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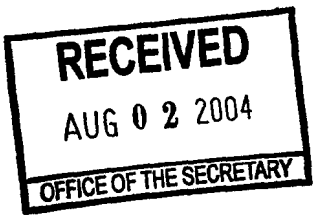

VIA HAND DELIVERY

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File No. S7-06-04; Release No. 34-49148
Point of Sale Disclosure and Confirmation Requirements

Dear Mr. Katz:

Our firm represents the Committee of Annuity Insurers (the "Committee").[1] This letter of comment is submitted on behalf of the Committee on the rules and amendments (the "Proposed Rules") proposed by the Securities and Exchange Commission (the "Commission") in Release No. 34-49148 (the "Proposing Release"), and follows an initial comment letter submitted on behalf of the Committee on April 12, 2004.[2] This letter supplements the comments provided in the Committee's initial letter on the Proposed Rules and, importantly, includes point of sale disclosure and confirm forms developed by the Committee specifically for variable annuity contracts.

The Committee and its member companies endorse the efforts of the Commission to help investors in various types of "covered securities," including variable annuity contracts, make better-informed decisions by means of enhanced disclosure about the costs they will incur in purchasing or selling the security, and the conflicts of interest

[1] The Committee of Annuity Insurers is a coalition of life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over half of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A. This comment letter addresses variable annuities only, since fixed annuities are not subject to the Proposed Rules.

[2] *See* Letter from Sutherland Asbill & Brennan LLP on behalf of the Committee to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 12, 2004. Given the Committee's mandate, the comments submitted in the initial letter and in this letter focus on the applicability and effect of the Proposed Rules on variable annuity transactions.

their broker-dealer may face in recommending or executing such transaction. The Committee recognizes the importance of crafting a disclosure regime for a number of complex products (*e.g.*, mutual funds, 529 plans, variable life insurance policies and variable annuity contracts) for use both at point of sale and in the confirmation statement process. As discussed in the Committee's initial comment letter, however, the disclosure regime proposed in the Proposing Release, while possibly appropriate for mutual funds, would not be workable and in many respects not relevant for variable annuities given the significant differences in the structure, distribution channels and the sales compensation arrangements of variable annuities as compared to mutual funds. Accordingly, the Committee undertook to develop an alternative confirmation form ("VA Confirm Form") and point of sale form ("VA POS Form") and recommends that the Commission adopt such forms for use with variable annuity contracts instead of proposed Schedules 15C and 15D, respectively.[3]

We believe the forms could be used effectively at the point of sale and for transaction confirmations in connection with variable annuity transactions. The Committee developed the forms to permit variable annuity investors to focus on the essential cost and conflicts information they need without being overwhelmed by additional information already provided in prospectuses delivered to such investors. Section I of this letter explains the Committee's proposed VA Confirm Form and Section II explains the proposed VA POS Form. Section III provides additional comments on other aspects of the Proposed Rules.

I. Proposed VA Confirm Form

A. Section A of the VA Confirm Form: General Information

Section A of the VA Confirm Form provides general information about a transaction. The Committee does not believe that the VA Confirm Form needs to provide all of the information that Schedule 15C would require of mutual funds. Two of the more significant items of information the Committee believes are unnecessary are discussed below.

"Class" of Variable Annuity Contract. Schedule 15C would require confirm forms to specify the "class" of security purchased or sold. The term "class" is not defined in Rule 15c2-2. The term is generally used in the mutual fund industry to denote the basic pricing structure of a mutual fund, with "Class A" shares being front-end load

[3] The VA Confirm Form is attached as Appendix B and the VA POS Form is attached as Appendix C. In the interests of providing the recommended forms as expeditiously as possible in order for the Commission to have concrete and constructive proposals regarding variable annuity contracts, the Committee is not submitting herewith specific revisions to Rules 15c2-2 and 15c2-3. Revisions to such rules may be necessary, however, to make them consistent with the Committee's proposed forms.

shares, "Class B" shares being shares with a contingent deferred sales load, and so on. The term "class" may initially have derived from the fact that state corporate laws generally permit corporations to issue "classes" of shares. In certain circumstances, the variable annuity industry may informally refer to certain pricing structures as "A shares," "B shares," and so on. However, state insurance laws do not contemplate different "classes" of annuity contracts, and there are no standardized industry conventions establishing a "class" structure for variable annuities. Moreover, many (if not most) insurers do not offer purchasers a choice of pricing structures within the same contract.

For these reasons, the Committee does not believe that the concept of share class is germane to most variable annuity transactions. Accordingly, the VA Confirm Form does not require "class" information and, in the same vein, does not require disclosure regarding whether the insurer pays higher compensation to sell contracts with back-end loads than contracts with front-end loads.

Subaccount Detail. As discussed below, variable annuity contracts generally permit contract owners to allocate purchase payments to, reallocate contract value among, and make withdrawals from different "subaccounts" or subdivisions of the separate account. Each subaccount invests in an underlying mutual fund (or portfolio thereof). The Committee believes that a single confirm should be generated for one transaction involving multiple subaccounts. Therefore, the VA Confirm Form requires separate "accumulation unit values" (the variable annuity equivalent of mutual fund "net asset values") and number of units for each subaccount involved in a transaction.[4]

B. Section B of the VA Confirm Form: Cost Disclosure ("What you Pay for Purchases")

Sales Loads. Like mutual funds, sales loads for variable annuity contracts consist of front-end and back-end charges. The VA Confirm Form requires disclosure of "Front End Sales Loads" and "Contingent Deferred Sales Loads" ("CDSLs"). With respect to the latter type of charge, the form would require a footnote to CDSL tables to explain how the charge is calculated.[5]

Underlying Fund Rule 12b-1 Fees. Paragraph (c)(3) of Rule 15c2-2 would require confirm disclosure of "asset-based sales charges" and "asset-based service fees." "Asset-based sales charge" is defined by proposed Rule 15c2-2 as "all asset-based

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[4] In the case of contracts that do not use accumulation units, the VA Confirm Form should permit the dollar amounts instead of number and value of accumulation units.

[5] Variable annuity contracts may differ with respect to the calculation of a CDSL. For example, some contracts may base the CDSL on the number of contract years elapsed since issuance of the contract, while others might use the number of years elapsed since payment of the purchase payment that is deemed to be withdrawn.

charges incurred in connection with the distribution of a covered security, paid by the issuer or paid out of the assets of covered securities owned by the issuer." The definition of "asset-based service charge" is similar. The Commission explained in the Proposing Release that these terms would require mutual funds to disclose Rule 12b-1 fees, as well as variable contract issuers to disclose Rule 12b-1 fees of mutual funds underlying their variable contracts.

The Committee agrees with the basic premise of Rule 15c2-2 that Rule 12b-1 fees of underlying funds can be viewed as distribution-related costs that should be disclosed. At the same time, the Committee concluded that requiring variable annuity confirms to specify Rule 12b-1 fees of *every* underlying fund within a variable annuity contract would overwhelm some investors, while disclosing Rule 12b-1 fees just for underlying funds involved in a particular transaction may not alert some contract owners to the Rule 12b-1 fees of underlying funds that a current owner may be considering purchasing, or transferring funds into, in the future. Therefore, the Committee decided that, on balance, the most effective means of alerting contract owners to the Rule 12b-1 fees within a contract would be to disclose the number of underlying funds of the contract that include Rule 12b-1 fees, and the *range* of underlying fund Rule 12b-1 fees in confirms. The Committee recommends further that additional required prominent disclosure be included in the VA Confirm Form stating that detailed information about each underlying fund's Rule 12b-1 fee (of course, that have such a fee) is contained in the prospectuses for the underlying funds.

C. Section C of the VA Confirm Form: Selling Firm Compensation Disclosure ("What Selling Firm, Inc. Earns by Selling you the XYZ VA II")

With most variable annuity contracts, sales compensation paid to the broker-dealer firm selling a variable annuity contract in the retail market ("Selling Firm") generally consists of one or more of the following: (1) a percentage of the premium payments made for the variable annuity contract; (2) an ongoing "trail" commission based on the overall assets held in the variable annuity contract; and (3) a marketing allowance, which may or may not be calculated with reference to premium payments and/or overall assets held in the variable annuity contract. Ordinarily, the insurer or a broker-dealer firm acting as the principal underwriter ("Principal Underwriter") and/or a wholesaling firm ("Wholesaler") pays part or all of this compensation to the Selling Firm. In addition, the Selling Firm may receive non-cash compensation benefits from the insurer, Principal Underwriter or Wholesaler, or from the principal underwriter or wholesaler for an underlying fund in the form of contributions to training and education meetings and other similar events.

In connection with variable annuity contract sales, compensation paid to the Selling Firm generally is not specifically allocated to a particular fee or charge imposed under the contract, and therefore sales compensation is not described or identified as such in the prospectus fee table or in the name of any particular charge. Rather, the insurer

pays the sales compensation out of its own assets, which include revenues derived from periodic deductions made under the terms of the variable annuity contracts. Further, while most variable annuity contracts provide for a contingent deferred sales charge, this charge, if collected by the insurer, is not paid to a Selling Firm. Thus, in only very rare instances is a charge imposed under a variable annuity contract specifically identified for sales compensation.

With these considerations in mind, the Committee determined that compensation paid to Selling Firms in the form of concessions, trail commissions, and marketing allowances (identified in clauses (1), (2) and (3) above) should be disclosed as such in variable annuity confirms. Accordingly, such disclosure would be required by the VA Confirm Form.[6] Selling Firm compensation of any other type would be disclosed qualitatively as "Other Compensation."[7] However, neither "inbound" revenue sharing payments from underlying fund advisers or other affiliates nor portfolio brokerage commissions received by Selling Firms from underlying funds would be required to be disclosed.

Revenue Sharing Payments. Rule 15c2-2 would require mutual funds to disclose revenue sharing payments that fund advisers or other affiliates make to selling firms. The basis for requiring revenue sharing payments to be disclosed is not that such payments are considered to be a distribution-related *cost* (mutual fund affiliates, and not the mutual fund itself, pay such costs so they do not come out of investors' pockets), but because such payments may create potential conflicts of interest for selling firms that receive such payments.

The variable annuity industry typically uses the term "revenue sharing" to describe inbound payments from the adviser of an underlying fund to the insurance company. The Committee believes that revenue sharing payments from underlying fund advisers, or their affiliates, to insurance companies do *not* need to be disclosed because, unlike retail mutual fund "revenue sharing" payments, they are very rarely paid to Selling Firms and therefore cannot create conflicts of interest. In the rare cases where such payments are made directly to a Selling Firm, that amount should be described in the "Other Compensation" section of the VA Confirm Form.

More specifically, most registered variable annuity contracts offered today are funded by a "two-tier" investment company structure. In this two-tier structure, there are two separate and distinct investment companies and two separate and distinct investment company securities. The "top tier" investment company is the "separate account" of the

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[6] Where variable annuity contract values are surrendered, and there are no sales costs or charges incurred, or compensation earned by a Selling Firm we assume the confirmation statement would not include any references to costs or charges that are inapplicable, and a "standard" confirm would be provided.

[7] Such compensation could include any fixed payments made to the Selling Firm.

insurance company; the separate account is a segregated investment account established by the insurer under state insurance law. The insurer issues variable annuity contracts funded by the separate account. Because variable annuity contracts are securities, absent an applicable exemption from registration under the Securities Act of 1933 Act (the "1933 Act"), the contracts or interests therein are registered with the Commission under the 1933 Act. Additionally, the separate account is treated as an investment company under the Investment Company Act of 1940 (the "1940 Act") and is therefore (unless exempted from the definition of "investment company" under the 1940 Act) required to be registered with the Commission as a unit investment trust under the 1940 Act.[8] Separate accounts ordinarily are divided into subdivisions called "subaccounts," each investing in the shares of an underlying mutual fund or portfolio of a mutual fund. These mutual funds are the "lower tiers" of the two-tiered investment company structure.[9]

Importantly, under this two-tier structure "inbound" revenue sharing payments from underlying fund advisers or other affiliates are almost always paid to the insurance company and not to the Selling Firms selling the insurer's variable annuity contracts. These payments go to the insurer's general account and are commingled with other types of revenue the insurer accumulates, whether related to its variable contracts or any other business. The insurance company may use revenue sharing payments for any lawful purpose it chooses, including paying sales commissions or other compensation for sales of its variable contracts. However, it is the compensation ultimately paid to Selling Firms, and not the revenue sharing payments made to the insurer, that is intended to provide the incentive to the Selling Firms to sell the contracts and this compensation is disclosed on the VA Confirm Form as such. "Double-counting" revenue sharing payments by requiring Selling Firm to disclose the amounts in two places would

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[8] The contracts are registered under the 1933 Act and the separate account is registered under the 1940 Act on one integrated registration form, Form N-4.

[9] When contract owners make premium payments, they specify the subaccounts to which they want the insurer to allocate their payment and the relative percentages for each such subaccount allocation. On an ongoing basis, contract owners typically may instruct the insurance company to transfer existing contract value from one subaccount to another by redeeming contract value, measured by "accumulation units" similar to "shares" of mutual funds, from one subaccount and using the proceeds to purchase units in the new subaccount. Insurers typically aggregate buy and sell orders for each subaccount daily and, in accordance with contractual terms specified in "participation agreements" with the underlying funds, transmit the net or "omnibus" orders to the corresponding underlying funds after the close of trading each business day. Some contracts offer as many as 40 to 50 subaccount choices to contract owners with the same number of corresponding underlying funds. Because investor transactions in subaccounts are processed under aggregation and netting rules, an investor's investment in or redemption from a given subaccount are not "mirrored" by corresponding individual purchase or redemption transaction in shares of the underlying fund.

therefore be inequitable and confusing at best, and at worst, misleading. Therefore, the Committee believes strongly that inbound revenue sharing payments from underlying fund affiliates should not be disclosed on variable annuity confirms.

Portfolio Brokerage. Proposed Rule 15c2-2 would require mutual fund confirms to provide certain quantitative disclosure about portfolio brokerage commissions that the fund's selling firms or their affiliates may earn from the fund or the "fund complex." The reason for this disclosure, similar to the revenue sharing payment disclosure that would be required for mutual funds, is that such payments may create potential conflicts of interest for the selling firms.

Rule 15c2-2 could be interpreted to require Selling Firms also to disclose portfolio brokerage commissions they receive from funds offered as investment options within variable annuity contracts sold by the Selling Firms. This would require Selling Firms to keep track of all portfolio brokerage commissions they received from every such underlying fund and report such information on variable annuity confirms. The Committee believes that such disclosure is unnecessary because underlying fund portfolio brokerage commissions would generally not be directed by underlying funds to provide incentives to a Selling Firm to sell particular variable annuity contracts.

D. Section D of the VA Confirm Form: Disclosure of Potential Conflicts of Interest ("Potential Conflicts of Interest for Selling Firm, Inc.")

Proposed Rule 15c2-2 would with certain exceptions require disclosure of whether a broker-dealer pays differential compensation to associated persons related to purchases of two specific types of securities: (i) covered securities with deferred sales loads, and (ii) sales of "proprietary covered securities" that are issued by an affiliate of the broker-dealer. With respect to the Commission's expressed concerns about firms that may pay higher compensation to associated persons to encourage sales of fund shares with back-end loads that may in turn provide the firm with higher compensation than front-end load shares, the Committee does not believe these concerns are currently raised in connection with sales of variable annuity contracts since most insurers do not offer different classes of the same contract. Therefore, unlike Schedule 15C, Section D of the VA Confirm Form does not require disclosure related to differential compensation paid with respect to variable annuity contracts with deferred sales loads.

With respect to the Commission's concerns regarding differential compensation paid for sales of proprietary fund shares, these concerns may be raised by sales of variable annuity contracts. Therefore, Section D of the VA Confirm Form does require disclosure of whether a Selling Firm may pay its sales personnel more money for selling a variable annuity contract issued by an affiliated insurance company than an unaffiliated insurance company.

II. Proposed VA POS Form

A. General Information

The Committee believes that a single VA POS Form should be used for all potential purchasers of a particular variable annuity contract. Therefore, the VA POS Form's general information section only includes the name of the Selling Firm and the variable annuity contract

B. Cost Disclosure ("Sales Loads and Charges Incurred by You Under the Variable Annuity")

The VA POS Form developed by the Committee would require disclosure of sales loads and underlying fund Rule 12b-1 fees similar to that required by the Committee's recommended VA Confirm Form. The Committee's reasons for recommending this disclosure in the VA POS Form are the same as its reasons for recommending the disclosure in the VA Confirm Form.

C. Selling Firm Compensation Disclosure ("What Selling Firm, Inc. Earns by Selling you the XYZ Variable Annuity")

The Committee's VA POS Form would require the same disclosure regarding compensation paid to Selling Firms as its VA Confirm Form, for the reasons discussed above.

D. Disclosure of Potential Conflicts of Interest ("Potential Conflicts of Interest for Selling Firm, Inc.")

The Committee concluded that the same disclosure that would be required to be provided by the VA Confirm Form regarding differential compensation should be required by the VA POS Form.

III. General Comments

A number of the Committee's more salient comments regarding the Proposed Rules are set forth below. Some of these points were made in the Committee's initial comment letter on the Proposed Rules, but are repeated below for ease of reference and in many cases expanded upon.

A. Multiple Broker-Dealer Firms Confirming Transactions

Proposed Rule 15c2-2 would apply to "every broker-dealer that effects a transaction in a covered security, including transactions effected by more than one broker-dealer." Today, customers purchasing variable annuities typically receive a single confirmation from the issuing insurance company, acting on the broker-dealer's behalf.[10] The Proposed Rules would appear to require compensation disclosure regarding *any* broker-dealer that effects a transaction. This provision could be read to include the Selling Firm, the Principal Underwriter for the contracts, and any Wholesaler that receives compensation in connection with the variable annuity transaction.[11] This apparently would be the case regardless of whether the purchaser of the variable annuity contract has any contact with the Principal Underwriter or the Wholesaler. The Proposing Release states that investors should see information about those types of remuneration specifically attributed to *each* broker-dealer in order to allow investors to evaluate conflicts of interest. Given the stated rationale for multiple firm confirmations, the Committee believes it is illogical to conclude that an investor's decision making process would be improved as a result of information on the conflicts of interest facing a broker-dealer with whom the investor has no contact (*e.g.*, the Principal Underwriter or Wholesaler).

Imposing confirmation statement requirements on Wholesalers and Principal Underwriters would require exponentially enhanced coordination and integration of systems among the relevant broker-dealer firms. Selling Firms in the variable annuity industry generally do not have standardized electronic feed systems connecting them to the issuing insurance company or the Principal Underwriter that allow for the

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[10] Because the processing of variable annuity transactions is within the control of the insurer, in virtually all cases, the insurer generates the confirmations on behalf of the Selling Firms. The Proposed Rules contemplate a confirmation containing transaction information that could be derived *only from* an insurance company's processing system (*e.g.*, separate account unit values), as well as conflict of interest information that would be known *only by* the Selling Firm (*e.g.*, comparative payout rates to its representatives). However, currently no industry-wide infrastructure exists to support the delivery or exchange of variable annuity transaction and sales compensation information among insurers, Principal Underwriters, Wholesalers and Selling Firms to facilitate the generation of confirmations for Selling Firms disclosing the items required under the Proposed Rules. While the Committee in this comment letter has generally refrained from opposing the Proposed Rules on the basis of costs for the industry, which are likely to be huge, and the associated increase in administrative burdens, we note that the Proposed Rules pose enormous operational challenges for the variable annuity industry because there is not architecture currently in place to transmit information between insurers, Principal Underwriters, Wholesalers and Selling Firms.

[11] *See* Section I(C) *supra.*

transmission of such data. Unlike the mutual fund industry, which has certain standard electronic feeds available for securities held in a brokerage account, the required infrastructure has not been widely deployed in the variable annuity industry for products purchased on a "check and app" basis. A preliminary review of the potential systems of data exchange indicate that it is unlikely that modifications alone would provide the required functionality, but rather completely new systems would need to be constructed. The Committee notes that the systems requirements to provide this level of information, and the integration of systems between and among Wholesalers, Principal Underwriters, and Selling Firms, is a daunting challenge under the Proposed Rules and will require significant transition time.

Finally, the Committee believes that multiple firm confirmation statements will lead to customer confusion. A variable annuity purchaser could receive a dizzying number of confirmation statements resulting from the same variable annuity transaction from the Principal Underwriter, Wholesaler(s) and the Selling Firm, possibly at slightly different times, with each confirmation statement reflecting the different types of compensation received by each firm. If the Commission does require multiple confirms, however, the Committee recommends that the Commission clarify that broker-dealer firms providing compensation information on their confirmation statements would be required only to report the compensation they retain, and not any of the compensation that they may pay to other broker-dealer firms. For example, if the final rules retain the requirement for the Principal Underwriter to disclose information, the Principal Underwriter should only be required to confirm the compensation that it keeps, and should not report any amounts that it pays to Wholesalers or Selling Firms.

B. Retention of Current Industry Confirmation Practices

Many of the variable annuity transactions for which confirmations currently are generated do not implicate any sales compensation arrangements. For example, many variable annuity contract owners elect various reallocation features, such as dollar cost averaging and portfolio rebalancing. In addition, many contracts give contract owners the right to make transfers among subaccounts. These transactions do not have any impact on sales compensation arrangements. Furthermore, the SEC staff has issued a number of no-action letters that address the unique circumstances of confirmations in the context of variable annuity contracts.[12] These no-action letters provide relief from certain

[12] A substantial number of variable annuity principal underwriters have obtained exemptions to permit their use of alternative confirmation statement arrangements. For example, in connection with group annuity contracts funding certain employee benefit plans (principally arrangements under Section 403(b) of the Internal Revenue Code), no-action letters have provided relief from Rule 10(b)-10(d)(6)(iii)(C) to permit insurance company affiliates of broker-dealers to deal directly with employers that take longer than 30 days to remit payroll deductions. *See, e.g.*, Metropolitan Life Insurance Company (pub avail. Apr. 3, 1995); The Variable Annuity Life Insurance Company (pub. avail.

technical confirmation requirements. The Committee strongly urges the Commission to clarify that such relief carries forward under any final rules.

C. Confirmation of Underlying Fund "Transactions"

The Proposing Release requested comment on whether a single confirmation should be used for transactions in both the variable annuity contract and the underlying funds. The Committee's view is that a single confirmation statement must be used. While the subaccounts of the separate account invest in such underlying funds, an investor's investment in the subaccount is not necessarily reflected as an investment in an underlying fund because of the aggregation and netting of orders occurring at the insurance company level.[13] Since transactions at the underlying fund level do not generally correlate to transactions at the subaccount level, disclosure of transactions at the underlying fund level simply would not be possible for each investor's transactions.[14]

Dec. 20, 1985). SEC staff has also issued no-action letters (many of which were framed as exemptions) related to variable life insurance confirmation practices. *See, e.g.,* New England Mutual Life Insurance Company (pub. avail. Oct. 29, 1983); Provident Mutual Variable Life Insurance Company (pub. avail. Mar. 1, 1984); Pruco Life Insurance Company (pub. avail. May 11, 1985); Nationwide Life Insurance Company (pub. avail. Jan. 11, 1987).

[13] *See supra* note 9.

[14] State insurance laws and regulations governing insurance company separate accounts typically contain several key provisions that illustrate the difficulties associated with providing a confirm for the underlying fund transactions. In order for variable annuity contracts to provide benefits that reflect the performance of the assets held in a separate account, the most basic statutory provision states that the income, gains and losses, realized or unrealized, from assets allocated to the separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the insurer. Although separate account laws are structured so that the benefits provided under variable contracts are tied to the performance of separate account assets, they make it clear that the separate account is essentially an accounting mechanism. They usually provide that amounts allocated to a separate account shall be owned by the insurer, and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts. Accordingly, variable annuity contract holders do not hold legal title to, or, arguably, any beneficial ownership interest in, separate account assets notwithstanding that by operation of law the assets of the separate account equal to the reserves and other liabilities with respect to variable contracts issued through the separate account are not be chargeable with liabilities arising out of any other business the insurer may conduct. Because the assets are legally segregated from other assets of the insurer subject to the claims of other creditors, contract owners may in a sense be said to enjoy special or

D. Comparison Range Disclosure

Proposed Rule 15c2-2 would require broker-dealers to disclose, adjacent to various sales load, concession, and other compensation figures, industry ranges and medians for such information. The Commission indicated in the Proposing Release that it anticipates publishing industry range and median information annually in the *Federal Register*.

The Commission acknowledged in the Proposing Release that additional rulemaking would be necessary to implement reporting requirements that would enable the Commission to gather the information needed to calculate industry range and median data. We understand that this would provide an additional opportunity for the Committee to comment on the proposed range and median information requirements at the time of the reporting requirement proposal. In addition, the Proposing Release asked for comment on the general utility and necessity for requiring such information to be provided by broker-dealers at the point of sale.

Variable annuity contracts are complex financial instruments that have both insurance and investment characteristics. The Committee questions whether meaningful categories of variable annuity contracts could be constructed that would provide the basis for "apples-to-apples" range and median data comparisons between different contracts. The costs of developing the new data collection and transmission systems to transmit necessary individual contract information to the Commission for its industry database would likely be enormous given the need as previously discussed for the variable annuity industry to construct all new systems. In short, the Committee believes the costs of such a system would virtually completely outweigh any utility of such a system.

E. Timing and Relevance of the Point of Sale Disclosure Document for Variable Annuities

The disclosures mandated by proposed Rule 15c2-3 would be required to be provided at the "point of sale." Proposed Rule 15c2-3(f) defines "point of sale" as (i) immediately prior to the time a broker-dealer accepts the order from the customer, or (b) as to transactions for which the customer does not open an account and in which the broker-dealer does not accept the order from the customer, at the time the broker-dealer first discusses the covered security with the customer. For a variable annuity transaction, the "point of sale" will depend on the manner in which the Selling Firm effects the

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preferential rights to separate account assets similar to the rights that secured creditors have in the assets securing a debtor's promise to discharge a debt.

variable annuity transaction, *e.g.*, on a check and app basis or through a securities brokerage account. If a customer has a securities brokerage account with a broker-dealer, the point of sale would be the time the order is communicated to the broker-dealer. For check and app business, the broker-dealer could be required to provide the disclosure at the first time the broker-dealer communicates with the customer about the variable annuity.

Variable annuities are sold in a wide variety of situations with very different "points of sale." For example, a variable annuity could be purchased by a corporate employer as the funding vehicle for a retirement plan in a context entailing a "request for proposal" process and negotiations carried out over several months, on a check and app basis by an individual in the context of a financial plan, or through a brokerage account as a rollover distribution. A variable annuity could be recommended in the context of a much broader investment portfolio discussion in which multiple products (*e.g.*, different mutual funds, different variable annuities) may be presented, many of which may trigger separate point of sale disclosure statements under the Proposed Rules. Further, at the point in time that would be deemed to be the "point of sale" under the Proposed Rules' definition, the amount to be invested and associated costs often are not yet determinable. However, the Proposed Rules presume a simplistic sales process involving the recommendation of a single product and an easily identifiable point of sale.

The Committee believes that under the proposed definition of "point of sale," Selling Firms would be involved in a number of different types of transactions that would lead to confusion as to what type of point of sale disclosure must be provided, and when it would be required to be provided. In addition, the Committee notes that there is tension in the Proposed Rules between providing the point of sale disclosures at the earliest possible time, and attempting to provide purchaser-specific information. In essence, where the amount of the securities purchase is reasonably estimable, the Selling Firm must provide a "mini-illustration" of actual fees and costs to be paid by the purchaser based on the specific amount invested.

For the reasons discussed, the Committee recommends that the timing and mechanics of the delivery of the point of sale disclosure be more completely described in the definition of "point of sale" for the various types of variable annuity transactions and that a level playing field is ensured between the retail mutual fund industry and the variable annuity industry. In addition, given the complexity of the sales process, the Committee suggests that only the hypothetical $10,000 investment be used as the basis for the point of sale disclosure, and not the mini-illustration described above.[15]

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[15] The Committee also notes that state mandated free look rights are available for variable annuity contract purchasers. All investors will receive both the confirmation and the prospectus prior to the conclusion of the free look right. In some states, the purchaser can receive a refund of premium during the free look period. As a result, the need for customer specific point of sale disclosure should be lessened.

Furthermore, the Committee strongly recommends that only the initial purchase of a variable annuity contract should trigger an obligation on the Selling Firm to provide a point of sale disclosure document; no point of sale disclosure should be required when additional amounts are invested in a variable annuity contract after the initial purchase.

Conclusion

The Committee appreciates the time and resources that the Commission and its staff have devoted to this important initiative and that the Staff's continuing to remain open to the Committee's recommendations. We are pleased to have this opportunity to provide further comments to the Commission and we can assure the Commission and its staff that significant resources were committed to developing the recommended VA Confirm and POS Forms. We appreciate the Commission's careful consideration of the Committee's specific recommendations and what we are confident will be the agency's continued commitment to create a workable disclosure format for the variable annuity industry that will provide meaningful information to investors.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

W. Thomas Conner EAA

BY: _____

W. Thomas Conner
Eric A. Arnold

FOR THE COMMITTEE OF ANNUITY INSURERS

Cc: The Honorable William H. Donaldson
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Cynthia A. Glassman
The Honorable Harvey J. Goldschmid
Catherine McGuire, Division of Market Regulation
Susan Nash, Division of Investment Management
Paul Cellupica, Division of Investment Management

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

Allmerica Financial Company
Allstate Financial
American International Group, Inc.
AmerUs Annuity Group Co.
Equitable Life Assurance Society of the United States
F & G Life Insurance
Fidelity Investments Life Insurance Company
GE Financial Assurance
Great American Life Insurance Co.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
ManuLife Financial
Merrill Lynch Life Insurance Company
Metropolitan Life Insurance Company
Mutual of Omaha Companies
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
The Phoenix Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sun Life of Canada
Travelers Insurance Companies
USAA Life Insurance Company
Zurich Kemper Life Insurance Companies

APPENDIX B

VA CONFIRM FORM

VA Confirmation Form

Selling Firm, Inc.
Fees and Payments Associated with Your Variable Annuity

A. GENERAL INFORMATION

Customer: John Doe
Policy Number: 1234567
Transaction Date: 01/04/05

Type of Transaction: Purchase
Units bought/sold: 25.00 subaccount A
50.00 subaccount B
Issuer: XYZ Insurance Company

Type of Security: XYZ VA II
Accumulation Unit Value:
$20.00 subaccount A
$10.00 subaccount B
Amount paid/received: $1,000

B. WHAT YOU PAY FOR PURCHASES

Front End Sales Load NA

Contingent Deferred Sales Load
This table indicates the charges you would incur if you surrendered your variable annuity contract shares that you purchased over the next [5] years

Year in which *contract value* surrendered*	**Applicable Percentage**	**Dollar Amount of Load**
Year 1	5 %	$50
Year 2	4 %	$40
Year 3	3 %	$30
Year 4	2 %	$20
Year 5	1 %	$10

*[Provide explanation of how the surrender charge is calculated]

Rule 12b-1 Fees Charged by *Underlying Portfolios*

[__] of the [__] *underlying portfolios* charge Rule 12b-1 fees. These fees range from ___% to ___%. See the *underlying portfolio* prospectuses for information about the fees

C. WHAT SELLING FIRM, INC. EARNS BY SELLING YOU THE XYZ VA II

Type of Compensation	Applicable Percentage	Dollar Amount
Sales Fee	a maximum of 5.25% of premium payments	$52.50
Trail Compensation	0.30% of *contract value* each year	$3.00*
Marketing Allowance	0.25% of premium payments each year or [*contract value* each year]	$2.50*

* These amounts are estimates since the *contract value* could increase or decrease during the years.

Other Compensation. In addition to *sales fees*, *trail compensation*, and *marketing allowances*, Selling Firm, Inc. may receive from the insurance company issuing XYZ Variable Annuity, the principal underwriter distributing the XYZ Variable Annuity, or an affiliate, compensation in connection with selling the XYZ Variable Annuity or other products issued by the insurance company or for administrative or other services we provide to the insurance company, principal underwriter or affiliate.

D. POTENTIAL CONFLICTS OF INTEREST FOR SELLING FIRM, INC.

Selling Firm, Inc. may pay its sales personnel, your broker, more money for selling a variable annuity contract issued by an affiliated insurance company than for selling a variable annuity contract issued by an unaffiliated company. The contract you are purchasing is [or is not] issued by an affiliated insurance company.

Italicized terms are described on the next page

DEFINITION OF TERMS

Front End Sales Loads -- A front end sales load is an amount assessed against the premium payment for a variable annuity contract, expressed as a percentage of such payment amount.

Contingent Deferred Sales Charge – A contingent deferred sales load is an amount that may be charged to a variable annuity contract owner when the contract owner makes a partial or total surrender of the value of a variable annuity contract. The amounts identified in the chart are the charges that you would incur for surrendering **all** of your variable annuity contract during the specified number of years after this purchase.

Contract Value – The sum of your interests in the separate account and the fixed account of your variable annuity contract.

Underlying Portfolios – The underlying investment options of the variable annuity contract.

Sales Fee – This is one type of compensation that Selling Firm, Inc. gets paid [by or through] the issuing insurance company for selling the variable annuity contract to you, and is based on the initial (and any subsequent) premium payments.

Trail Compensation – Trail compensation is paid to Selling Firm, Inc. over the lifetime of the variable annuity contract and is based on the contract value of the variable annuity contract.

Marketing Allowance -- Some broker-dealers also get paid a marketing allowance, that is based either on premium payments or contract value.

APPENDIX C

VA POS FORM

VA Point of Sale Form

Selling Firm, Inc.
XYZ Variable Annuity

SALES LOADS AND CHARGES INCURRED BY YOU UNDER THE VARIABLE ANNUITY

Types of Sales Loads and Other Sales Fees	**Applicable Percentage and Base**	**Amount per $10,000 investment**
Front End Sales Load	x.xx% of premium payments	$xxx.xx
Contingent Deferred Sales Load – at the end of Year 1	x.xx% of *contract value* surrendered	$xxx.xx
Rule 12b-1 Fees Charged by *Underlying Portfolios*	[__] of the [__] *underlying portfolios* charge Rule 12b-1 fees. These fees range from ___% to ___%. See the *underlying portfolio* prospectuses for information about the fees.	$xx.xx to $yy.yy

Please see the XYZ Variable Annuity prospectus for a complete description of the fees and charges imposed on you

WHAT SELLING FIRM, INC. EARNS BY SELLING YOU THE XYZ VARIABLE ANNUITY

Type of Compensation	**Applicable Percentage and Base**	**Amount per $10,000**
Sales Fee	x.xx% of premium payment	$xxx.xx
Trail Compensation	x.xx% of *contract value* each year	$xxx.xx
Marketing Allowance	x.xx% of [premium payments each year] or [*contract value* each year]	$xxx.xx

Other Compensation. In addition to *sales fees, trail compensation, and marketing allowances*, Selling Firm, Inc. may receive from the insurance company issuing XYZ

Variable Annuity, the principal underwriter distributing the XYZ Variable Annuity, or an affiliate, compensation in connection with selling the XYZ Variable Annuity or other products issued by the insurance company or for administrative or other services we provide to the insurance company, principal underwriter or affiliate.

POTENTIAL CONFLICTS OF INTEREST FOR SELLING FIRM, INC.

Selling Firm, Inc. may pay its personnel, your broker, more money for selling a variable annuity contract issued by an affiliated insurance company than for a variable annuity contract issued by an unaffiliated company. The contract you are purchasing is [or is not] issued by an affiliated insurance company.

Italicized terms are described on the next page

DEFINITION OF TERMS

Front End Sales Loads -- A front end sales load is an amount assessed against the premium payment for a variable annuity contract, expressed as a percentage of such payment amount.

Contingent Deferred Sales Charge – A contingent deferred sales load is an amount charged to a variable annuity contract owner when the contract owner determines to make a partial or total surrender of the value of a variable annuity contract. The amount identified in the chart is the charge that you would incur for surrendering part of your variable annuity contract during the first year of holding the contract. The contingent deferred sales charges will decrease over time, and that information is included in the prospectus.

Contract Value -- The sum of your interests in the separate account and the fixed account of your variable annuity contract.

Underlying Portfolios -- The underlying investment options of the variable annuity contract.

Sales Fee – This is one type of compensation that Selling Firm, Inc. gets paid [by or through] the issuing insurance company for selling the variable annuity contract, and is based on the initial (and any subsequent) premium payments.

Trail Compensation – Trail compensation is paid to Selling Firm, Inc. over the lifetime of the variable annuity contract and is based on the *contract value* of the variable annuity contract.

Marketing Allowance -- Some broker-dealers also get paid a marketing allowance, that is based either on premium payments or contract value.