current 32 member companies represent approximately 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, securities, banking, and tax policies regarding annuities. For over four decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is available on the Committee’s website at www.annuity-insurers.org/about-the-committee/.

²A “Covered Entity” is defined in the BD Cybersecurity Release to include various market participants, including certain broker-dealers registered with the Commission. See BD Cybersecurity Release at 478.

broad input on the potential impacts of and alternatives to what the Commission has proposed. The comments in this letter reflect Committee member' consideration of two key aspects of the proposal that are of particular importance to the Committee.

1. Request for clarification that the definition of Non-Covered Entities includes broker-dealers that sell other insurance contracts, not just variable contracts

Under the BD Cybersecurity Release, a broker-dealer whose role is limited to distributing or selling variable contracts is deemed a “Non-Covered Broker-Dealer” or “Non-Covered Entity.”³ As explained in the Release, Non-Covered Broker-Dealers “tend to offer a more focused and limited set of services such as facilitating private placements of securities, selling mutual funds and **variable contracts**, underwriting securities, and participating in direct investment offerings. Further, they do not act as custodians for customer securities and cash or serve as a conduit (*i.e.*, an introducing broker-dealer) for customers to access their accounts at a carrying broker-dealer that does maintain custody of securities and cash. Therefore, they do not pose the risk that a significant cybersecurity incident could lead to investors losing access to their securities or cash or having those assets stolen.”⁴ (emphasis added).

The proposal does not define the term “variable contracts,” although we assume the Commission intends the term to include variable annuities that if registered with the Commission are registered on Forms N-4 or N-3, and variable life insurance policies that if registered with the Commission are registered on Form N-6. However, there are other types of insurance contracts that are sold through the same broker-dealer channels as variable contracts. These insurance contracts include registered index-linked annuities and life insurance products, registered market value adjusted annuities, registered contingent deferred annuities and other types of insurance contracts (collectively, “other insurance contracts”). Like broker-dealers that sell variable contracts, broker-dealers selling other insurance contracts offer “a more focused and limited set of services,” do not act as custodians for customer securities and cash, and do not act as an introducing broker-dealer that serves as a conduit for customers to access their accounts at a carrying broker-dealer.

For these reasons, the Committee asks the Commission to clarify and confirm that broker-dealers that sell other insurance contracts as noted above would qualify as Non-Covered Entities under proposed Rule 10(e)(1).

2. Request for an exemption from the immediate notice requirement for Non-Covered Entities selling variable and other insurance contracts

Proposed Rule 10(e)(2) would require all Non-Covered Entities to give the Commission immediate written electronic notice of a significant cybersecurity incident upon having a reasonable basis to conclude that the significant cybersecurity incident has occurred or is occurring.

³BD Cybersecurity Release at n. 118.

⁴Id. at 65.

The stated purpose of the immediate notice is to “facilitate the Commission in identifying patterns and trends across Market Entities experiencing significant cybersecurity incidents.”⁵ However, as the Commission noted in the BD Cybersecurity Release, Non-Covered Entities generally “are smaller firms whose functions do not play as significant a role in promoting the fair, orderly, and efficient operation of the U.S. securities markets, as compared to broker-dealers that would be Covered Entities.”⁶ Non-Covered Entities also do not serve as a conduit for customers to access their accounts at a carrying broker-dealer. And Non-Covered Broker-Dealers “likely are less connected to other Market Participants through information systems than Covered Broker-Dealers.”⁷ For these reasons, Non-Covered Entities pose significantly less risk of incurring the kind of harmful cybersecurity incidents that give rise to the Commission’s need for immediate notice.

Yet, requiring smaller, less interconnected entities not only to adopt a robust cybersecurity program, but also to provide immediate notice to the Commission of a significant cybersecurity incident upon having a reasonable basis to conclude that such an incident is occurring or has occurred would impose an onerous, and we submit unnecessary burden on Non-Covered Entities, such as registered principal underwriters for variable products, that have minimal to no connections to either customers or their securities and pose minimal risks to the financial system.

For these reasons, the Committee requests that the Commission exempt Non-Covered Entities selling variable and other insurance contracts from the immediate notice requirement in proposed Rule 10(e)(2).

3. Comment on proposed amendments to Regulation S-P

The Committee wishes to emphasize its objection to the confusing overlap of obligations, standards and definitions between those set forth in the BD Cybersecurity Release and the Commission’s proposal to amend Regulation S-P.⁸ The Committee strongly believes that such overlap will create confusion and uncertainty among investors and will be overly burdensome for Committee members and the Non-Covered Entities that sell variable and other insurance contracts. The Committee is providing more detail on these points in its comment letter on the proposed Regulation S-P amendments.

* * *

The Committee appreciates the time and resources the Commission and its staff have devoted to this rule proposal, as well as the opportunity to provide the Committee’s views to the Commission. We also appreciate the Commission’s careful consideration of the comments expressed herein. If you have any questions about our comments please

⁵*Id.* at 132.

⁶*Id.* at 64-65.

⁷*Id.* at 65.

⁸Release Nos 34-97141; IA-6262; IC-34854: Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information (March 15, 2023).

contact Stephen Roth (202-383-0158), Mary Jane Wilson-Bilik (202-383-0660), or Alexander Sand (512-721-2721).

Respectfully submitted,

A handwritten signature in blue ink that reads "Eversheds Sutherland (US) LLP". The signature is written in a cursive, flowing style.

Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS

cc: Haoxiang Zhu, Director, Division of Trading and Markets
Randall W. Roy, Deputy Associate Director, Division of Trading and Markets