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June 17, 2022

VIA ELECTRONIC SUBMISSION

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

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors
File No. S7-10-22
Release Nos. 33-11042; 34-94478

Dear Ms. Countryman:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the "Committee") in response to the request for public comment by the Securities and Exchange Commission (the "SEC") on the proposal titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (the "Proposal").[1] The Committee recognizes the importance of the SEC's initiative to improve the consistency, comparability, and reliability of climate-related disclosures for investors, and therefore appreciates the SEC's consideration of this comment letter.

The Committee strongly opposes the applicability of the Proposal to life insurance companies that issue registered non-variable insurance contracts, such as registered index-linked annuities ("RILAs"), market value adjustment contracts ("MVAs"), contingent deferred annuities ("CDAs"), and registered index-linked universal life insurance policies ("RILs") (collectively, "registered insurance contracts").[2] Applying the proposed Regulation S-K and Regulation S-X amendments to such companies would not serve the SEC's purpose of providing investors with "decision-useful information." Nor would it serve the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and promote capital formation.

The SEC should fully exempt life insurance companies issuing registered insurance contracts from the proposed climate-related disclosures,[3] primarily for the following reasons:

(1) *The proposed disclosures are immaterial to potential and existing contract owners.*

(2) *The proposed disclosures could be detrimental to potential and existing contract owners.*

(3) *The proposed disclosures are not expected to provide a meaningful basis upon which a potential or existing contract owner can differentiate between life insurance companies.*

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[1] 87 Fed. Reg. 21334 (Apr. 11, 2022).

[2] Except when specifically noted, references in this letter to "registered insurance contracts" do not encompass registered variable annuity contracts or registered variable life insurance policies. The Committee acknowledges that registered variable insurance contracts are outside the scope of the Proposal.

[3] Specifically, the exemption should apply to (i) all registration statements for offerings of registered insurance contracts and (ii) all reports filed pursuant to Section 15(d) of the Securities Exchange Act of 1934 (the "1934 Act"), provided that the life insurance company's reporting obligation arises solely from the registration of one or more insurance contract offerings under the Securities Act of 1933 (the "1933 Act").

(4) *The compliance costs imposed on life insurance companies would far outweigh the benefits (if any) to the public and would discourage life insurance companies from offering registered insurance contracts in the future.*

After providing a brief background on the Committee and registered insurance contracts, our letter will further explain the reasons why life insurance companies issuing registered insurance contracts should be fully exempt from the Proposal. Additionally, it will raise two specific issues related to the proposed Regulation S-X amendments, as they relate to life insurance companies, for the SEC's consideration.

Background on the Committee and Registered Insurance Contracts

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 member companies represent approximately 80% of the annuity business in the United States.[4] For over 40 years, the Committee has been actively involved in shaping and commenting upon many elements of the SEC regulatory framework as it applies to insurance contracts registered under the 1933 Act and, with respect to variable insurance contracts, the Investment Company Act of 1940 (the "1940 Act").

This letter focuses on the applicability of the Proposal to life insurance companies that issue registered non-variable insurance contracts, including (but not necessarily limited to) RILAs, MVAs, CDAs, and RILs. Unlike variable insurance contracts, non-variable insurance contracts do not pass through the investment performance of a unitized separate account. Instead, the contract values, benefits and guarantees provided by these contracts are paid exclusively out of assets held in the insurance company's general account and/or a non-unitized separate account. As a result, these contracts are not investment company securities required to be registered under the 1940 Act, and they are not eligible to be registered on Form N-3, N-4, or N-6. Due to the current absence of a dedicated registration form for these contracts, insurance company issuers have no option but to register these contracts under the 1933 Act on Form S-1 or S-3. Furthermore, because these contracts are registered under the 1933 Act, absent an exemption, their registration triggers the obligation to file periodic and current reports pursuant to Section 15(d) of the 1934 Act.[5]

An owner of a registered insurance contract (or virtually any other insurance contract) is not an investor in the insurance company that issued the contract. Consistent with his/her status as a policy holder rather than an investor, the contract owner ordinarily does not participate in the insurance company's profits or losses, and does not have voting rights with respect to the insurance company's governance or operations.[6] The contract owner's financial interest is in the

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[4] A list of the Committee's member companies is available on the Committee's website at http://www.annuity-insurers.org/about-the-committee/.

[5] If an insurance company issuer registers a contract on Form S-1 and relies on the reporting exemption set forth in Rule 12h-7 under the 1934 Act, the business-related disclosures required by Regulation S-K and the financial statements required by Regulation S-X will appear in the prospectus for the contract. If the insurance company issuer registers the contract on Form S-3, or on Form S-1 and does not rely on an exemption from 1934 Act reporting, the business-related disclosures required by Regulation S-K and the financial statements required by Regulation S-X will appear in the prospectus, annual reports on Form 10-K, quarterly reports on Form 10-Q, and/or current reports on Form 8-K, as provided by the applicable form instructions.

[6] Stock life insurance companies represent the large majority of life insurance companies that offer registered insurance contracts. A contract owner of a stock life insurance company has no interest in the company's profits or losses and no voting rights. There are mutual life insurance companies, including some Committee members, that offer registered insurance contracts. A contract owner of a mutual life insurance company may receive some form of benefits depending on the company's financial results (*e.g.*, reduction in required premiums) and may have voting rights with respect to certain issues (*e.g.*, company mergers). Historically, these aspects of contract ownership have been treated solely as a matter of state insurance law, and not a matter relating to securities under federal law. For example, contract owner votes for mutual

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insurance guarantees and benefits that the insurance company provides pursuant to the terms of the insurance contract. Moreover, even though the insurance company's obligations are subject to the company's financial strength and claims-paying ability, life insurance companies are subject to extensive and vigilant regulation at the state level that significantly reduces the risk of default and generally ensures a stable insurance market for consumers. State regulations include, but are not limited, to: (i) stringent requirements to obtain a license to issue insurance products; (ii) maintenance of minimum levels of capital and surplus; (iii) limitations on the types of financial assets that may be held in a company's general account; (iv) detailed procedures by which a company must value its investments; (v) submission of quarterly and annual reports on a company's financial condition; and (vi) periodic examination to verify a company's financial condition and compliance with state law. Furthermore, in the event that a life insurance company is deemed to be financially impaired, state regulators work with the company to strengthen its financial condition or, if necessary, to oversee its liquidation in a manner that prioritizes fulfilling the company's obligations to its contract owners. Also, life insurance companies are required to be members of state insurance guaranty associations, which provide funds to pay the claims of contract owners of insolvent insurance companies, up to statutory limits, by member insurers.

As discussed further below, the contractual nature of registered insurance contracts and the robust state regulation to which life insurance companies are subject, together with the distinguishing fact that registered insurance contracts are not traded, make offerings of registered insurance contracts fundamentally different than offerings of equity and debt securities. Consequently, offerings of registered insurance contracts warrant special recognition and treatment within the SEC disclosure framework.

The SEC Should Fully Exempt Life Insurance Companies Issuing Registered Insurance Contracts from the Proposed Amendments to Regulation S-K and Regulation S-X

For the following reasons, the SEC should fully exempt life insurance companies issuing registered insurance contracts from the proposed climate-related disclosures. Specifically, this exemption should apply to (i) all registration statements for offerings of registered insurance contracts and (ii) all reports filed by life insurance companies pursuant to Section 15(d) of the 1934 Act, provided that the life insurance company's reporting obligation arises solely from the registration of one or more insurance contract offerings under the 1933 Act.

(1) The proposed climate-related disclosures are immaterial to potential and existing owners

As stated in the release, the SEC has proposed to enhance and standardize climate-related disclosures in an effort to provide investors with "decision-useful" information on climate risks. More extensive and standardized climate-related disclosures may be material to investors in equity and debt securities, where the future value of such investments largely depends on the issuer's financial performance and future prospects. As such, various aspects of the proposed amendments to Regulation S-K and Regulation S-X may enable equity and debt investors to make more informed judgments about climate risks.

However, as previously noted, registered insurance contracts are fundamentally different than equity and debt securities. Unlike owners of equity securities, owners of registered insurance contracts do not have an ownership interest in the life insurance company issuer, and ordinarily do not participate in the life insurance company issuer's profits or losses or have voting rights with respect to the life insurance company issuer.[7] Unlike owners of debt securities, owners of registered insurance contracts have the protection of significant state solvency regulation that

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life insurance companies are not subject to proxy regulation under the federal securities laws, and the participating features of mutual life insurance contracts have been held not to implicate the federal securities laws.

[7] *See* fn. 6 regarding mutual life insurance companies.

substantially reduces the risk of default. In addition, unlike many equity securities and debt securities, there are generally no secondary trading markets for registered insurance contracts.

Given the fundamental differences between registered insurance contracts and equity and debt securities, it is incumbent upon the SEC to specifically consider and evaluate how the proposed climate-related disclosures will provide "decision-useful" information to potential and existing owners of registered insurance contracts. Absent such consideration and evaluation, the Committee respectfully submits that the SEC would lack the foundation and economic analysis necessary to support the Proposal in this particular context.

The Committee believes that, from the perspective of a potential or existing owner of a registered insurance contract, the proposed climate-related disclosures would be immaterial. In other words, the proposed amendments to Regulation S-K and Regulation S-X would not provide "decision-useful" information to contract owners. For instance, to make an informed decision to buy or invest more money in a registered insurance contract, such insurance purchasers do not need to know how the insurance company oversees, assesses, and manages climate risks. They don't need robust descriptions and categorizations of such climate risks. Nor do they need MD&A-like disclosure describing the impact of climate risk on the insurance company's business. Moreover, they certainly don't need to know about the insurance company's direct and indirect greenhouse gas emissions. Nor do they need a note to the financial statements that contains climate-related financial metrics. In short: none of the proposed climate-related disclosures are material to a contract owner's decision to buy or put more money in a registered insurance contract.[8]

The Committee's position on the immateriality of the proposed climate-related disclosures is further supported by the practical experience of Committee members. In Committee members' experience, potential and existing contract owners and their financial intermediaries do not seek climate-related information when making decisions about insurance contracts, regardless of whether such contracts are securities under federal law.[9] The Committee recognizes that, in order to justify the Proposal, the SEC went to great lengths in the release to establish that there is public demand for enhanced and standardized climate-related information, but there is no real world demand for such information from prospective or existing owners of insurance contracts. It is also noteworthy that the release does not cite any evidence to support the application of the proposed climate-related disclosures specifically to life insurance companies that issue registered insurance contracts. Absent such evidence, the Committee respectfully submits that the SEC, in this particular context, would lack a fundamental justification upon which the SEC is relying in order to establish that the Proposal is in the public interest.

The Committee understands that the SEC's integrated disclosure framework generally serves to standardize disclosure items and instructions across various types of offerings. However, this approach does not work when it requires a registrant to disclose information that is clearly immaterial. That would be the case here. The proposed amendments would require life insurance companies that issue registered insurance contracts to provide (costly and burdensome) immaterial

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[8] To be clear, the Committee is not taking the position that all climate-related disclosures are categorically immaterial. For example, extreme weather events could present a business continuity risk to life insurance companies (and companies typically include risk disclosure to that effect). However, contract owners would not benefit from SEC rules requiring standardized, complex climate-related disclosures for insurance contract offerings. The rules would be overkill, and would generally elicit immaterial information. Rather, the public, life insurance companies, and the SEC would be better served by exempting life insurance companies offering registered insurance contracts from the Proposal, in which case such life insurance companies would continue following the SEC's 2010 guidance on how existing SEC rules may require climate-related disclosure.

[9] In this regard, there is nothing about registered insurance contracts, and the nature of insurance company issuers' obligations with respect to such contracts, that make climate-related disclosures any more relevant or material than to owners of traditional annuity contracts and life insurance policies that are not securities under federal law. Requiring that life insurance companies issuing registered insurance contracts provide such disclosures when such disclosures would not be required in other insurance contract transactions makes no sense from an overall public policy perspective.

disclosures to contract owners. Accordingly, the SEC should fully exempt life insurance companies that issue registered insurance contracts from the proposed amendments.

There is relevant precedent for exempting registered insurance contracts from federal securities requirements that are generally applicable to equity and debt offerings. In 2009, the SEC recognized the special nature of registered insurance contracts by adopting Rule 12h-7 under the 1934 Act.[10] Rule 12h-7 exempts insurance companies from the 1934 Act's periodic and current reporting requirements with respect to their registered insurance contracts, provided certain conditions are satisfied. The SEC's adoption of Rule 12h-7 was primarily based on the fact that state regulation and SEC periodic reporting is duplicative, thereby eliminating the need for SEC periodic reporting.[11] The reasons for exempting insurance companies from 1934 Act reporting under Rule 12h-7 are the same reasons why life insurance companies offering registered insurance contracts should be exempt from the climate-related disclosures proposed in the release: the fundamental nature of insurance contracts and the oversight of insurance companies by state regulators eliminates the need for enhanced and standardized climate-related disclosures.

(2) The proposed climate-related disclosures could be detrimental to potential and existing owners of registered insurance contracts

The proposed climate-related disclosures not only would be immaterial to potential and existing contract owners, they may also be detrimental. By applying the proposed amendments to life insurance companies that issue registered insurance contracts, the SEC would be mandating disclosure that (i) will further obscure important product-related disclosure and (ii) will task contract owners with understanding and contextualizing voluminous and complex information related to climate risk that is ultimately immaterial to their investment decisions.

When a life insurance company offers a registered insurance contract, its SEC disclosures focus on two overarching topics: (1) the product and (2) the company. The product-related disclosures are critical, as they describe the material terms and risks of the contract. The prescribed company-related disclosures generally are of de minimis value. They are lengthy, go far beyond what is necessary to convey material information about the insurance company's ability to meet its contractual obligations, and fail to account for the robust state regulations to which insurance companies are subject and that afford contract owners substantial protection. The company-related disclosures are not prescribed based on any prior public policy or rulemaking decision specifically related to insurance contracts. Rather, they are prescribed as a result of the SEC's integrated disclosure framework (*i.e.*, non-variable insurance contracts do not have a dedicated registration from, and by virtue of registering the contracts on Form S-1 or Form S-3 by default, they become subject to the company-related disclosures applicable to equity and debt offerings). The Committee

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[10] *See* Indexed Annuities and Certain Other Insurance Contracts, Release Nos. 33-8996, 34-59221, 74 Fed. Reg. 3137 (Jan. 8, 2009).

[11] As the SEC stated in the adopting release for Rule 12h-7:

> We base [the adoption of Rule 12h-7] on two factors: first, the nature and extent of the activities of insurance company issuers, and their income and assets, and, in particular, the regulation of those activities and assets under state insurance law; and, second, the absence of trading interest in the securities. . . . State insurance regulation, l ke [1934 Act] reporting, relates to an entity's financial condition. We are of the view that, in appropriate circumstances, it may be unnecessary for both to apply in the same situation, which may result in duplicative regulation that is burdensome. Through [1934 Act] reporting, issuers periodically disclose their financial condition, which enables investors and the markets to independently evaluate an issuer's income, assets, and balance sheet. State insurance regulation takes a different approach to the issue of financial condition, instead relying on state insurance regulators to supervise insurers' financial condition, with the goal that insurance companies be financially able to meet their contractual obligations. We believe that it is consistent with our federal system of regulation, which has allocated the responsibility for oversight of insurers' solvency to state insurance regulators, to exempt insurers from [1934 Act] reporting with respect to state-regulated insurance contracts. 74 Fed. Reg. 3154.

has previously commented in response to other SEC releases that life insurance companies issuing registered insurance contracts should be exempt from most of the company-related disclosures prescribed by Regulation S-K.[12]

These ill-fitted and extensive company disclosures have not provided potential and existing contract owners with material or useful information, and therefore can be said to be detrimental to the overall interests of these contract owners because they distract contract owners from the important product-related disclosures. In addition, they confuse contract owners, as most individuals are not accustomed to receiving extensive business information when purchasing an insurance contract. These disclosures have been especially detrimental to owners of insurance contracts registered on Form S-1. Most non-variable insurance contracts are registered on Form S-1 because registration on that form is an indirect consequence of Rule 12h-7 reliance. Form S-1 prospectuses contain both the product-related disclosures *and* the required company-related disclosures (unlike a Form S-3 prospectus, where the company disclosures are largely provided outside of the prospectus in periodic and current reports under the 1934 Act). Potential and existing contract owners who receive Form S-1 prospectuses are necessarily tasked with trying to distinguish the product-related disclosures from the company-related disclosures, and are faced with the daunting task of contextualizing the disclosures without any guide or instruction as to their relative importance.

The proposed climate-related disclosures, if applicable to life insurance companies that issue registered insurance contracts, would perhaps be the most voluminous and complex company-related disclosures. Contract owners would be tasked with navigating, understanding, and contextualizing climate-related disclosures that are lengthy, complicated, and immaterial. This burden should not be placed on registered insurance contract owners. Rather, they should be given the opportunity to focus on the disclosures about the product, which are most critical to their investment decisions. The SEC should fully exempt life insurance companies issuing registered insurance contracts from the proposed climate-related disclosures so as not to exacerbate the already ill-fitted disclosure framework for registered insurance contracts.

(3) The proposed climate-related disclosures would not provide a meaningful basis upon which a potential or existing contract owner can differentiate between life insurance companies

If the proposed climate-related disclosures were to apply to life insurance companies that issue registered insurance contracts, the disclosures would not serve a primary goal of the SEC: comparability. The disclosures would be comparable in the sense that they would be standardized. However, the value of comparability due to standardization would be significantly diminished in this context. Given that life insurance companies are generally engaged in the same business lines and are subject to substantially similar state regulation, the Committee does not expect that there would be important substantive climate-related disclosure differences among the vast majority of life insurance company registrants. Committee members rather expect that the disclosures would be so similar in substance that they would not provide a basis upon which to differentiate among life insurance companies. In this regard, the proposed climate-related disclosures would be more akin to boilerplate disclosure (albeit extremely costly and burdensome boilerplate disclosure) than the "decision-useful" information that the SEC envisions.

[12] *See*, *e.g.*, Comment Letter from the Committee to Brent J. Fields, Secretary of the SEC, re Concept Release on Business and Financial Disclosure Required by Regulation S-K (July 21, 2016), https://www.sec.gov/comments/s7-06-16/s70616-219.pdf.

(4) The costs imposed on life insurance companies would far outweigh the benefits (if any) to the public and would discourage life insurance companies from offering registered insurance contracts in the future

In the absence of an exemption, the costs imposed on life insurance companies to comply with the proposed amendments to Regulation S-K and Regulation S-X would be extreme and would far outweigh the benefit (if any) to the public.

In the release, the SEC reasoned that registrants' costs of compliance should be mitigated by the fact that the proposed amendments are modeled after the Task Force on Climate-Related Financial Disclosure's ("TCFD") recommendations and the Greenhouse Gas Protocol ("GHG Protocol"), because many public companies are familiar with those widely-accepted frameworks. This reasoning does not hold true for life insurance company registrants.

Life insurance companies generally do not prepare disclosures or regulatory reports based on the TCFD's recommendations or the GHG Protocol. In order to comply with the proposed amendments, life insurance companies would need to*, e.g.*, hire new employees, dedicate substantial employee time to compliance, institute new policies and procedures, retain climate risk experts, and expand auditing engagements. Companies could easily incur millions of dollars in new compliance costs, with no commensurate benefit to the public, as the proposed climate-related disclosures would not be "decision-useful" to potential and existing contract owners.

In addition, these extreme compliance costs would likely discourage life insurance companies from offering registered insurance contracts. The costs of compliance associated with the SEC's current, ill-fitted disclosure framework already dissuade some life insurance companies from entering the market. If life insurance companies were to become subject to the proposed amendments, the costs of compliance could be exponentially magnified. The Committee believes that the extreme compliance costs would discourage new life insurance companies from entering the market and might even cause some life insurance companies that are currently in the market to withdraw.

The Committee acknowledges that, over the past decade, the insurance industry has faced some calls from state regulators for reporting and management of climate risks. For example, the NAIC has developed an Insurer Climate Risk Disclosure Survey, containing a small number of questions and serving as a mechanism for providing state regulators with basic, non-standardized information about climate risk. But, overall, life insurance companies are not currently gathering the extensive information about climate risk that the Proposal would require, in response to state regulation or otherwise. As such, the costs of compliance in this context would be extraordinary. The SEC should not underestimate the extreme burden that would be placed on life insurers.

Specific Issues Related to the Regulation S-X Amendments

For the reasons set forth above, the SEC should fully exempt life insurance companies that issue registered insurance contracts from the Proposal. Therefore, this letter generally does not address specific aspects of the complex disclosure requirements. Nonetheless, the Committee believes that the following two issues related to the proposed Regulation S-X amendments warrant specific mention.

(1) ***Applicability to Companies with GAAP Relief.*** Many life insurance companies that issue registered insurance contracts have obtained permission under Rule 3-13 of Regulation S-X to file financial statements prepared in accordance with state statutory accounting principles rather than U.S. GAAP. The proposed amendments to Regulation S-X would require a registrant, when preparing the extensive climate-related note to the financial statements, to apply the same set of accounting principles that it is required to apply to the rest of the registrant's consolidated financial statements. Should the SEC ultimately decide against an exemption from the entire Proposal for life insurance companies issuing registered non-variable insurance contracts, the proposed Regulation S-X amendments

should not apply to any company that has obtained permission to file audited financial statements prepared on a statutory basis of accounting ("SAP") rather than GAAP financial statements. State statutory accounting principles do not require a climate-related note to the financial statements. Requiring companies that have received permission to file SAP financial statements to include a climate-related note in their financial statements would be counter to state statutory accounting principles and would essentially defeat the purpose of the permission that they have received.

(2) ***Different Financial Statement Requirements for Non-Variable and Variable Contracts.*** Should the SEC ultimately decide against an exemption from the entire Proposal for life insurance companies issuing registered non-variable insurance contracts, the Proposal would result in an inexplicable difference in regulation under Regulation S-X for non-variable versus variable contracts. If the proposed amendments to Regulation S-X were to apply:

- On one hand, with respect to offerings of registered *non-variable* insurance contracts, audited company financial statements *would be* subject to the climate-related note.
- On the other hand, with respect to offerings of registered *variabl*e insurance contracts, audited company financial statements *would not be* subject to the climate-related note.

This difference in financial statement requirements applicable to life insurance companies offering SEC-registered insurance products would be unprecedented. The requirements for audited life insurance company financial statements have never depended on whether the offering is for a non-variable or variable contract. The Proposal would change that without any clear basis or explanation. Moreover, the difference in regulation would be illogical, primarily for the following two reasons:

- First, in the case of either a non-variable or variable insurance contract, the contract's insurance guarantees are supported by the assets of the issuing life insurance company. There is no reason why the audited company financial statements provided to a potential or existing contract owner should differ depending on whether the contract is categorized as variable or non-variable under the federal securities laws.
- Second, if a company issues both registered non-variable and variable contracts, the company would need to either (a) prepare different audited financial statements for use with its non-variable and variable contracts (which may not even be possible as a practical matter or permissible under other applicable law) or (b) prepare a single set of audited financial statements, including the climate-related note (in which case the company would be going far beyond the financial statement requirements applicable to offerings of variable insurance contracts due to SEC rules applicable to offerings of non-variable insurance contracts). Neither result makes sense.

To avoid such unprecedented and illogical results, in the absence of a full exemption, the SEC should exempt life insurance companies from the proposed Regulation S-X amendments.

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The Committee appreciates the opportunity to comment on the Proposal. The Committee would be pleased to assist the SEC and its staff in any manner that would be helpful in the SEC's consideration of the Committee's comments. Please do not hesitate to contact the undersigned.

Respectfully submitted,

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The Honorable Hester M. Peirce, Commissioner
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Mr. William A. Birdthistle, Director, Division of Investment Management