

July 23, 2008

**VIA E-MAIL**

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: **File Numbers S7-11-08 and S7-12-08; Comments on the Interactive Data Proposals**

Dear Ms. Harmon:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee").<sup>1</sup> The Committee is pleased to have the opportunity to offer its comments in response to the requests by the Securities and Exchange Commission (the "Commission") in Release No. 33-8924 (May 30, 2008)<sup>2</sup> and Release No. 33-8929 (June 10, 2008)<sup>3</sup> (together, the "Proposing Releases") for comments on proposed rules that would require the filing of certain information with the Commission in interactive format. The Financial Statements Release requests comments on proposed rules that would require companies to provide financial statement information in interactive format, while the Mutual Fund Release requests comments on proposed rules that would require mutual funds to provide risk/return summary information in interactive format. Both Proposing Releases would require the filing of the interactive data with the Commission using the eXtensive Business Reporting Language ("XBRL"), as well as the posting of the interactive data on the entity's Web site in XBRL format.

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<sup>1</sup> The Committee of Annuity Insurers is a coalition of 33 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 two-thirds of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

<sup>2</sup> See Interactive Data to Improve Financial Reporting, Release No. 33-8924 (May 30, 2008) (the "Financial Statements Release").

<sup>3</sup> See Interactive Data for Mutual Fund Risk/Return Summary, Release No. 33-8929 (June 10, 2008) (the "Mutual Fund Release").

The Committee commends the Commission for its efforts to provide both financial statement information and mutual fund risk/return summary information in a format that would improve the information's usefulness to investors by facilitating the analysis and comparisons of different investment choices and by increasing the speed, accuracy, and usability of financial disclosures for investors. However, with respect to the Financial Statements Release, the Committee questions the benefit of providing annuity investors with interactive data about the financial statements of the issuing insurance company. Additionally, because of the unique characteristics of registered fixed and variable annuities, the Committee requests clarification and confirmation concerning the applicability of the proposed rules in both Proposing Releases in the context of registered annuities. Finally, the Committee would like to offer comments in response to a specific request by the Commission in the Financial Statements Release.

The first section of this letter provides brief background information concerning the characteristics of registered annuity products. The second section sets forth the Committee's comments and requests for clarification and confirmation with respect to the Financial Statements Release, while the third section sets forth the Committee's request for clarification and confirmation with respect to the Mutual Fund Release.

## **I. Characteristics of Registered Annuities**

Annuities are financial products offered by insurance companies in which the insurance companies promise to make certain periodic payments to a contract owner in exchange for one or more premium payments. While many annuities qualify for the exemption from registration provided in Section 3(a)(8) of the Securities Act of 1933, as amended (the "1933 Act"), certain annuities are registered with the Commission as securities. *Registered fixed annuities are registered on Forms S-1 or S-3 under the 1933 Act*, while registered variable annuities are registered on Forms N-3 or N-4 under both the 1933 Act and the Investment Company Act of 1940, as amended (the "1940 Act").

### **A. Registered Fixed Annuities**

A registered fixed annuity generally is a non-exempt annuity contract issued by an insurance company where the benefits under the contract do not depend upon the investment experience of a separate account. While registered under the 1933 Act, registered fixed annuities are also regulated as insurance under state law. One focus of state insurance regulation is on insurance company solvency "with the ultimate purpose of ensuring that insurance companies are financially secure enough to meet their contractual obligations."<sup>4</sup> Another characteristic of registered fixed annuities is the absence of trading interest in the annuity contracts.<sup>5</sup> The annuity is purchased directly from an insurance company and is not listed or traded on a securities exchange or in any

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<sup>4</sup> Indexed Annuities and Certain Other Insurance Contracts, Release No. 33-8933 (June 25, 2008) (the "Rule 12h-7 Proposing Release") at 48.

<sup>5</sup> See *id.* at 47 and 49.

other market. As a result, the financial markets and investors generally have a very limited interest in comparing and contrasting the financial statements of various insurance companies in connection with the purchase of a registered fixed annuity.

## **B. Variable Annuities**

A variable annuity is an annuity contract issued by an insurance company,<sup>6</sup> where benefits depend on the investment experience of a separate account, and which is generally issued through a two-tiered investment structure. The top tier consists of a separate account of the issuing insurance company, which is a segregated investment account established under state insurance law that holds variable annuity contract assets and liabilities separate and apart from the assets and liabilities of the insurance company's general account. Absent an exemption from the 1940 Act, the separate account is required to register as an investment company under the 1940 Act. Separate accounts typically are organized and registered under the 1940 Act as unit investment trusts and are divided into subaccounts.

The bottom tier of the two-tiered variable annuity investment structure consists of portfolios of one or more underlying mutual funds, which may include both so-called "proprietary" funds sponsored by the insurance company as well as unaffiliated mutual funds. The current generation of variable annuity contracts typically offers a wide variety of underlying funds. Each subaccount of the separate account corresponds to and is invested exclusively in a portfolio of the underlying funds. This structure permits variable annuities to offer a wide variety of underlying funds as investment options, and gives the contract owner the opportunity to select from dozens of underlying funds offered by many different mutual fund complexes.

As with registered fixed annuities, there is an absence of trading interest in variable annuity contracts. A variable annuity is purchased directly from an insurance company and is not listed or traded on a securities exchange or in any other market. Therefore, as with registered fixed annuities, the financial markets and investors generally have a very limited interest in comparing and contrasting the financial statements of various insurance company depositors in connection with the purchase of a registered variable annuity.

## **II. The Financial Statements Release**

The Commission has proposed rules that would require domestic and foreign issuers that prepare their financial statements in accordance with generally accepted accounting principles as used in the United States ("U.S. GAAP"), and foreign private

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<sup>6</sup> For ease of reference, this comment letter sometimes refers to insurance companies as issuers of variable annuity contracts although, under the federal securities laws, insurance company separate accounts are the primary issuers of variable annuity contracts, with the insurer as a separate entity co-issuing the contract. See Stephen E. Roth, Susan S. Krawczyk, and David S. Goldstein, Reorganizing Insurance Company Separate Accounts Under Federal Securities Laws, 46 Business Lawyer 546 (Feb. 1991).

issuers that prepare their financial statements using International Financial Reporting Standards (“IFRS”) as promulgated by the International Accounting Standards Board, to prepare and file their financial statements in XBRL format. The data-tagged interactive financial statements would be submitted to the Commission as an exhibit to the registration statement (the “XBRL exhibit”) and would be posted on the registrant’s corporate Web site, if any.<sup>7</sup> The rules proposed by the Financial Statements Release, however, would specifically exclude investment companies registered under the 1940 Act that prepare their financial statements in accordance with Article 6 of Regulation S-X from the requirements to submit XBRL interactive data files with regard to their financial statements or to post such data on the registrant’s corporate Web site.<sup>8</sup>

**A. Request for an Exemption from the Rules Proposed in the Financial Statements Release for Insurance Companies That Submit U.S. GAAP Financial Statements in Connection with Registered Insurance Products**

Because the rules proposed in the Financial Statements Release would apply to all U.S. companies that file U.S. GAAP financial statements and that are not registered investment companies (or other entities that prepare their financial statements in accordance with Article 6 of Regulation S-X), all insurance companies that register fixed annuities on Forms S-1 or S-3, and that prepare U.S. GAAP financial statements to accompany those filings, would be subject to such rules.<sup>9</sup> For the reasons discussed below, the Committee requests that the Commission exempt insurance company issuers of registered fixed annuities from the proposed rules set forth in the Financial Statements Release.<sup>10</sup>

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<sup>7</sup> See the Financial Statements Release at 117.

<sup>8</sup> See *id.* at 21 and 118 (proposing amendments to Item 601 of Regulation S-K and Rule 405 of Regulation S-T to prohibit a registrant that prepares its financial statements in accordance with Article 6 of Regulation S-X from submitting an XBRL interactive data file in accordance with the requirements of Rule 405 of Regulation S-T, but continuing to permit participation in the voluntary XBRL program under Rule 401 of Regulation S-T). The prohibition would extend to business development companies and to other entities that report under the Securities Exchange Act of 1934, as amended (the “1934 Act”), and that prepare their financial statements in accordance with Article 6 of Regulation S-X.

<sup>9</sup> The Committee questions whether insurance companies that register fixed annuities on Form S-1 or S-3 should be required to prepare U.S. GAAP financial statements, in addition to audited statutory financial statements, if the only reason the insurance company prepares U.S. GAAP financial statements is to accompany the registration statements for its registered fixed insurance products. The Committee notes that insurance companies that register as depositors to their separate accounts funding variable insurance products on Forms N-4 and N-6 are permitted, under similar conditions, to prepare and file only audited statutory financial statements. See Instruction 1 to Item 23(b) of Form N-4 and Instruction 1 to Item 24(b) of Form N-6. The Committee expects to pursue this issue in other contexts.

<sup>10</sup> Such an exemption could, for instance, modify proposed Item 601(b)(101)(iii) of Form S-K to include, under the heading “Not Permitted to be Submitted”, the phrase “or if the registrant is an insurance company subject to the supervision of the insurance commission of any State and the securities do not constitute the equity securities of the registrant.”

As noted above, the Committee believes that providing financial information in an interactive XBRL format can be very useful in certain circumstances, allowing investors to more easily analyze and compare the financial information about publicly traded companies in which they are considering investing. However, in the context of the financial statements of insurance companies that offer registered annuities, the Committee questions whether investors would find interactive data about the insurer's financial status to be sufficiently material to their decision regarding the purchase of an annuity so as to justify the costs to the insurance industry of preparing and filing the XBRL interactive data and posting it on a corporate Web site.<sup>11</sup>

As the Commission recently recognized in its release proposing new Rule 12h-7 under the 1934 Act (the "Rule 12h-7 Proposing Release"),<sup>12</sup> insurance products, including insurance products registered under the 1933 Act, are unique and often warrant treatment different from that of other financial instruments. Unlike most securities, annuities are not traded on a securities exchange or otherwise, but are purchased directly from the insurance company. Because annuity contracts do not represent an equity interest in the issuing insurance company, purchasers of annuities do not depend on the financial condition of the insurance company to determine the value of their registered annuity. Therefore, purchasers of registered annuities do not have the same interest in the financial statements of insurance company issuing the annuity as do purchasers of publicly traded equity interests. Due to the absence of a trading interest in annuities, there is no need to provide the financial marketplace with interactive XBRL tools that readily compare and analyze the financial statements of annuity issuers.

In addition, the Committee believes that the Commission should exempt insurance company issuers of registered fixed annuities from the rules proposed in the Financial Statements Release because the costs of complying with such rules would far outweigh the public benefit. In the Financial Statements Release, the Commission lists the benefits of interactive data as increased information access and market efficiency in the form of more efficient capital formation and more efficient capital allocation.<sup>13</sup> However, none of those benefits would apply in the context of registered fixed annuities. Clearly, the financial markets would not be made more efficient by requiring insurance company issuers of fixed annuities to file XBRL exhibits. Furthermore, the benefit of improved information access is also not as relevant here since, apart from the information provided about the solvency of the insurance company, insurance company financial statements do not inform the investor about the annuity that he or she is considering

<sup>11</sup> The Committee strongly believes, however, that interactive data tagging of the risk/return summary for variable annuities could prove extremely useful to investors and urges the Commission to work towards the development of a revised Form N-4 to permit such interactive summary data.

<sup>12</sup> See the Rule 12h-7 Proposing Release at 47.

<sup>13</sup> See the Financial Statements Release at 83-91.

purchasing. Thus, while insurance companies would be required to invest significant resources in creating XBRL tags for their financial statements and posting such interactive data on their corporate Web sites, it is not clear what, if any, benefit would be provided to an annuity investor or to the capital markets by making the financial statements of the issuing insurance company available in interactive format.<sup>14</sup>

**B. Request for Clarification with Respect to the Applicability of the Financial Statements Release to the Financial Statements of Insurance Company Depositors**

As noted above, the Committee requests that the Commission consider an exemption from the rules proposed in the Financial Statements Release for insurance company issuers of registered fixed annuities. In addition, the Committee requests clarification regarding their applicability to the financial statements of insurance company depositors of registered variable annuities.

The Financial Statements Release clearly states that it would not apply to registered investment companies that prepare their financial statements in accordance with Article 6 of Regulation S-X,<sup>15</sup> and so it would not apply to registered separate accounts. However, whether or not the Financial Statements Release would apply to depositor financial statements filed with an N-4 or N-6 filing is somewhat ambiguous since the depositor is not, itself, an investment company. As mentioned above, with respect to U.S. companies, the Financial Statements Release states on its face that it applies to reporting companies under the 1934 Act that file U.S. GAAP financial statements.<sup>16</sup> Thus, the Financial Statements Release appears not to apply to any insurance company depositor financial statements to the extent that the insurance company in question is not a 1934 Act reporting company and/or does not prepare U.S. GAAP financials (*i.e.*, the insurance company prepares only audited statutory financial statements as permitted by Forms N-4 and N-6).<sup>17</sup> However, the Committee requests that the Commission confirm that this is an accurate interpretation of the rules proposed in the Financial Statements Release.

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<sup>14</sup> To the extent that the Commission is unwilling to provide an exemption for insurance companies as requested above, the Committee requests that the Commission consider a more flexible window for filing the XBRL exhibit and for posting the XBRL file on the company's Web site, similar to the 15 business day window that is proposed under the Mutual Fund Release. See Mutual Fund Release at 37. Like mutual fund families that may have many registrants, many insurance companies have multiple registered fixed insurance products and would be required to tag and post the corresponding XBRL exhibits within a very short time frame, adding significantly to the burdens of compliance with the rules.

<sup>15</sup> See the Financial Statements Release at 21 and 118

<sup>16</sup> See id. at 1.

<sup>17</sup> See supra note 9.

**C. Request for Confirmation as to Whether an XBRL Exhibit is Required**

To the extent that an insurance company is a reporting company under the 1934 Act, under the rules proposed in the Financial Statements Release, it would be required to provide its financial statements in XBRL format. However, there is nothing in the Financial Statements Release that would require the insurance company, acting as a depositor, to file the XBRL exhibit with its N-4 or N-6 filing. To the extent that such rules are adopted as proposed, the Committee requests that the Commission confirm that simply because an insurance company has prepared and filed an XBRL exhibit with its 1933 Act or 1934 Act filings, it would not be required to include the XBRL exhibit with any of the filings for its registered variable annuities.

Similarly, to the extent that the registration statement for a registered annuity (whether fixed or variable) includes the financial statements of another entity (that otherwise would be required to provide its financial statements in XBRL format), such as a guarantor or credit support provider, the Committee requests that the Commission confirm that the insurance company would not be required to include the XBRL exhibit with the insurance product filing.

**D. Response to the Commission's Specific Request for Comments on Investment Company Filings**

In the Financial Statements Release, the Commission specifically requests comments as to whether investment companies registered under the 1940 Act, business development companies, and other entities that report under the 1934 Act and prepare their financial statements in accordance with Article 6 of Regulation S-X should be subject to the rules proposed in the Financial Statements Release.<sup>18</sup>

The Committee does not believe that, at this time, the financial statements of investment companies should be subject to the mandatory rules proposed in the Financial Statements Release. This is particularly true with respect to separate accounts registered on Form N-4, as appropriate data tags for the financial statements of separate accounts have not yet been developed.

**III. Mutual Fund Release**

The Commission has proposed rules that would require mutual funds to prepare the risk/return summary section of their Form N-1A prospectuses in interactive data format using XBRL tags.<sup>19</sup> The interactive data would be filed with the Commission as a post-effective amendment to the mutual fund's registration statement, as well as posted

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<sup>18</sup> See the Financial Statements Release at 40.

<sup>19</sup> See the Mutual Fund Release.

on the mutual fund's Web site. The Mutual Fund Release clearly states that a mutual fund is only required to post the interactive data on its Web site to the extent that it "has" a Web site.<sup>20</sup>

**Request for Confirmation that an Insurance Company that Posts An Underlying Fund's Risk/Return Summary on Its Own Web Site has Not Created a Web Site for the Fund**

The rules proposed in the Mutual Fund Release would modify only Form N-1A, so that variable annuities registered on Form N-4 would not be directly affected. However, because of the unique structure of variable annuities, which often leads to insurance companies providing information about the underlying funds available in the variable annuities on the insurance companies' Web site, Committee members are requesting clarification to ensure that Committee members do not inadvertently become subject to the Web site posting requirements in the Mutual Fund Release.<sup>21</sup>

While the Release clearly states that a mutual fund is only required to post the XBRL file on its Web site "if it has one,"<sup>22</sup> what it means for a mutual fund to "have" a Web site is not clearly defined in the Mutual Fund Release. Thus, the Committee requests confirmation that, to the extent that an insurance company posts risk/return summary information on its own Web site about an underlying fund available through a variable annuity issued by that insurance company, the insurance company would not be deemed to have inadvertently created a Web site for the fund and, thus, subjected itself to the XBRL Web site posting requirements.<sup>23</sup>

**IV. Conclusion**

The Committee appreciates the opportunity to comment on the proposed rules in the Proposing Releases and respectfully requests that the Commission grant the

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<sup>20</sup> See the Mutual Fund Release at 39.

<sup>21</sup> See *id.*

<sup>22</sup> *Id.*

<sup>23</sup> For example, an insurance company might post information on its own Web site about an underlying fund in order to satisfy the prospectus delivery requirements under the rules proposed by the Commission to permit the delivery of a summary prospectus in lieu of a full statutory prospectus. See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Release No. 33-8861 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)].



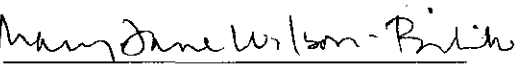
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Committee's petition for relief from the XBRL requirements for insurance companies that issue registered annuities and that the Commission provide the clarifications addressed above.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY:   
Stephen E. Roth

BY:   
Mary Jane Wilson-Bilik

FOR THE COMMITTEE OF ANNUITY INSURERS

cc: The Honorable Christopher Cox  
The Honorable Paul S. Atkins  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
Andrew J. Donohue, Division of Investment Management  
Susan Nash, Division of Investment Management

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

AEGON USA, Inc.  
Allstate Financial  
AIG Life Insurance Companies  
AmerUs Annuity Group Co.  
AXA Equitable Life Insurance Company  
Commonwealth Annuity and Life Insurance Company  
Conseco, Inc.  
Fidelity Investments Life Insurance Company  
Genworth Financial  
Great American Life Insurance Co.  
Guardian Insurance & Annuity Co., Inc.  
Hartford Life Insurance Company  
ING North America Insurance Corporation  
Jackson National Life Insurance Company  
John Hancock Life Insurance Company  
Life Insurance Company of the Southwest  
Lincoln Financial Group  
MassMutual Financial Group  
Merrill Lynch Life Insurance Company  
Metropolitan Life Insurance Company  
Nationwide Life Insurance Companies  
New York Life Insurance Company  
Northwestern Mutual Life Insurance Company  
Ohio National Financial Services  
Old Mutual Life Insurance Company  
Pacific Life Insurance Company  
Protective Life Insurance Company  
Prudential Insurance Company of America  
RiverSource Life Insurance Company  
*(an Ameriprise Financial company)*  
Sun Life Financial  
Symetra Financial  
The Phoenix Life Insurance Company  
USAA Life Insurance Company