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

December 22, 2020

Via Electronic Mail

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

Re: File Number S7-09-20;
Release Nos. 33-10814; 34-89478, IC-33963
Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements

Dear Ms. Countryman:

We are submitting this comment letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to several of the Securities and Exchange Commission's (the "Commission") proposals in the 'investor experience' release (**Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements** *(*Release Nos. 33-10814; 34-89478; IC-33963, August 5, 2020) (the "Proposing Release")). Among other things, the Commission proposed a new rule 498B under the Securities Act of 1933 (the "1933 Act"), amendments to rule 30e-3 under the Investment Company Act of 1940 (the "1940 Act"), revisions to Form N-1A, and amendments to certain rules applicable to investment company advertisements.

[1] The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For almost four decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the Commission, FINRA, the CFTC, the IRS, the U.S. Treasury Department, and the U.S. Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition comprised of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

The Committee applauds the Commission's efforts to modernize the disclosure framework for open-end management investment companies (mutual funds) in order to improve investor experience. Speaking from the perspective of issuers and distributors of variable annuity (and life insurance) contracts[2] registered under the 1933 Act and depositors/sponsors of separate accounts[3] registered under the 1940 Act, the Committee generally supports the Commission's proposals regarding mutual fund shareholder reports and annual prospectus updates, but believes there is a significant issue regarding applicability of the advertising rule amendments to variable insurance products. The Committee offers the following specific comments to help advance the Commission's goals.

1. Scope of Rule 498B: Inapplicability to Prospectus Delivery for Registered Variable Insurance Contract Owners

The Committee supports the scope of rule 498B as proposed, and does not believe that it needs to be extended to include investors that hold indirect interests in mutual fund shares through a separate account funding a registered variable insurance contract.

Proposed rule 498B would allow "online" (notice & access) delivery of mutual fund[4] ***prospectuses*** to "Existing shareholders" (paragraph (b) of proposed 498B), subject to certain conditions. The proposal would specifically exclude owners of registered variable annuities and variable life insurance policies ("variable contract owners") from the online delivery method in 498B by excluding those investors from the definition of "Existing Shareholder" in paragraph (a) of proposed rule 498B.[5] However, as the Proposing Release notes, paragraph (j) of recently adopted rule 498A (under the 1933 Act) already allows optional online (notice & access) delivery of mutual fund prospectuses to variable contract owners. The Proposing Release explains:

> "The Commission recently adopted rule 498A, which provides that prospectus delivery requirements under section 5(b)(2) of the Securities Act are satisfied with respect to those investors if the fund's current prospectuses and certain other documents appear online and certain other conditions are met. Rule 498A, like the disclosure framework for funds that we are proposing, relies on a layered disclosure approach that tailors the disclosure that investors receive to the informational needs of both new and ongoing investors in

[2] "Variable insurance contract," as used herein, means a variable annuity contract or a variable life insurance policy. "Variable contract owners" refers to owners of registered variable insurance contracts.

[3] "Separate account," as used herein, means an insurance company separate account as defined in section 2(a)(37) of the 1940 Act.

[4] "Mutual fund" and "fund," are used herein interchangeably, to mean an open-end management investment company as defined in section 5(a)(1) of the 1940 Act.

[5] Specifically, the definition of "Existing Shareholder" in paragraph (a) of proposed rule 498B would exclude "investors that hold the fund through a separate account funding a variable annuity contract offered on Form N-4 … or a variable life insurance contract offered on Form N-6." Accordingly, this exclusion would only apply to owners of registered variable contracts, and not to owners of unregistered variable contracts (since unregistered variable contracts are not offered on Forms N-4 or N-6).

variable contracts. The conditions associated with the satisfaction of prospectus delivery requirements pursuant to rule 498A are tailored to the unique nature of variable annuity and variable life insurance contracts, and provide disclosures and protections that we believe are more appropriate for investors in those contracts (compared to disclosures and protections associated with the satisfaction of prospectus delivery requirements pursuant to proposed rule 498B). Accordingly, we are not proposing to make proposed rule 498B available for those products."[6]

In this regard, Question # 184 in the Proposing Release asks "should the scope [of rule 498B] be extended to include . . . investors that hold the fund through a separate account funding a variable insurance contract? Why or why not?"

The website posting and other requirements for online delivery of fund prospectuses under existing rule 498A(j) and proposed rule 498B are very similar. However, as the Proposing Release explains, paragraph (j) of rule 498A is specifically designed for delivery of fund prospectuses to variable contract owners, whereas rule 498B is not. Moreover, rule 498A reflects significant work and effort, and very careful consideration, over a very extended period by both the Commission staff and the insurance industry. In particular, rule 498A takes into account the two-tier structure of separate accounts registered as unit investment trusts under the 1940 Act as well as the context in which indirect interests in certain mutual funds are offered to variable insurance contract investors – that is, contracts that provide an investment platform typically comprised of dozens of mutual fund portfolios, and that also provide significant insurance benefits and guarantees. The Committee also notes that rule 498A has only recently gone into effect, so experience should be gained with respect to implementing its terms and conditions before the Commission considers whether applying a new and different rule to online delivery of fund prospectuses to variable contract owners would serve any purpose. For these reasons, the Committee sees no need to extend the scope of rule 498B to include variable contract owners in the definition of Existing Shareholders, as long as paragraph (j) of rule 498A remains in effect in its current form.

The proposed scope of rule 498B is appropriate, and no change in that scope should be made.

2. <u>Availability of Rule 30e-3 to Unit Investment Trust Separate Accounts: Fulfilling Delivery Requirements for Shareholder Reports Under Rule 30e-2</u>

<u>The proposed amendments to rule 30e-3 are not intended to, would not, and should not eliminate the ability of separate accounts registered as unit investment trusts to rely on rule 30e-3 to fulfill their obligations under rule 30e-2 to deliver the shareholder reports of the underlying funds.</u>[7]

[6] Proposing Release, pages 232-33 (footnotes omitted).

[7] "Underlying fund" refers to a mutual fund whose shares are held by (owned by) an insurance company separate account (registered or unregistered). The fund's shares may or may not also be held by other types of investors; that is, an underlying fund's shares do not have to held *exclusively* by insurance company separate accounts, although that is frequently the case.

The proposals would amend recently adopted rule 30e-3 so that funds registered on Form N-1A could not utilize its online (notice & access) delivery method for fund shareholder reports (for any obligations such funds have under rule 30e-1 to deliver shareholder reports).[8] Under the proposals, unit investment trusts ("UITs")[9] would retain the ability to use rule 30e-3 for online delivery of underlying mutual fund shareholder reports, to fulfill their rule 30e-2 delivery obligations (by sending paper notice of internet availability of underlying fund shareholder reports, and meeting the website posting and other requirements of rule 30e-3). Paragraph (h)(1) of rule 30e-3 defines "Company" to include a unit investment trust required to transmit a report to shareholders pursuant to rule 30e-2, and that includes variable insurance contract separate accounts that are registered as UITs ("UIT separate accounts). Paragraph (a) of rule 30-3 provides that a "Company" may satisfy its obligations to transmit a report required by rule 30e-2 by satisfying the conditions in paragraphs (b) through (e) of rule 30e-3.[10] The proposals would not amend paragraphs (a) or (h)(1) of rule 30e-3, and therefore UIT separate accounts can continue to rely on rule 30e-3.

Not only has the Commission not proposed changes to the specific provisions of rule 30e-3 that would be necessary to exclude UIT separate accounts from the rule, but the Proposing Release contains no discussion indicating that the proposals are intended to, or would, make any change in the availability of rule 30e-3 to UIT separate accounts.[11] Accordingly, the Proposing Release gives no reasons for excluding UIT separate accounts from the scope of rule 30e-3, and there are none.[12] In sum, it seems clear that no such change is intended, and the Committee strongly believes that none is warranted.

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[8] Because the focus of the Committee's comments in this letter is on how the proposals would affect variable insurance contract issuers and distributors, the Committee is not specifically commenting on this aspect of the proposals except to note that narrowing Rule 30e-3 would not be consistent with the Committee's and other industry participants' recent advocacy seeking long overdue modernization of the Commission's guidance relating to electronic delivery of required documents. As the Committee set forth in its October 23, 2020 submission to Chairman Clayton, the Committee believes the Commission should move to a notice & access default electronic delivery framework for all required documents.

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[9] "UIT" as used herein, means a unit investment trust as defined in Section 4(2) of the 1940 Act. "UIT separate account" means a separate account registered as a UIT under the 1940 Act.

[10] One of those conditions is addressed in the next section of this letter.

[11] *See* Proposing Release, pages 257-260.

[12] The Proposing Release does ask for comment on whether the scope of the amendments to rule 30e-3 should be extended to exclude other types of investment companies (such as registered closed-end funds, BDCs, and ETFs organized as UITs) (Proposing Release, Question # 210 at page 261), but does not mention UIT separate accounts in the discussion of scope or related questions.

In order for the Commission to change the scope of rule 30e-3 regarding UITs in general or UIT separate accounts in particular, the Committee respectfully submits that the Commission would need to develop and publish a specific proposal for doing so, with accompanying explanation and justification, and provide notice of and a meaningful opportunity for comment.

The proposal to narrow the scope of rule 30e-3 focuses on management companies registered on Form N1-A, and does not address significant differences in the disclosures and disclosure delivery framework applicable to UIT separate accounts. In particular, under recently adopted rule 498A (and amendments to Forms N-4 or N-6), existing investors in registered UIT separate accounts would receive, at least annually, an updated "portfolio company appendix" that specifies each of the funds available in the product, its investment adviser (and sub-adviser(s) if any), annual expenses, and investment performance history (one, five, and ten-year average annual total returns).[13] It is anticipated that most investors in registered variable annuity and life insurance products will receive this updated portfolio company information in a short "updating summary prospectus," delivered, at least annually, in paper format pursuant to rule 498A.[14] Because of this significant difference in updated disclosure delivery requirements, the rationale for excluding funds registered on Form N-1A that are subject to a rule 30e-1 delivery obligation from rule 30e-3 – funds that also will be able to rely on proposed rule 498B, does not apply to UIT separate accounts (with respect to their rule 30e-2 delivery obligations).

Notwithstanding all of the above, insofar as the proposals would change the scope of rule 30e-3 with respect to management investment companies registered on Form N-1A, and as discussed below the proposed wording arguably creates a 'technical glitch' in applying the rule to UITs, we understand that a question may have been raised as to applicability of the rule to UITs. Therefore, while the Committee believes it is clear that, under the proposed amendments, UIT separate accounts remain within the scope of, and can rely on, rule 30e-3, it nevertheless would be helpful if the Commission could confirm that the proposals do not impact the ability of insurance company separate accounts registered as UITs under the 1940 Act to rely on rule 30e-3 to meet their delivery requirements under rule 30e-2.

If the Commission determines to modify rule 30e-3 as it would apply to management investment companies, the Committee respectfully requests confirmation that UIT separate accounts (registered on Forms N-4 or N-6) can continue to rely on rule 30e-3 to fulfill their obligations under rule 30e-2 to deliver the shareholder reports of underlying funds to their contract owners.

3. Technical Glitch in the Proposed Limitation of the Scope of Rule 30e-3

The proposal to restrict the scope of rule 30e-3 to exclude funds registered on Form N-1A from relying on rule 30e-3 unintentionally excludes the shareholder reports (and portfolio holdings) of such funds from the website posting requirements in paragraph (b) of rule 30e-3.

As noted above, the proposals would amend recently adopted rule 30e-3 so that funds registered on Form N-1A would not be within its scope – that is, under the proposed amendments such funds could not utilize rule 30e-3's online (notice & access) delivery method to fulfill their obligations under rule 30e-1 to deliver their shareholder reports to investors. As

[13] *See* paragraph (c)(6)(iv) of Rule 498A.

[14] If an insurance company elects not to use an updating summary prospectus, then the same updated portfolio company information will be delivered annually in a full, statutory (section 10(a)) prospectus under the recently adopted amendments to Forms N-4 and N-6. *See* Item 17 of Form N-4 and Item 18 of Form N-6.

also noted above, the Committee expresses no view on the merits or substance of this proposed restriction.

However, while this proposed amendment to rule 30e-3 was only intended to apply to funds registered on Form N-1A, it appears to have an unintended, technical impact on UIT separate accounts. That is, there appears to be a "technical glitch" in exactly how the proposed limitation on the scope of rule 30e-3 would be implemented. Specifically, the proposals would amend rule 30e-3 by changing the definition of "Fund" in paragraph (h)(2) of rule 30e-3 so that the term "Fund" includes only management companies registered on Forms N-2 or N-3 (and any separate series thereof), and does not include funds registered on Form N-1A. However, paragraph (b) of rule 30e-3 would still require UIT separate accounts (which are included in "Companies" as defined in rule 30e-3) to post "the Fund's" shareholder reports and portfolio holdings, even though the amended definition of "Fund" literally would no longer include any investment companies registered on Form N-1A – so that "Fund" as defined would no longer include underlying funds whose shares are held in UIT separate accounts. Accordingly, under the amendments, taken literally, there would be nothing for UIT separate accounts to post. However, continued posting of the underlying fund documents is clearly what is intended and fulfills the purposes of the shareholder report delivery requirements in general and rule 30e-3 in particular.

The Committee suggests that one possible way to accomplish the Commission's goal of excluding funds registered on Form N-1A from the scope of rule 30e-3 with respect to their rule 30e-1 obligations, without creating this technical problem, would be (1) to not change the definition of "Fund" in paragraph (h)(2) of rule 30e-3, but instead (2) to revise paragraph (a) of rule 30e-3 to exclude funds registered on Form N-1A from that operative provision. By retaining the current definition of "Fund," it would be clear that UIT separate accounts (and other UITs) relying on the rule would need to post the shareholder reports and portfolio holdings of the underlying funds, which is of course what is intended. Changing the scope of the rule in paragraph (a) of rule 30e-3 would more directly and cleanly accomplish the Commission's goal of requiring mutual funds to deliver their shareholder reports to investors (other than investors that hold indirect interests in fund shares through UIT separate accounts).[15]

Accordingly, the definition of "Fund" in paragraph (h)(2) of rule 30e-3 should continue to include funds registered on Form N-1A, so that the term "Fund" in paragraph (b) of the rule clearly includes underlying funds held in UIT separate accounts. Including funds registered on Form N-1A in the definition of "Fund" in paragraph (h)(2) while excluding funds registered on Form N-1A from paragraph (a), would preclude mutual funds subject to rule 30e-1 from relying

[15] For example, one possible solution would be to revise paragraph (a) of rule 30e-3 by simply adding the parenthetical "(other than a Fund registered on Form N-1A)", so that paragraph (a) of 30e-3 would read as follows: "A Company (other than a Fund registered on Form N-1A) may satisfy its obligations to transmit a report required by [Section] 270.30e-1 or [Section] 270.30e-2 ("Report") to a shareholder of record if all of the conditions set forth in paragraphs (b) through (e), [and (i)] of this section are satisfied." The definition of "Fund" in paragraph (h)(2) of rule 30e-3 would not be revised and would continue to include funds registered on Form N-1A, so that the website posting requirements in paragraph (b) (applicable to UIT separate accounts and other UITs) would continue to include documents relating to funds registered on Form N-1A.

on rule 30e-3, while still allowing UITs to rely on rule 30e-3 without creating the technical interpretive problem for UIT separate accounts noted above.

If the scope of rule 30e-3 is restricted to exclude funds registered on Form N-1A from relying on rule 30e-3 in order to meet their rule 30e-1 obligations, it should be done in a manner that does not unintentionally exclude the shareholder reports (and portfolio holdings) of all funds registered on Form N-1A from the website posting requirements in paragraph (b) of rule 30e-3.

4. New, Simplified Fee Terminology for Mutual Funds

The Committee generally supports the Commission's proposals to use more simplified, user-friendly, plain language to describe fees in mutual fund prospectuses.

The proposals would require the use of new, simplified terminology to describe fees and expenses in Form N-1A mutual fund prospectuses. These new terms (or captions) would be used in a new mutual fund fee summary, in the full fund fee table, and throughout the fund prospectus.

The proposals would apply this new terminology to Form N-1A (mutual fund) statutory prospectuses (and therefore also to fund summary prospectuses under rule 498), regardless of whether the fund's shares are sold directly to investors or indirectly to investors through insurance company separate accounts or otherwise.[16] However, the proposals would not apply this new terminology to statutory or summary prospectuses for variable insurance contracts since these proposals would not apply to Forms N-4 or N-6 (for variable annuity and life insurance contracts, respectively).

The Committee supports the Commission's goals of providing investors with simpler, user-friendly and easier to understand disclosure materials, using plain and everyday language wherever practical.[17] Accordingly, without addressing the merits of the particular terminology that the Commission has proposed, the Committee supports the use of simple, plain English captions and terms in the fee tables and elsewhere throughout mutual fund prospectuses.

Prospectuses (both statutory and summary) for variable insurance contracts funded by UIT separate accounts must disclose certain information regarding the fees and expenses of the underlying funds. However, as the Committee and others have maintained in connection with the Commission's recent adoption of the summary prospectuses (initial and updating) for

[16] Mutual fund shares could, for example, be held indirectly by investors through tax-qualified retirement plans or funds-of-funds as well through insurance company separate accounts.

[17] *See, e.g.*, the Comment Letter of the Committee of Annuity Insurers (Feb. 14, 2019), on ***Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts*** (File No. S7-23-18.

variable annuity and life insurance contracts (rule 498A),[18] it is important that flexibility and alternative terminology be allowed in variable annuity and variable life insurance statutory and summary prospectuses and other disclosure materials. Specific terminology should not be required, so long as alternate terminology clearly conveys the fees and expenses. The Commission has expressed general agreement with these views, and in recently adopted amendments to Forms N-3, N-4, and N-6,[19] the Commission added a clarifying instruction "that explicitly and broadly permits registrants to use alternate terminology … so long as the alternate terminology clearly conveys the meaning of, or provides comparable information as, the terms used in the forms."[20] Therefore, in their prospectuses, variable insurance contract registrants (using Forms N-3, N-4 and N-6) should be permitted, but not required, to utilize whatever new terminology is adopted for Form N-1A registrants regarding underlying fund fees and expenses. No change in the Commission's current proposals should be necessary in this regard, since the recently amended variable insurance contract registration forms currently provide the appropriate flexibility for all terminology used in variable insurance contract prospectuses.

The Committee generally supports the Commission's proposals to use more user-friendly, everyday terminology to describe fees in mutual fund prospectuses. However, the Commission should confirm that the proposed amendments to the Form N-1A disclosure requirements regarding fee terminology do not affect the recently adopted provisions in Forms N-3, N-4, and N-6 permitting flexibility in the use of all terminology in variable insurance contract disclosures.

5. Advertisement and Sales Literature Amendments

The proposed amendments to the advertisement and sales literature rules do not work for and should not apply to variable insurance contracts funded by insurance company separate accounts.

The Commission has proposed amendments to rules 482, 156, and 433 under the 1933 Act and rule 34b-1 under the 1940 Act (the "advertising rule amendments") to require that investment company advertisements[21] that provide fee or expense figures must include timely and prominent information about a fund's maximum sales load and gross "total annual

[18] *Id.; see* ***Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,*** Release Nos. 33-10765, 34-88358, IC-33814, 85 Fed. Reg. 25964, 25972-73 (May 1, 2020).

[19] Form N-3 is applicable to variable annuity contracts issued through separate accounts organized as management investment companies; Forms N-4 and N-6 are applicable to variable annuity and variable life insurance contracts, respectively, issued through UIT separate accounts. We are not aware of any variable life insurance contracts issued through separate accounts organized as management investment companies.

[20] See ***Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,*** Release Nos. 33-10765, 34-88358, IC-33814, 85 Fed. Reg. 25964, 25972 (May 1, 2020). *See* General Instruction C.3(d)(ii) of Forms N-3, N-4, and N-6.

[21] "Advertisements," as used herein (and as used in the Proposing Release), includes investment company communications subject to rules 482, 156, 433, and 34b-1.

expenses." The Proposing Release explains that these amendments "would generally apply to all investment companies, including mutual funds, ETFs, closed-end funds, and BDCs."[22]

It seems clear that the advertisement rule amendments (at least with respect to the total annual expenses requirement) were intended to apply to various types of management investment companies. All of the examples given in the Proposing Release (quoted above) are management companies. The concept of standardized "total annual expenses"[23] (without any fee waiver or expense reimbursement), as required by the proposed amendments to rule 482, is fundamentally a management company concept. As the Proposing Release notes, in fee waiver and expense reimbursement arrangements, the fund's *adviser* provides the waiver or reimbursement,[24] and UIT separate accounts do not have advisers. The Proposing Release does not discuss or explain whether or how this proposal would apply to unit investment trusts.

Moreover, the Proposing Release does not discuss or explain whether or how this proposal would apply to insurance company separate accounts generally. Specifically, the Proposing Release does not address or discuss whether, and if so how, a standardized "total annual expense" figure could or would be calculated for variable annuity (or variable life insurance) separate accounts; there are so many significant issues that would need to be addressed and resolved in order to apply that concept to variable insurance contracts that it is clear that the advertising rule amendments as proposed cannot be applied to variable insurance contracts.[25]

Unlike a class of shares in a mutual fund portfolio,[26] a particular UIT separate account can, and frequently does, support a number of different variable insurance contracts. More importantly, even a single variable insurance contract can, and frequently does, have a variety of fees, expenses, and charges, reflecting a number and wide variety of optional investment options

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[22] Proposing Release, page 321. "ETF" refers to exchange-traded funds, and "BDC" refers to business development companies.

[23] Although the comments herein focus on the "total annual expenses" requirement, this is not to say that there are no problems or concerns with applying the "maximum sales load" requirement to variable contracts. For example, the sales load on a variable life insurance contract can be in the form of a front-end load, periodic deductions from cash value, or a surrender charge, or a combination of those forms of charges; these charges can be based on the premium amount, the cash value, and/or the amount surrendered; and can vary based on the individual characteristics of the insured. With respect to shares of a mutual fund, the maximum sales load is the same for all investors; for variable life insurance, the maximum sales load can vary from investor to investor based on a number of factors.

[24] Proposing Release, n. 670.

[25] At the very least, if the Commission intends for the advertising rule amendments to apply to variable insurance contracts, then the Commission should develop and publish a specific proposal for somehow calculating "total annual expenses' or some other, more appropriate measure of 'standardized' expenses for insurance company UIT separate accounts, and provide notice of and a meaningful opportunity for comment on such a proposal.

[26]It may be a fairly straightforward matter to calculate a standardized "total annual expense" figure for a mutual fund portfolio. With that in mind, the Committee generally supports the proposed advertisement rule amendments *insofar as they would apply to mutual funds.*

as well as insurance and other optional benefits and riders. For the reasons summarized below, these numerous expense variations necessarily would make it extremely difficult, if not impossible, to calculate a single, standardized "total annual expense" figure for most variable insurance contracts.

First, of course, variable insurance contracts are generally funded not by a single portfolio, but by dozens of different available underlying mutual fund portfolios (corresponding to different sub-accounts of the separate account), each with a different level of annual operating expenses.

Second, a base variable ***annuity*** contract can offer a number of death benefit options, such as (1) a death benefit equal to the cash value, (2) a return of premium death benefit, and (3) an annual roll-up or step-up death benefit. The base variable annuity mortality and expense risk charge can vary for each of these different base contract death benefits. In addition, variable annuities can offer "enhanced" death benefits (*e.g.*, an 'extra' death benefit equal to 20% or 40% of the base death benefit or cash value, intended to cover taxes due on the base death benefit). These enhanced death benefits could, of course, entail an additional, separate fee or charge (in addition to the base mortality and expense risk charge and administrative charge).

Third, variable annuities frequently offer a variety of "living" benefits, such as guaranteed minimum income benefits (GMIBs), guaranteed minimum accumulation benefits (GMABs), and guaranteed minimum withdrawal benefits and guaranteed lifetime withdrawal benefits (GMWBs and GLWBs). Each of these living benefits may also entail an additional, separate fee or charge.

Fourth, these various charges can be in different forms, such as a percentage of the cash value (or separate account value), or a percentage of the benefit base. The charges can be deducted daily (as part of the calculation of accumulation unit values) or periodically such as monthly or quarterly charges (implemented by a deduction in the number of accumulation units credited to the contract).

The Proposing Release does not acknowledge these numerous variations in the amounts and types of charges for variable annuities, let alone discuss or address how they could, would or would not be reflected in "total annual expenses."

Variable ***life insurance*** contracts present even more numerous and difficult problems and uncertainties for calculating a standardized "total annual expenses" figure. Some of these charges, including (but not limited to) the cost of insurance charge[27] are "individualized" and vary based on the individual characteristics of the insured (age, sex, smoker status, underwriting classification). Not only does the cost of insurance charge vary based on the individual characteristics of the insured, but underwriting charges and even sales loads and surrender

[27] Variable life insurance contracts typically have a "face amount" on which the death benefit is based, and the cost of insurance charge is a dollar amount determined by the net amount at risk, which is the difference between the death benefit (which can vary with the cash value) and the cash value, and mortality tables that reflect the individual characteristics of the insured (age, sex, smoker status, underwriting classification).

charges also can vary based on these individual characteristics. Like variable annuities (but even more so), variable life insurance contracts also offer a variety of optional rider benefits, generally including riders such as spousal insurance, children's insurance, guaranteed insurability, return of premium, no-lapse guarantee, monthly deduction waiver, accidental death benefit, waiver of specified premium, and even living benefit riders, the charges for which can vary based upon individual characteristics. Finally, charges for both the base life insurance policy, and the various riders, can take a variety of forms, such as a percentage of premiums, a percentage of cash value, a monthly dollar amount per $1000 of net amount risk, a monthly dollar amount per $1000 of face amount (each policy has its own face amount), a flat dollar amount per month, a monthly amount or percentage based on the rider face amount or rider benefit, a percentage of the cash value surrendered, a percentage of the premium surrendered, etc. As with variable annuity fees and expenses, the Proposing Release does not acknowledge these numerous variations in the amounts and types of charges for variable life insurance contracts, or their possible variation with and dependence on individual characteristics of the insured, let alone discuss or address how they could, would or would not be reflected in "total annual expenses." Indeed, it does not seem possible to calculate "standardized" total annual expenses for a variable life insurance product that by its nature is so individualized.

The proposed amendments specify that the "total annual expenses" should be "based on the methods of computation prescribed by the company's registration statement form under the 1940 Act or under the [1933] Act." This may work for Form N-1A registrants; however, the Form N-4 and N-6 registration statements for variable annuity and life insurance contracts do not include a "method of computation for" or require disclosure of a single "total annual expense" figure that can be used to fulfill the proposed requirement for advertisements. This is because, for the reasons noted above, there are too many different variables, of different types, in numerous combinations, for this to be feasible.[28] Variable insurance contract expenses are

[28] The registration forms N-4 and N-6 include a number of items that call for a variety of expense figures, but none of these are a figure for "total annual expenses" that would be appropriate for applying the proposed advertising rule requirement to variable insurance contracts. These registration form items include: (1) Instructions 16 and 17 to Item 4 of Form N-4 and Instructions 4(a) and 4(b) to Item 4 of Form N-6 (calculating Annual Portfolio Company Expenses, in accordance with Item 3 of Form N-1A, for purposes of the Fee Tables); (2) Item 4 of Form N-4 also requires expense examples in the Fee Table, but this results in expense example tables with up to nine, eighteen, or even more separate expense figures; (3) Instruction 2(c)(i) of Item 2 of Form N-4, which requires a "Minimum and Maximum Annual Fee Table" in the 'Key Information Table,' but this is six figures and for variable annuities only and has other shortcomings; (4) Item 24 of Form N-4 addresses calculation of performance figures, but these reflect the investment performance for each individual subaccount, and Form N-4 specifically provides that even this subaccount-specific performance "may not reflect all Contract charges" (see Instruction 7 to Item 24(b)(1) of Form N-4); and (5) Item 29(h) of Form N-6, which provides instructions for calculating a single figure for *portfolio company* expenses for use in variable life insurance *illustrations* (these illustrations are literally pages of columns and rows of figures). None of the registration form items prescribe a total annual expense figure, other than portfolio company expenses alone.

Conceivably, it might possibly be to show the expenses for a variable annuity contract based on certain assumptions, such as expenses for a base annuity contract only; for a contract with the lowest cost optional benefit; with the most commonly selected optional benefit; with the most expensive optional benefit; or some other assumption(s). However, requiring annual expense disclosure along these lines would require careful and substantial evaluation of a specific proposal(s), after appropriate notice and opportunity for comment. It would be much more difficult, if not impractical, to apply such a method to variable life insurance.

infinitely more complex and variable than mutual fund expenses, so that the concept of a single, standard "total annual expense" figure for a mutual fund portfolio cannot be exported and applied to variable insurance contracts, at least without carefully analyzing and taking into account the differences in the fees and expenses and developing a specific disclosure requirement that addresses and accounts for those differences.

For all of these reasons, the Committee believes that the proposed advertisement rule amendments (at least with respect to total annual expenses) cannot as a practical matter, and should not, apply to separate accounts supporting variable insurance contracts.[29] The Committee requests that the proposed rule amendments be modified to clearly exclude variable insurance contract separate accounts.

The Commission should revise the proposed advertisement rule amendments to expressly exclude variable annuity and life insurance contract separate accounts.

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The Committee appreciates the opportunity to submit these comments in response to the Proposing Release. Please do not hesitate to contact Stephen E. Roth at [redacted], Dodie Kent at [redacted], or Frederick R. Bellamy at [redacted] if you have any questions regarding this letter.

Respectfully submitted,

The Committee of Annuity Insurers

By: Stephen E. Roth

Stephen E. Roth
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cc: The Honorable Jay Clayton, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honerable Caroline A. Crenshaw, Commissioner
Ms. Dalia Blass, Director, Division of Investment Management

Accordingly, for a variety of reasons, there is no suitable "method of calculation" in the variable annuity or variable life insurance registration statement forms for a single "total annual expense" figure, other than the portfolio expenses only, for a particular portfolio only.

[29] Because the proposed requirement presents so much uncertainty for insurance company separate accounts, the proposal could have the practical effect of preventing the inclusion of any fee and expense figures in variable insurance contract advertising materials.

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
Brighthouse Financial, Inc.
Equitable
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Financial Group
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
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
Sammons Financial Group
Security Benefit Life Insurance Company
Symetra Financial Corporation
Talcott Life Insurance Company
The Transamerica companies
TIAA
USAA Life Insurance Company