INSURED RETIREMENT INSTITUTE

November 28, 2023

Submitted via SEC's Internet Comment Form at: https://www.sec.gov/cgi-bin/ruling-comments

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

Re: File Number S7-16-23 – Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities

Dear Ms. Countryman:

On behalf of our members, the Insured Retirement Institute ("IRI")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "SEC") proposal titled, ***Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities*** (the "Proposal"),[2] which would, among other things, propose rule and form amendments to provide a tailored form to register the offerings of registered index-linked annuities ("RILAs"). Principally, the SEC proposes to amend the form currently used by most variable annuity separate accounts, Form N–4, including filing rules and other related amendments, to require issuers of RILAs to register offerings on that form. These changes would, if adopted, implement the requirements relating to RILAs contained in Division AA, Title I of the *Consolidated Appropriations Act, 2023* (the "RILA Act").[3]

IRI would like to express its appreciation for the SEC's work on the Proposal, presenting a practical and effective solution to RILA issuers and policyholders alike. A RILA-specific registration form is both timely and essential, considering the growing prominence of RILAs in the marketplace. The Proposal would substantially improve the effectiveness of the disclosures provided by RILA issuers to prospective purchasers in conveying essential information to help them better understand RILAs and their risks and benefits. We offer our comments in general support for the Proposal, along with some requests for clarification and related recommendations to best align the interests of the SEC, the industry, and investors.

[1] The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

[2] SEC Release No. 33-11250; 34-98624; IC-35028; File No. S7-16-23; 88 FR 71088 (Oct. 13, 2023) (the "Proposing Release").

[3] Pub. L. 117-328; 136 Stat. 4459 (Dec. 29, 2022) (Division AA, Title I).

IRI has reviewed the comment letters being submitted to the SEC regarding the Proposal by the Committee of Annuity Insurers ("CAI") and the American Council of Life Insurers ("ACLI"), and we are pleased to express our agreement with and support for the CAI's and ACLI's comments and recommendations on the substantive and detailed requirements of the Proposal, as well as the CAI's request for guidance on (and expansion of) certain provisions of the Proposal. To be clear, while our comments focus on the primary proposed changes, the Proposal necessarily contains many detailed disclosure, filing, and offering requirements, and requests comment on a wide range of related issues. These details are very important to our members. In this regard, although we do not address all the Proposal's issues here, we want to emphatically note our full support and endorsement of the CAI's more extensive comments.

I. General Support for the Proposal.

A. IRI Supports the Use of Form N-4 as the Registration Form for RILAs and Combination Contracts.

The Proposal would amend Form N-4, which is currently used by most variable annuity separate accounts, to require issuers to register RILAs, as well as contracts that offer a combination of index-linked options and variable options ("Combination Contracts"), on the same Form. IRI supports these proposed amendments to Form N-4.

Currently, the SEC does not have a registration form tailored for RILAs, which are similar but not identical to variable annuities. Instead, RILA issuers today must use the SEC's default registration forms (Forms S-1 or S-3), which are designed primarily for use in connection with offerings of equity securities. As recognized by the RILA Act and the Proposing Release, Forms S-1 and S-3 are not well-suited for insurance products. This has slowed product development, impeded the entry of new issuers to the RILA marketplace, and impaired the ability of investors to find and understand the information that is most relevant to their investment decision. Using Form N-4, as proposed to be amended, to register RILAs would eliminate information that may be important for equity investors but not relevant to an investor considering the purchase of a retirement income product. Without this extraneous information, prospective RILA purchasers will be able to more easily find the information they actually need in order to effectively decide whether a RILA product would meet their needs and objectives.

B. IRI Supports the Permitted Use of a Summary Prospectus by Issuers of RILAs and Combination Contracts.

The Proposal would amend Rule 498A to permit issuers to use a summary prospectus to satisfy their statutory prospectus delivery obligations with respect to RILAs and Combination Contracts. IRI supports these proposed amendments to Rule 498A.

The current summary prospectus rule for variable contracts incorporates a tiered disclosure methodology to give investors key information about the annuity contract's provisions, benefits, and risks in a concise, readable, and understandable format, while requiring that the full statutory prospectus be posted online for the benefit of investors looking for additional information.[4] As the SEC acknowledges in the Proposing Release, expanding Rule 498A to cover RILAs is consistent with

[4] 17 CFR Parts 200, 230, 232, 239, 240, 270, and 274, *Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts* (Jul. 2020).

the RILA Act's call for disclosures designed "with the goal of ensuring that key information is conveyed in terms that a purchaser is able to understand."[5]

As noted above, the Proposal would permit but not require the use of a summary prospectus for RILAs and Combination Contracts, as is the case for variable products. IRI believes alignment with the treatment of variable annuities in this regard is also appropriate and will be especially important in the near-term following adoption of the Proposal as a final rule, as issuers will need time to complete the operational and compliance work necessary to transition to the use of Form N-4.

C. IRI Supports the Permitted Use of SAP Financial Statements in RILA Registration Statements.

Under the Proposal, issuers would be permitted to file RILA registration statements using financial statements prepared in accordance with Statutory Accounting Principles ("SAP") rather than Generally Accepted Accounting Principles ("GAAP") to the same extent and under the same circumstances and conditions as issuers of variable products registered on Form N-4. IRI supports and commends the SEC for taking this approach in the Proposal.

Every insurance company is required under state law to produce SAP financial statements, which are designed to provide state regulators with the information they need to assess and oversee the company's solvency and ability to meet its financial obligations to contract owners. By establishing conditions under which variable product issuers can use SAP financials instead of GAAP financials in their registration statements, the SEC has already recognized that SAP financial statements provide the type of information most needed by prospective purchasers and owners of insurance products. Information provided by GAAP financials about the issuing company's performance and value as a going concern are far less relevant to prospective purchasers and owners of RILAs and other insurance products.

Preparation and auditing of GAAP financials entails significant costs and administrative burdens. For insurers that are not required to prepare GAAP financials for any other reason, these costs and burdens effectively serve as a barrier to entry into the RILA market. By allowing the use of SAP financials for RILA issuers on the same terms as variable product issuers, the Proposal would facilitate new entrants to, and enhance competition in, the RILA marketplace.

D. IRI Supports the Proposal's Approach to the Calculation of Registration Fees for RILAs.

The Proposal would require issuers to pay registration fees related to RILAs in the same manner as variable annuities, using Form 24F-2. IRI supports this approach to the payment of RILA registration fees.

Currently, RILA issuers are required to register a specific amount of securities on Form S-1 or S-3, and to pay registration fees based on the specified amount, while issuers of variable products registered on Form N-4 are permitted to register an indeterminate amount of securities, with registration fees paid annually based on their net issuance of securities. The latter approach is more in line with the nature of insurance product offerings. While issuers of equity securities typically register a fixed number of shares to be issued in a set period of time as part of a particular offering, annuity contracts are issued as individual investors purchase them, creating a risk that an issuer could inadvertently

[5] Proposing Release, at FR 71146.

issue more securities than were registered. As such, IRI believes it is appropriate to calculate registration fees for RILAs in the same manner as variable products.

The Proposal also provides that, when registering a RILA on Form N-4, the registration fee calculation should exclude unsold securities that were previously registered on Form S-1 or S-3. IRI appreciates and supports the inclusion of this provision in the Proposal.

E. IRI Supports the Timeline for Effectiveness and Compliance.

Under the Proposal, the amendments to Form N-4 and Rule 498 would go into effect upon publication of the final rules in the Federal Register, such that RILA issuers will be able to begin using revised N-4 as soon as possible after the rules are finalized. The remaining changes included in the Proposal would go into effect six months later, giving the SEC time to make necessary updates to the EDGAR system to accommodate those provisions. In addition, RILA issuers would have a one-year compliance period after publication of the final rule, meaning all initial registration statements and post-effective amendments filed after the compliance date would have to comply with the provisions of the final rule. IRI agrees with the SEC's assessment that a one-year compliance period should provide sufficient time for RILA issuers to prepare for compliance. As such, subject to the specific revisions and clarifications requested in the CAI's letter, IRI generally supports the staggered timeline reflected in the Proposal.

II. Comments and Recommendations on Certain Aspects of the Proposal.

While IRI generally supports the Proposal, we also respectfully offer the following comments and recommendations to assist the SEC as it prepares a final rule for issuance:

A. IRI Recommends Expansion of Rule 482 or Rule 433 to RILA Advertising and Sales Literature.

The SEC declined to extend Rule 482 to RILAs. We urge the SEC to reconsider this posture and revise the Proposal to bring RILAs under Rule 482, or alternatively, under Rule 433.

Under Rule 482, existing N-4 issuers are permitted to (a) use performance data that complies with the standardized methodologies set forth in the Rule in their advertisements and sales literature, and (b) provide advertisements and sales literature to investors without it being accompanied by or preceded by a statutory prospectus. Rule 482 was designed to address its concerns that the use of certain performance in advertising materials could create unrealistic or misleading expectations. The SEC explains that it opted not to extend Rule 482 to RILAs based on its perception that RILAs are not typically marketed based on past performance.

While current RILA marketing practices may not give rise to the concerns that drove the adoption of Rule 482 for variable products, IRI nevertheless recommends that the SEC amend Rule 482 to permit RILA advertisements that do not include RILA and/or index-linked option historical performance data. Alternatively, the SEC could amend Rule 433, with the same performance caveat, to allow for the use of "free writing prospectuses" ("FWPs) in connection with RILA advertisements, which would similarly avoid the statutory prospectus delivery requirement. Doing so would provide appropriate parity in terms of the treatment of advertisements and sales literature for RILAs and variable products, while also recognizing the practical impossibility of requiring delivery of a statutory prospectus together with or prior to broad-based advertising of RILAs through various forms of print, television, radio, and electronic media.

B. IRI Would Not Object to the Rescission of Existing Rule 3-13 Letters Only to the Extent Applicable to RILAs.

The Proposing Release notes that, when the Proposal is adopted as a final rule, the SEC intends to withdraw or rescind the letters issued over the past several years to certain RILA issuers by the SEC staff under Rule 3-13 ("3-13 Letters") to authorize the use of SAP financials instead of GAAP financials in RILA registration forms filed on Forms S-1 or S-3, subject to the same terms and conditions as currently apply to variable products registered on Form N-4. While we appreciate that the relief provided by these 3-13 Letters would no longer be needed in light of the Proposal's extension of such treatment to all RILAs registered on Form N-4, it is our understanding that certain recipients of these 3-13 Letters may rely on the relief provided therein for products other than RILAs. With this in mind, we would not object to rescission of the existing 3-13 Letters or portions thereof, but only to the extent applicable to RILAs. We would, however, urge the SEC to not rescind existing 3-13 Letters to the extent that they provide relief from the GAAP financial requirements with respect to products other than RILAs.

C. IRI Strongly Discourages the Possible Addition of Valuation Disclosures for RILAs.

In Request for Comment No. 48 in the Proposing Release, the SEC seeks input as to whether insurance companies should be required to disclose any other information to "help investors better understand the economic tradeoffs associated with an index-linked option." As an example, the Proposal compares RILAs to structured notes given that both products provide bounded returns and asks whether investors would benefit from valuation disclosures for RILAs similar to those currently required for structured notes. Given the significant differences between RILAs and structured notes, we do not believe such disclosures would be helpful in the RILA context and recommend that the SEC not impose similar requirements on RILA issuers.

Issuers of structured notes are required to disclose their valuation of the structured note based on the value of embedded derivatives and a fixed-income bond. These disclosures are intended to help investors better understand the difference between the issuer's valuation and the original price paid for the structured note. While it is true that RILAs are similar to structured notes insofar as both provide bounded returns, these products share almost no other common characteristics. Most notably, RILAs are long-term investments designed to be held for indeterminate periods and to provide significant insurance benefits, such as death benefits, annuitization, tax deferral, and in some cases, living benefits, whereas structured notes provide no such insurance benefits and are designed to be held for fixed periods.

In our view, due to the extensive differences between these product types, the valuation disclosures required in the structure note context would be difficult, if not impossible, to produce in the RILA context. More importantly, such information would be of limited utility for prospective purchasers and owners of RILA contracts, would result in substantial confusion for many investors, and would obscure the key information investors need to understand the risks and benefits of RILAs. The Proposal appropriately focuses on helping investors understand the contract terms and features of RILAs and should not be expanded as contemplated by Request for Comment No. 48.

D. IRI Recommends Allowing the Use of Form N-4 for Registered Market-Value Adjustment Annuities.

In Request for Comment No. 147 in the Proposing Release, the SEC seeks input as to whether the SEC should also require that Registered Market-Value Adjustment Annuities ("Registered MVAs") be registered on Form N-4. IRI recommends that the SEC permit, but not require, registration of MVAs on Form N-4.[6]

As with RILAs, Registered MVAs currently must be registered on Forms S-1 or S-3. As noted in the Proposing Release, RILAs and Registered MVAs differ only with respect to the way interest is calculated and credited, and therefore, many of the disclosures that would be required for RILAs on revised Form N-4 would also be appropriate in the context of Registered MVAs.

Similarly, IRI encourages the SEC to (1) permit, but not require, registration of contingent deferred annuities ("CDAs") and other non-variable annuities – including future non-variable annuity product innovations – on the revised version of Form N-4, and (2) amend Form N-6 in a manner consistent with the Proposal's revisions to Form N-4 and to permit, but not require, registration of registered index-linked life insurance products ("RILUs") on the revised version of Form N-6. Alternatively, IRI would support the non-enforcement policy, as described in significant detail in the CAI's comment letter, to permit issuers of Registered MVAs, CDAs, RILUs, and other non-variable annuity and life insurance products to exclude immaterial company-related disclosures not required by Form N-4, and to use SAP financials instead of GAAP financials, when registering those products on Form S-1.

The Proposal represents thoughtful work by the SEC in adapting to recent advances in the insurance industry, and we believe there would be significant value in seeking to leverage this effort – just as the SEC did in choosing to expand the scope of the variable annuity summary prospectus proposal to cover variable life insurance products – to avoid the need for additional rulemaking with respect to other existing annuity and life insurance products, as well as new products developed in the future to meet the evolving needs and objectives of retirement savers.

III. Conclusion.

Thank you again for the opportunity to provide these comments. If you have questions about our comments on the Proposal or if we can be of any further assistance in connection with these important regulatory questions and considerations, please feel free to contact the undersigned at emicale@irionline.org or jberkowitz@irionline.org.

Respectfully submitted,

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer
Insured Retirement Institute

Emily C. Micale
Director, Federal Regulatory Affairs
Insured Retirement Institute

[6] A permissive approach is necessary to account for the fact that some Registered MVAs are no longer offered or sold to new investors. In such cases, it would be inappropriate and unnecessary to require issuers to bear the costs and burdens associated with transitioning to Form N-4. The SEC has taken a similar approach in the past when adopting or amending registration forms that could apply to closed blocks of business.