Northwestern Mutual®

John E. Dunn
Vice President and Investment
Products and Services Counsel

720 East Wisconsin Avenue
Milwaukee, WI 53202-4797
[redacted] office
[redacted] fax
[redacted]

November 1, 2016

Filed By Email: rule-comments@sec.gov
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SEC Release 33-10110 proposing to eliminate Rule 7-02(b) of Regulation S-X
File Number S7-15-16

Dear Mr. Fields:

The Northwestern Mutual Life Insurance Company[1] (the "Company") appreciates the opportunity to comment on the above-referenced rule proposal. SEC Release 33-10110, issued July 13, 2016 (the "Release") 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the proposed changes as technical amendments of requirements that may have become "redundant, duplicative, overlapping, outdated or superseded in light of other disclosure requirements, U.S. Generally Accepted Accounting Principles ("U.S. GAAP"), International Financial Reporting Standards or changes in the information environment."[2] While the Company is supportive of the overall goal of the Release to streamline disclosure requirements, we believe that the Securities and Exchange Commission (the "Commission") has missed that mark in proposing the elimination of Rule 7-02(b) of Regulation S-X ("Rule 7-02(b)"), which continues to serve a useful purpose for both mutual companies and the investing public. We urge the Commission to reconsider the elimination of Rule 7-02(b) and maintain its existence within Regulation S-X.

Rule 7-02(b) currently permits any mutual life insurance company and wholly-owned stock subsidiary of a mutual life 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 principles ("SAP"). In proposing to eliminate Rule 7-02(b), the Release notes that the Commission originally provided the relief in Rule 7-02(b) because prior to 1995 U.S. GAAP did not address accounting by mutual insurance companies. The Release goes on to explain that with the publication of their Statement of Financial Accounting Standards 120 in 1995, the Financial Accounting Standards Board set forth U.S. GAAP accounting requirements for mutual life insurance companies and, as a result, the use of statutory accounting in U.S. GAAP financial statements was no

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[1] The Northwestern Mutual Life Insurance Company, a mutual life insurance company, has been helping families and businesses achieve financial security for nearly 160 years. Our financial representatives build relationships with clients through a distinctive planning approach that integrates risk management with wealth accumulation, preservation and distribution. The Company delivers financial security to 4.3 million people who rely on us for insurance and investment solutions, including life, disability income and long-term care insurance; annuities; trust services; mutual funds; and investment advisory products and services. Our financial strength and ability to meet our clients' needs is demonstrated by $245 billion in assets, $28 billion in annual revenue, $97 billion in assets under management in investment products and services, and $1.6 trillion worth of life insurance in force. The Company was recognized by FORTUNE magazine as one of the "World's Most Admired" life insurance companies in 2016.

[2] Release at p.1.

longer permitted.[3] It further notes that no issuers under the 1933 Act or 1934 Act currently rely on Rule 7-02(b).[4]

Although the proposed elimination of Rule 7-02(b) in the Release would not have any impact of the ability of life insurance companies to use statutory 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 is true that the Company is not presently relying on Rule 7-02(b) as a basis to file financial statements prepared under SAP, the Company feels compelled to comment upon the Commission's proposal to eliminate Rule 7-02(b) because of the impact such a change would have for other types of insurance products – an impact that would be perhaps as unintended as it would be unwelcome.

As a mutual life insurance company, the Company exists for the benefit of its policyowners and clients. In fact, the Company presently leads the U.S. insurance industry in total individual life insurance dividends paid to policyowners, an expected total of $5.6 billion in 2016. The Company only prepares audited financial statements in accordance with SAP and is not otherwise required to produce U.S. GAAP audited financial statements by any regulatory body. From the perspective of trying to preserve policyowner value, the Company is very concerned that the burdens that would be imposed by having to prepare and file U.S. GAAP financial statements – solely because we have decided to issue certain life insurance products that would need to be registered as securities on Form S-1 or S-3 – would impose a substantial financial and administrative hardship that would adversely affect both our current and prospective policyowners.[5] In the absence of Rule 7-02(b), the Company would need to include audited U.S. GAAP financial statements in any such registration statements, the financial costs of conversion to which alone we estimate could run to $100 million dollars or more,[6] not to mention the millions more that would be required for annual ongoing maintenance of such a financial reporting system. These costs would, given our mutual structure, be borne entirely by our policyowners.

The elimination of long-standing Rule 7-02(b) may also have the unintended consequence of actually limiting the product offerings available to America's retirees at a time when those products appear to be most needed by the investing public. Companies such as ours may decide to limit their offerings of general account insurance products (e.g., products with market value adjustment features or

[3] It should be pointed out that the Commission actually cited two reasons for the adoption of the forerunner of Rule 7-02(b) which is relevant to our discussion below—not only the absence of a body of established generally accepted accounting principles for mutual insurance companies, but also in consideration of the nature of the filings by mutual insurance companies. See Release No. 33-5456 (Feb. 14, 1974), 39 FR 10118 (Mar. 18, 1974).

[4] Release at pp.129-130.

[5] It is well established that federal agencies have an obligation to strike the right balance between the benefits and costs of proposed rulemaking. See, e.g., Executive Order 12,291, 46 FR 13193 (Feb. 17, 1981) ("regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society."); Executive Order 12,866 (superseding Executive Order 12,291), 3 C.F.R. 638 (1993) ("in deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."); Executive Order 13,563, §1(b), 76 FR 3821 (Jan. 18, 2011) ("each agency must . . . propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs."); and Office of Mgmt. & Budget, Circular No. A-4, Regulatory Analysis (Sept. 17, 2003) (identifying three fundamental elements to federal agency rulemaking: (i) a statement of the need for the proposed regulation; (ii) discussion of alternative regulatory approaches; and (iii) an analysis of both qualitative and quantitative costs and benefits of the proposed action and the leading alternatives.).

[6] These costs include actuarial systems/processes modifications, actuarial feeder system enhancements, non-actuarial system implementations and additional personnel costs. We also estimate that a multi-year time period is required to convert from SAP to U.S. GAAP to ensure sustainable implementation.

certain structured insurance products) if the costs of doing so would force them to prepare U.S. GAAP audited financial statements for their SEC filings when they would otherwise not be required to do so. Thus, the Company takes exception to 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." It would be much more than a "housekeeping" item; it would be more akin to a major home remodeling. Such an undertaking, the Company submits, should involve a full analysis of the potential costs and benefits that the elimination of Rule 7-02(b) would have on mutual life insurance companies, their products, and the markets that they serve before any action is taken on this rule.

Moreover, it is far from clear that the Release has justified a preference for U.S. GAAP filings in this context, especially in light of the long-standing and widely held understanding that financial statements prepared under SAP are not only a legitimate and appropriate method of accounting for insurance companies, but that they actually fulfill the Commission's stated goal of effective disclosure. In other words, financial statements prepared under SAP 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 policyowner dividend liability and policy benefit reserves are made). SAP financial statements also focus on an insurer's solvency and other measures relating to an insurer's ability to meet its obligations to policyowners, 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 financial statements as far back as 1974 when it allowed mutual life insurance companies and their wholly owned stock life insurance subsidiaries to use an alternative to U.S. GAAP financials when filing their products.[7] Additionally, the Commission noted the costs and administrative burdens associated with the production of U.S. GAAP financial statements in allowing insurance company depositors of variable insurance products to use SAP statements when filing variable annuities on Form N-4 and variable life insurance products on N-6, so long as the insurance company does not otherwise have to prepare financial statements in accordance with U.S. GAAP.[8] Moreover, other federal regulators have acknowledged and permitted use of other appropriate accounting reporting regimes other than U.S. GAAP, including SAP, under the Dodd-Frank Act.[9]

For the above reasons the Company urges the Commission to reconsider its proposed elimination of Rule 7-02(b) and not include it in any final rulemaking. Since it does not appear that the Commission has conducted any cost benefit analysis in proposing its elimination, including the cost impact to mutual companies and the potential detrimental impact on beneficial retirement and other insurance product offerings to the investing public, weighed against the Commission's desire for standardization and uniformity in financial statement presentation, at a minimum we believe such a thorough analysis should be conducted by the Commission before deciding upon any further action with respect to Rule 7-02(b).

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[7] See fn. 3 *infra*.

[8] See Release No. 33-6568, 50 FR 26145 (June 25, 1985) at footnote 9; Release No. 33-8088, 67 FR 19848 (April 23, 2002) at 19856.

[9] See, e.g., Study & Recommendations Regarding Concentration Limits on Large Financial Companies, Financial Stability Oversight Council (January 2011) at pp. 16-17; Concentration Limits on Large Financial Companies, Board of Governors of the Federal Reserve System, 79 FR 68095 at 68097 (Nov. 14, 2014); 12 CFR § 251.3(e) (Regulation XX).

Thank you for the opportunity to comment. The Company stands ready to provide any additional information that would be helpful at this juncture and to assist the staff of the Commission in any way that would facilitate and 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 [redacted] or by e-mail at [redacted].

Respectfully submitted,

John E. Dunn
Vice President and Investment Products and Services Counsel
The Northwestern Mutual Life Insurance Company