THE Committee OF Annuity Insurers
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SUTHERLAND

November 29, 2016

VIA ELECTRONIC MAIL

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Amendment to Securities Transaction Settlement Cycle
File No. S7-22-16
Release No. 34-78962

Dear Commissioners:

We are writing on behalf of our client, the Committee of Annuity Insurers (the "Committee").[1] We appreciate the opportunity to submit these comments to the Securities and Exchange Commission ("SEC" or the "Commission") on its proposal to amend Securities Exchange Act Rule 15c6-1 (the "Amendment").[2] The Committee wishes to respond to the SEC's request for comment on whether the conditions set forth in the 1995 Commission order granting an exemption from Rule 15c6-1 for variable annuities (and other registered insurance products)[3] are still appropriate.[4] The Committee believes that the conditions for the existing exemption for registered insurance products are still appropriate, and that the Insurance Products Exemption should therefore be preserved. The Committee appreciates your attention to its comments in support of the continued availability of the exemption.

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[1] The Committee was formed in 1981 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 over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, FINRA, CFTC, IRS, Treasury, Department of Labor, as well as the National Association of Insurance Commissioners (NAIC) and relevant Congressional committees. Today the Committee is a coalition 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.

[2] Amendment to Securities Transaction Settlement Cycle, Release No. 34-78962 (Sept. 28, 2016); 81 Fed. Reg. 69240 (Oct. 5, 2016).

[3] Grant of Exemption, Release Nos. 33-7177; 34-35815; IC-21117, 59 SEC Docket 1045 (June 6, 1995); 60 Fed. Reg. 30906 (June 12, 1995) (the "Insurance Products Exemption," or the "1995 Exemptive Order").

[4] 81 Fed. Reg. at 69262 (text at footnote 212).

I. Background

The Amendment proposes to abbreviate the settlement cycle for most broker-dealer transactions from the current trade date plus three business days (T+3) to trade date plus two business days (T+2).[5] However, registered insurance products have always been exempt from the T+3 standard.[6] The Committee believes that the rationale for this exemption is only strengthened in the context of an abbreviated T+2 (or shorter) settlement period. Therefore, while the Committee does not oppose T+2, it urges the SEC to preserve the long-standing exemption for registered insurance products.

When the Commission granted the exemption for registered insurance products from the T+3 requirement, it recognized that "the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlements."[7] The Commission further explained that "compliance with the unique requirements of state and federal law, as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process."[8]

In the current proposal to shorten the settlement cycle, the Commission asks the following regarding insurance products:

> "Are the conditions set forth in the Commission's exemptive order for variable annuity contracts still appropriate? If not, why not? If the exemption should be modified, how should it be modified and why?"[9]

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[5] *Id.* at 69240.

[6] The T+3 standard's effective date was June 7, 1995. *See* Securities Transactions Settlement, Release Nos. 33-7110; 34-34952; IC-20691 (Nov. 9, 1994); 59 Fed. Reg. 59137 (Nov. 16, 1994). However, the Insurance Products Exemption order was issued on June 6, 1995, one day prior to T+3's effective date. *See* 1995 Exemptive Order, 60 Fed. Reg. 30906.

[7] 60 Fed. Reg. 30906.

[8] *Id.*

[9] 81 Fed. Reg. at 69262 (text at footnote 212) (footnote omitted). The 1995 Exemptive Order covered

> "a contract for the purchase or sale of any security issued by an insurance company ... including a 'variable annuity contract' as defined in Rule 0-1(e)(1) under the Investment Company Act [of 1940], or a 'variable life insurance contract' as defined in Rule 6e-2(c)(1) or Rule 6e-3(T)(c)(1) under Investment Company Act, or any other insurance contract registered as a security under the Securities Act of 1933." (60 Fed. Reg. 30907; footnotes omitted).

The 1995 Exemptive Order notes that in addition to variable annuities and variable life insurance contracts, "certain fixed dollar annuity contracts ... may fall within the definition of securities under the Exchange Act." Although the current request for comment only mentions variable annuities, this comment letter addresses all insurance products covered by the 1995 Exemptive Order.

Notably, the request for comment did not identify any problems with the current exemption for registered insurance products.

II. The Conditions Under Which the Original Exemption was Granted Have Not Changed

The conditions and considerations set forth in the Commission's 1995 Exemptive Order apply as much today as in 1995, and with even greater force to T+2 than to T+3. The 1995 Commission order did not just rely on generalities about the settlement process for registered insurance products. It pointed to specific examples that would make it impractical for insurance companies to comply with T+3. For example, the 1995 Commission order noted the following requirements on insurers to:

- Assess the purchaser's insurability and mortality risk, which often involves time-consuming medical examinations, laboratory tests, and review of medical records;
- Conduct a review to determine any additional requirements imposed by the Internal Revenue Code (IRC) or ERISA; and
- Preserve and implement, as required by state law in many jurisdictions, a purchaser's right to return or cancel an insurance contract for any reason within a specified time of delivery (so-called "free look" requirements).[10]

Insurance companies issuing registered insurance products are still subject to these requirements (and others), just as they were when the Commission granted its original exemption in 1995. No relevant market or regulatory conditions have changed. No relevant features of registered insurance products have changed. And, because the Commission determined that the exemption from the T+3 standard was justified in light of those requirements, exemption from a shorter T+2 standard is *ipso facto* justified.

Further, the Commission noted in 1995 that exempting registered insurance products from the T+3 standard would not "adversely affect the market risk concerns which the T+3 settlement cycle seeks to address."[11] The SEC's current proposal to adopt T+2 appears to be motivated, at least in part, by a desire to further mitigate market risks associated with protracted settlement periods. However, as the Commission previously recognized, registered insurance products do not contribute to any such adverse market risks.

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[10] 60 Fed. Reg. 30906.

[11] *Id.*

In fact, although registered insurance products are securities as defined in the Securities Exchange Act of 1934, they do not "trade" in the same manner as most other securities. They are not listed on exchanges or sold in the OTC market. They generally are not sold by one investor to another, through a broker or otherwise. Instead, they are sold by the issuing insurance company directly to individual purchasers, after the insurer completes the reviews and underwriting processes noted above. Further, owners of registered insurance products do not sell or liquidate them through impersonal registered securities exchanges. The transactions they tend to engage in are quite different, and include taking a cash withdrawal from the insurance company, taking a loan from the insurance company against the cash value of the product, or surrendering the policy back to the insurance company for its net cash surrender value. The insurer also can effectively "liquidate" the product by providing annuity payments to the owner, or life insurance (or annuity) death benefits to the owner's beneficiaries.

The transactions noted above generally do not utilize the securities transactions settlement and clearance systems contemplated by the Commission when it proposed the Amendment. Further, they do not present the credit, market, liquidity, and systemic risks that Rule 15c6-1 is designed to address. These facts do not depend on whether the Rule applies a T+3 or T+2 standard. In short, there is no single "settlement cycle" for registered insurance products, and as the discussion above demonstrates, they are not purchased or sold like stocks, bonds, and other securities.[12]

The conditions under which the Commission granted its exemptive order for registered insurance products remain in effect today. In fact, insurance products are now subject to greater and more thorough regulation on both the state and federal level than they were in 1995, particularly regarding new sales and application processing.[13] Subjecting insurance companies

[12]For example, variable insurance products are funded and issued through "separate accounts," and Rule 0-1(e) under the Investment Company Act of 1940 (cited by the Commission in the 1995 Exemptive Order) provides a "[d]efinition of separate account and conditions for availability of exemptions under Rules 6c-6, 6c-7, 6c-8, 11a-2, 14a-2, 15a-3, 16a-1, 22c-1, 22d-2, 22e-1, 26a-1, 26a-2, 27a-1, 27a-2, 27a-3, 27c-1, and 32a-2 of this chapter." In addition, Rules 6e-2 and 6e-3(T), which are long and complicated, provide numerous conditional exemptions for scheduled premium and flexible premium variable life insurance policies, respectively. Many of the rules noted above apply to purchase and sale transactions for variable insurance products. These rules governing certain variable insurance product transactions reflect the Commission's considerable effort, undertaken over an extensive period of time, to tailor the 1940 Act's requirements to variable insurance products, consistent with the protection of investors and the public interest. Subjecting these insurance product transactions to Rule 15c6-1 now, would, at the very least, also require the Commission to re-examine how that would impact the various other rules that the Commission has already adopted governing transactions under variable insurance products. Presently, the existing rules work as the Commission intended. The Amendment's proposal to move to a T+2 settlement cycle for most broker-dealer transactions should not by itself create a need to re-examine all of these rules and the Commission's determinations behind them.

[13] For example, at the state level, the National Association of Insurance Commissioner's *Suitability in Annuity Transactions Model Regulation* (Model No. 275), promulgated in 2003 and amended in 2010, has been adopted (in some version) in 45 states. This regulation imposes numerous, specific duties on both insurance companies and insurance producers (*e.g.,* agents) that must be fulfilled as part of the sales process, before fixed and variable annuities can be issued. At the federal level, FINRA Rule 2330 (formerly NASD Rule 2821), initially effective in 2008, imposes not only suitability obligations but also requirements for processing applications in connection with

to the requirements of Rule 15c6-1 for the first time now would not serve to mitigate the risks the SEC seeks to address and would run counter to its sound reasons for granting the original exemption.

The settlement mechanisms for registered insurance products are already governed by a specialized set of rules. Subjecting registered insurance products to T+2 for the first time would disrupt that framework without providing any corresponding benefit. Therefore, the Commission should preserve the exemption for insurance products.

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sales of deferred variable annuities. In this regard, FINRA has provided specific requirements and guidance regarding the handling and processing of customer checks and applications for "subscription way" transactions (it is still very common for variable annuities to be purchased with a written customer check and paper application; in some cases, 50% or more of new sales are by paper application); *see* FINRA Regulatory Notices 10-05 and 15-23.

III. Conclusion

The Committee appreciates the opportunity to provide these comments to the SEC. We applaud the Commission's efforts to mitigate the risks associated with protracted settlement cycles by adopting T+2, but at the same time we urge the Commission to maintain its long-standing exemption for registered insurance products. Registered insurance products do not contribute to the risks the Commission seeks to address, and the settlement process for those products is already governed by extensive state insurance regulation.

We stand ready to provide whatever additional analysis or information we can and to answer any questions at your convenience. Please do not hesitate to contact Steve Roth [redacted] or [redacted]), or Fred Bellamy [redacted] or [redacted]), if you have any questions regarding these comments.

Respectfully submitted,

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Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
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
Symetra Financial Corporation
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.