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VIA ELECTRONIC DELIVERY

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

Re: **Comments on Proposed Rule 12h-7
Indexed Annuities and Certain Other Insurance Contracts
File Number S7-14-08; Release No. 34-58022**

Dear Ms. Harmon:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the "Committee").¹ The Committee is pleased to have the opportunity to offer its thoughts in response to the requests by the Securities and Exchange Commission (the "SEC" or the "Commission") in Release No. 34-58022 (the "Proposing Release")² for comments on proposed Rule 12h-7 (the "Proposed Rule") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Committee strongly supports adopting a rule that would provide an exemption from the reporting requirements of Sections 13 and 15(d) of the Exchange Act for insurance companies that issue non-variable insurance contracts registered under the Securities Act of 1933, as amended (the "Securities Act"), and commends the Commission for proposing the Proposed Rule.³

¹ 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 supporting this letter is attached as Appendix A.

² Indexed Annuities and Certain Other Insurance Contracts, Rel. No. 33-8933, 34-58022 (June 25, 2008), File No. S7-14-08. The Committee is submitting its comments on proposed Rule 151A under separate cover.

³ The Committee notes that, had its request for an extension of time been granted, it would have continued to evaluate the Proposed Rule and may have been able to provide the Commission with more extensive input and analysis. See Letter to Florence E. Harmon, Acting Secretary, U.S. Securities and Exchange Commission from the Committee of Annuity Insurers, File Number S7-14-08 (August 5, 2008).

The Committee concurs with the policy reasons cited by the Commission in the Proposing Release to support adoption of the Proposed Rule. For many insurance companies, the burdens of Exchange Act reporting have acted as a barrier to issuing SEC-registered non-variable insurance contracts. The Committee believes that the burdens of Exchange Act reporting imposed on issuers of SEC-registered non-variable insurance contracts do not further the Exchange Act's purpose of informing the trading markets, as no "audience" of market participants exists to analyze the information included in periodic reports. Nor does the Committee believe that such reporting enhances the protections already afforded contract owners by virtue of prospectus disclosure and the extensive regulation to which a life insurance company is subject under state insurance law. Accordingly, the Committee concurs with the Commission and believes that adoption of a rule providing an exemption from the reporting requirements of Sections 13 and 15(d) of the Exchange Act for insurance companies that issue SEC-registered non-variable insurance contracts is necessary and appropriate in the public interest and consistent with the protection of investors.

The Committee applauds the Commission for acting to address the needless burdens imposed on issuers of SEC-registered non-variable insurance contracts under the current regulatory regime. In addition, the Committee supports the approach taken by the Commission in crafting the Proposed Rule, subject to several specific industry concerns and comments. As provided in more detail below, the Committee questions the ability of insurance companies to comply with one of the conditions that would be imposed under the Proposed Rule; namely, that the company must take steps reasonably designed to ensure that a trading market for the securities does not develop by, among other things, reserving the right to refuse assignments.

The first section of this letter provides the Committee's specific legal analysis and comments on the Proposed Rule. The second section requests that the Commission separate its consideration and adoption of the Proposed Rule from that of proposed Rule 151A, which would deem certain annuity contracts not to be an "annuity contract" or "optional annuity contract" under Section 3(a)(8) of the Securities Act. The third section discusses the Committee's request that the Commission consider permitting the use of statutory financial statements in the registration statements for the types of insurance contracts referenced in the Proposed Rule, while the last section highlights the limitations of, and sets forth the Committee's suggestions regarding alternative approaches to, the current registration regime for such insurance contracts.

I. Legal Analysis and Comments on the Proposed Rule

Although the Committee supports adoption of a rule exempting insurance companies that issue SEC-registered non-variable insurance contracts from the reporting requirements of the Exchange Act, the Committee believes the Proposed Rule in its current form may prove unworkable and has two alternate proposals for the Commission's consideration. Each alternative is discussed below.

A. Request to Eliminate the Proposed Rule's Condition E to Take Steps to Preclude Secondary Trading Market and Clarify the Requirements of Condition D

The Committee submits that the condition imposed in Proposed Rule 12h-7(e) ("Condition E") is unnecessary in light of Proposed Rule 12h-7(d) ("Condition D") and recommends that the Commission delete Condition E in its entirety. Condition D requires that the securities not be "listed, traded, or quoted on an exchange, alternative trading system (as defined in [Rule 300(a) of Regulation ATS], inter-dealer quotation system (as defined in [Rule 15c2-11(e)(2) under the Exchange Act]), electronic communications network, or any other similar system, network, or publication for trading or quoting."⁴ Condition E would impose upon an insurance company an obligation to "take[] steps reasonably designed to ensure that a trading market for the securities does not develop, including requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis." Condition D, viewed alone, should give the Commission sufficient comfort that a trading market of the type that would be of concern will not arise.

The Committee believes that Condition D was intended to provide an objective standard for compliance with the Proposed Rule. As drafted, however, Condition D is extremely broad. In this regard, the Committee requests clarification from the Commission that Condition D would encompass only those exchanges, alternative trading systems, inter-dealer quotation systems, electronic communications networks, or other similar systems, networks, or publications for trading or quoting that are registered or regulated by the Commission or a self-regulatory organization, such that an issuer could be fairly charged with knowledge of the listing, trading, or quoting of its securities on such exchange, network, or system. To conclude otherwise would place insurance companies in the position of enforcing the SEC's registration or regulatory requirements by identifying any exchanges, alternative trading systems, inter-dealer quotation systems, electronic communications networks, or other similar systems, networks, or publications for trading or quoting that may arise from time to time and operate in violation of the Commission's rules and regulations.

Even with this clarification, we note for the Commission Staff's consideration that Condition D imposes a significant burden on insurance companies seeking to rely on the Proposed Rule. Most insurance companies and their affiliated broker-dealers do not have direct access to the type of trading information necessary to monitor and ensure compliance with Condition D, such as inter-dealer quotation systems. Insurance companies likely would need to engage an unaffiliated full service broker-dealer or clearing firm to assist in monitoring these markets from their trading desks.⁵

⁴ Although not specifically defined in the Proposed Rule, we assume that the Commission intends the terms "exchange" to have the meaning as defined in Section 3(a)(1) of the Exchange Act and "electronic communications network" to have the meaning as defined in Rule 600(b)(23) of Regulation NMS.

⁵ In light of the time constraints imposed on the comment process, the Committee has not been able to undertake a study to assess whether and to what extent such firms would be willing to undertake such a representation, consider

On the other hand, the Committee believes that Condition E is even more ambiguous than Condition D and creates a standard with which companies would find it difficult to assure compliance, while not yielding any real additional value. Condition E requires that the issuer take “steps reasonably designed to ensure that a trading market for the securities does not develop” The Proposed Rule, however, does not define “trading market,” nor are we aware of any specific definition of “trading market” in the federal securities laws.

Section 12(h) of the Exchange Act, which provides the Commission with authority to grant exemptions from Exchange Act reporting and provides the basis for adoption of the Proposed Rule, does not require the complete absence of a trading market, but focuses instead on the “amount of trading interest in the securities” as one of the relevant considerations. The Committee submits that the types of assignments and transfers of insurance contracts that may occur from time to time do not rise to the level of creating an “amount of trading interest” in the contracts that should concern the Commission. In most cases, these contracts are individualized in nature – not fungible or subject to easy circulation – unlike other more traditional forms of securities. The benefits and values of each contract are tied generally to characteristics of the owner, annuitant, or insured.

Although it is possible that certain financially sophisticated entities may engage in the purchase of these contracts from time to time, such purchases would be privately negotiated based on complicated actuarial calculations. Further, the insurance company would not be a party to such transactions. The Committee submits that these types of transactions would not constitute a “trading market.” Thus, the comprehensive list of secondary trading markets in Condition D should adequately cover the universe of trading markets to give the Commission comfort that the securities do not present the risks of secondary trading that would prompt the need for Exchange Act reporting.

Accordingly, the Committee submits that Condition E provides no additional value and requests that the Commission eliminate Condition E in its entirety.

B. Alternative Request to Revise the Proposed Rule’s Condition E to Take Steps to Preclude Secondary Trading Market

If the Commission determines not to eliminate Condition E in its entirety as requested in Section I.A. above, the Committee requests that the Commission revise the Proposed Rule to address the Committee’s concerns that Condition E as proposed is unworkable. As drafted, the Proposed Rule *requires* an issuer to retain the right in its contract forms to refuse assignments or other transfers. Condition E requires issuers to be able to reject assignments as an absolute

the frequency with which such monitoring would need to occur, or engage in a cost analysis of the financial burden such monitoring may impose on insurance companies. It is thus unclear at this time whether the costs of complying with Condition D alone may outweigh the benefits of an exemption from Exchange Act reporting.

matter. However, very few, if any, insurance companies would be able to rely on the Proposed Rule as drafted due to Condition E.

First, with respect to insurance companies currently filing Exchange Act reports for insurance contracts that are currently registered under the Securities Act (such as certain market-value adjusted annuity contracts), Condition E as proposed would act as a potential barrier to their reliance on the Proposed Rule. Such companies likely did not reserve the right to reject assignments or transfers for such outstanding contracts. The inability to comply with Condition E in the Proposed Rule would mean those insurance companies would have to continue Exchange Act reporting *even if* they only have one outstanding contract (or only one contract that does not provide them with the right to refuse assignments and transfers). Thus, such issuers would never be able to take advantage of the Proposed Rule's exemption unless and until they no longer have any outstanding registered contracts, or until they are no longer required to accept additional premium payments or permit transfers of contract value under their outstanding contracts.⁶

Second, the Committee believes that some states may not permit restrictions on transfers or assignments. Limiting ownership rights is a sensitive issue with state regulators. Several states specifically grant contract owners the right to transfer or assign their contracts, except in limited circumstances (such as in connection with certain group contracts or contracts that provide retirement benefits in an employment context).⁷ Regardless of whether state insurance law specifically addresses assignability of insurance contracts, state regulators may object to any limits imposed on assignment as part of the contract form review process. Because state regulators must review and approve insurance contract forms before they may be offered and sold in that state, they have significant discretion over the terms of those contracts. The state review process can be subjective, and interpretations of applicable requirements may vary from state to state. State regulators can disapprove a contract form for virtually any reason, particularly if they object to some provision of the contract. Thus, a significant aspect of a state's views on specific contract provisions arises out of this contract review process.

Accordingly, if Condition E is not eliminated entirely, the Committee respectfully requests that the Commission revise Condition E to:

- (1) focus on activities that are within the control of an insurance company by requiring insurance companies not to engage in any activities that may promote or encourage development of a trading market (instead of requiring insurance

⁶ The Committee does not believe that the Commission intended to prevent those issuers from being able to rely on the Proposed Rule. Accordingly, if Commission does not eliminate or revise Condition E as suggested above, the Committee respectfully requests that the Proposed Rule include within Condition E an exception to "grandfather" contracts issued before the effective date of the Proposed Rule (as well as certificates issued after the effective date of the Proposed Rule under group contracts issued prior to the effective date of the Proposed Rule, but only if the insurance company is obligated to issue such certificates on existing group contracts).

⁷ See, e.g., CAL. INS. CODE §10129 and 10130; UTAH INS. CODE § 31A-22-412.

companies to take steps reasonably designed to ensure that a trading market for the securities does not develop); and

- (2) not impose specific sub-conditions that an insurance company must meet when designing methods of complying with Condition E, by rewriting Condition E to delete the phrase “including requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis.”

We discuss each of these two requested revisions separately below.

1. **Revise Condition E to Make the Obligation Proactive**

The Committee believes that Condition E, if retained, should be drafted to better encompass those activities within the control of the insurance company, such that insurance companies would be able to assess compliance with, and be comfortable relying on, the Proposed Rule. Insurance companies may not have the ability to adequately evaluate assignments and transfers to determine if they raise potential concerns regarding secondary trading. Focusing the standards of Condition E on factors within the control of the insurance company would better enable insurance companies to comply with the Proposed Rule, while meeting the Commission’s goal of reducing the likelihood of any secondary trading market. Accordingly, the Committee respectfully requests that Condition E, if retained, be revised as follows: “(e) The issuer does not promote or encourage a trading market for the securities to develop.”

2. **Remove the Specific Requirement to Require Written Notice of, Acceptance By, and Refusal of Any Assignments or Transfers**

This revision would allow insurance companies to establish procedures that they believe are reasonable to comply with Condition E and thereby satisfy the Commission’s concerns regarding the development of any such trading market, while also imposing a requirement that is workable under state insurance law. As noted above, requiring an insurance company to prohibit assignments and transfers could be a virtually insurmountable hurdle due to state insurance law requirements. Accordingly, the Committee respectfully requests that Condition E, if retained, be revised as noted above.

Providing for more flexibility to meet Condition E under the Proposed Rule would not, of course, permit the insurance company to foster the development of a secondary trading market. Rather, it would allow insurers to consider effective controls to reduce the potential for secondary trading based on the insurance company’s own behavior. Such controls, for example, could (but may not necessarily) include the following:

- Develop and maintain written policies and procedures to ensure insurance companies have controls in place to monitor irregular assignment and transfer activity.

- Institute controls over the sales process to ensure that there is no promotion or encouragement of irregular assignment and transfer activity.
- Provide training to company employees to educate them on assignment and transfer activity that may be considered irregular.
- Ensure sales materials do not promote or encourage irregular assignments and transfers.
- Monitor the volume and pattern of any irregular assignment and transfer activity.
- Maintain records of assignment and transfer activity, the written policies and procedures, and the monitoring of such activity by the company.

Each insurance company should have flexibility to design its own procedures that it believes are reasonable to assure compliance with Condition E based on its own unique operational structure.

C. Request for Clarification That Reliance on Any Final Rule is Elective

The Committee respectfully requests that the Commission clarify in the adopting release accompanying any final rule that insurance companies are not required to rely on the final rule once adopted. Rather, as discussed below, if the Commission does not modify Form S-1 disclosure requirements, amend Forms N-4 and N-6, or adopt a new form to register non-variable insurance contracts, certain insurers may determine that, given their facts and circumstances, the ability to produce a shorter prospectus (by incorporating Exchange Act reports) may be more advantageous than the exemptive relief provided by any final rule. The Committee does not believe it is the Commission's intent to preclude such insurers from continuing to file with reduced disclosure on Form S-1 or Form S-3, as long as all applicable form requirements are met and Exchange Act reporting is continued.

II. Request for Separation of the Commission's Consideration and Approval of the Proposed Rule From That of Proposed Rule 151A

The Committee respectfully requests that the Commission move forward with adoption of the Proposed Rule separately from proposed Rule 151A under the Securities Act. As indicated in its recent request for extension of the comment period for both the Proposed Rule and proposed Rule 151A,⁸ the Committee is concerned that considerable time will be needed for the annuity industry and the Commission to work through the issues raised by proposed Rule 151A. Delaying the adoption of the Proposed Rule while these issues are addressed would benefit neither annuity issuers nor the investing public.

Foremost, any delay in its adoption would continue to impose significant costs on current reporting companies that would otherwise be able to avail themselves of the Proposed Rule. In addition, the adoption of the Proposed Rule would encourage additional companies to enter new

⁸ See *supra* note 3.

competitive markets by eliminating the burdens of Exchange Act reporting. For non-variable insurance contracts registered with the Commission, investors will continue to be provided with disclosure containing information they need to make informed investment decisions about such products.

Finally, the policy reasons supporting the Proposed Rule are not dependent in any regard on the adoption of proposed Rule 151A. The Commission itself noted in the Proposing Release that “the proposed Exchange Act exemption is independent of proposed [R]ule 151A and would apply to types of contracts in addition to those that are covered by proposed [R]ule 151A.”⁹ Regardless of whether proposed Rule 151A is ever adopted, the Proposed Rule can only work to the benefit of investors and annuity issuers. As such, the Committee respectfully requests that the Commission move forward with consideration of and adoption of the Proposed Rule separately from proposed Rule 151A.

III. Request for Permission to Use Statutory Financial Statements

The Commission has set forth its belief that the Proposed Rule is “appropriate in the public interest and consistent with the protection of investors,” in part because of “the nature and extent of the activities of insurance company issuers, and their income and assets, and, in particular, the regulation of those activities and assets under state insurance law.”¹⁰ The Committee believes that the Commission’s rationale for proposing the Proposed Rule, and in particular, the focus on protection of insurer solvency by state regulators in the Proposing Release, should also support relief from the current requirement for insurers (other than mutual insurers)¹¹ to include or incorporate audited financial statements in accordance with generally accepted accounting principles (“GAAP”) in registration statements filed on Form S-1 or Form S-3, and instead should permit the use of financial statements prepared in accordance with applicable statutory accounting requirements.

Statutory accounting principles are the basis of accounting that insurance companies use to comply with the financial reporting requirements of the National Association of Insurance Commissioners and state insurance regulations. As indicated in the Proposing Release, many legislative and regulatory safeguards are in place at the state level to ensure insurer solvency and reserve sufficiency, such as capital, surplus, and risk-based capital requirements, limitations on both general account investments and insurer-assumed risk, and valuation requirements on investments. In addition, state regulators require the filing of audited statutory financial statements annually and subject insurers to periodic financial examinations. Preparing GAAP financial statements in addition to meeting these state law requirements provides no additional benefit to investors; in fact, statutory financial statements are generally viewed as a more

⁹ Proposing Release at 53.

¹⁰ Proposing Release at 47.

¹¹ Mutual life insurance companies and their wholly owned stock insurance company subsidiaries are currently permitted to use financial statements prepared in accordance with statutory accounting requirements pursuant to Rule 7-02(b) under Regulation S-X.

conservative presentation of financial position than GAAP financial statements and provide a better basis for judging the solvency and claims paying ability of the insurer, which is more relevant to contract owners. Additionally, the annual internal and external auditing costs to insurers in preparing GAAP financial statements, imposed above and beyond those costs incurred in preparing statutory financial statements and complying with state requirements, can be significant.

Audited statutory financial statements are currently permitted in connection with the registration of variable annuity and life insurance contracts where the insurance company would not have to prepare audited GAAP financial statements except for inclusion in the separate account registration statement.¹² The Commission permits the use of statutory financial statements in these circumstances to relieve the issuer's disclosure burden.¹³ The Committee respectfully requests that the Commission extend the relief provided to variable contract issuers in Form N-4 and Form N-6 to insurance companies registering on Form S-1 or Form S-3. The same burdens and costs incurred by insurers in preparing GAAP financial statements, which differ from those prepared in accordance with statutory accounting requirements, are present regardless of the form on which the security is registered, and the same public policy considerations should apply.

For these reasons, the Committee respectfully submits that, where insurers are not otherwise required to prepare GAAP financial statements, they should be able to prepare financial statements in accordance with the statutory requirements of state insurance regulations for inclusion in a Form S-1 or Form S-3 registration statement.

IV. Request for the Modification of Form S-1, Amendment of Form N-4 and Form N-6, or Adoption of a New Form to Register Non-Variable Insurance Contracts

For the same reasons that Exchange Act reporting is not relevant for insurance companies issuing registered insurance contracts, many of the disclosure requirements of Form S-1 likewise should not apply to such issuers, including detailed disclosure about the insurance company, management's discussion and analysis ("MD&A"), executive compensation disclosure, and inclusion of financial statements in the prospectus. Insurance companies currently issuing insurance contracts registered on Form S-1 are permitted to incorporate certain information, such as MD&A, executive compensation, and financial statements from the annual report on Form 10-K, as long as that report is posted on the issuer's website and available upon request. This results in a streamlined prospectus that focuses primarily on the features of the insurance contract being

¹² See Instruction 1 to Item 23(b) of Form N-4; Instruction 1 to Item 24(b) of Form N-6. One situation where this exception does not apply, however, is where the insurer prepares financial information in accordance with GAAP for use by its parent in consolidated financial statements in registration statements or Exchange Act reports. See Instruction 1 to Item 24(b) of Form N-6 and Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Rel. Nos. 33-8088, IC-25522 (June 1, 2002).

¹³ See Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Rel. Nos. 33-6588, IC-14575 (June 14, 1985), note 9.

sold. Similarly, insurance companies issuing insurance contracts registered on Form S-3 provide reduced disclosure and incorporate periodic reports under the Exchange Act prospectively.

The result of the Proposed Rule is that companies choosing to rely on it would need to comply with all requirements of Form S-1 as they would not be able to incorporate any information by reference from Exchange Act reports, resulting in a much lengthier and more detailed prospectus. Such additional disclosure provides no useful information, is potentially confusing and overwhelming to investors, and imposes significant costs and burdens on SEC-registered non-variable insurance contract issuers.

Accordingly, the Committee respectfully requests that the Commission amend Form S-1 to revise or omit certain disclosure requirements for insurance contract issuers. In the alternative, the Committee respectfully requests that the Commission amend Forms N-4 and N-6 to permit the registration of non-variable insurance contracts or adopt a new registration form with disclosure requirements that are more appropriate and suitable for the registration of non-variable insurance contracts. Furthermore, until such time as amendments to Form S-1, Form N-4, and/or Form N-6 are adopted, or a new registration form is developed, the Committee requests that the Commission clarify that wholly owned subsidiaries of reporting companies that provide reduced disclosure in their periodic reports on Forms 10-K and 10-Q filed under the Exchange Act, as permitted by the instructions to those forms,¹⁴ may similarly provide the same reduced level of disclosure in the Form S-1.¹⁵

The Committee would be pleased to assist the Commission in the process of drafting proposed amendments to Form S-1, Form N-4, and/or Form N-6, or in preparing a new registration form.

¹⁴ See General Instruction I to Form 10-K and General Instruction H to Form 10-Q.

¹⁵ Applying the reduced disclosure format applicable to Form 10-K to Form S-1 would permit the omission of: (1) Selected Financial Data required by Item 301 of Regulation S-K; (2) List of Subsidiaries exhibit required by Item 601 of Regulation S-K; (3) information regarding Directors and Executive Officers of the Registrant required by Item 401 of Regulation S-K; (4) information regarding Executive Compensation required by Item 402 of Regulation S-K; (5) information regarding Security Ownership of Certain Beneficial Owners and Management required by Item 403 of Regulation S-K; and (6) information regarding Certain Relationships and Related Transactions required by Item 404 of Regulation S-K. In addition, registrants would be permitted to replace: (1) MD&A required by Item 303 of Regulation S-K with management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it; (2) the Description of Business required by Item 101 of Regulation S-K with a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries; and (3) Description of Property required by Item 102 with a brief description of the material properties of the registrant and its subsidiaries to the extent, in the opinion of the management, necessary to an understanding of the business done by the registrant and its subsidiaries.

A. Modification of Form S-1

The Committee respectfully requests that the Commission modify Form S-1 to omit certain disclosure requirements for non-variable insurance contract issuers.¹⁶ Form S-1 was not intended for the registration of insurance products; rather, it was designed for traditional corporate debt and equity offerings. Insurance companies, however, are in the business of issuing insurance products, and are not seeking to periodically raise capital to finance operations like corporate entities engaged in typical debt and equity offerings. Non-variable insurance contracts also are not priced or sold like traditional debt and equity securities. Much of the disclosure required by Form S-1, such as information relating to an issuer's history and business, MD&A, and executive compensation, is not material to purchasers of non-variable insurance contracts. The only information that is material to such purchasers is information pertaining to the terms and features of the contract and the issuer's ability to satisfy its obligations under the contract. As such, many of Form S-1's requirements result in prospectuses that, at a minimum, are lengthy and ill-suited for the continuous offering of insurance securities and of fairly limited value to investors.

As acknowledged in the Proposing Release, insurance companies are highly regulated entities under state law. The insurance contract is filed with and approved by state insurance departments to ensure that its terms comply with state law. Stringent solvency requirements dictate the quality and quantity of reserves maintained in connection with an issuer's contractual obligations and its overall solvency. Insurance companies also must submit to periodic examinations by the insurance authorities in every state in which its contracts are sold. With all of the protections provided by state insurance law, detailed prospectus information about an insurer's business operations is immaterial to an investor and worse may confuse investors or obscure information that is material.

A modification of Form S-1 is necessary to ensure that only essential and material disclosure is provided to investors to assist them in deciding whether to purchase a particular non-variable insurance contract. Accordingly, the Committee respectfully requests that the Commission modify Form S-1 so as to exclude insurance companies issuing non-variable insurance contracts from having to comply with the following form requirements:

- Item 101 of Regulation S-K: A discussion of the general development of the issuer's business over the previous five years, a detailed narrative description of the issuer's business "done and intended to be done," and financial information about the issuer's business segments and geographical areas.¹⁷

¹⁶ Alternatively, a similar result could be achieved by amending Form S-3 to permit all insurance companies to register non-variable insurance contracts on that form, regardless of their ability to meet the registrant and transactional requirements.

¹⁷ In place of this disclosure, a non-variable contract issuer could be required to include its name, address, a description of the general nature of its business (e.g., "life insurance"), the date and form of its organization, the

- Item 102 of Regulation S-K: A description of the location and general character of the principal plants, mines, and other materially important physical properties of the registrant and its subsidiaries.
- Item 301 of Regulation S-K: Selected financial data of the issuer for at least the last five fiscal years.
- Item 303 of Regulation S-K: MD&A of the issuer's financial condition and results of operations (including liquidity, capital resources, and results of operations).
- Item 305 of Regulation S-K: Quantitative and qualitative disclosure about market risk.
- Items 401 and 402 of Regulation S-K: Disclosure regarding the issuer's directors and executive officers, including their background, involvement in certain legal proceedings, transactions with the issuer, and executive compensation.
- Item 403 of Regulation S-K: Disclosure regarding security ownership of beneficial owners and management.
- Item 404 of Regulation S-K: Disclosure regarding certain relationships and related transactions.
- Items 504-508 of Regulation S-K: Information about the use of proceeds, determination of offering price, dilution, selling security holders, and plan of distribution.
- Item 11(e) of Form S-1: Placement of the financial statements in the prospectus.¹⁸

Modifying Form S-1 in this manner would be appropriate because the information listed above is not meaningful to non-variable insurance contract investors and the omission of such would not be inconsistent with the public interest or the protection of such investors.¹⁹ A prospectus that focuses primarily on the terms and features of the contract, describes the issuer in general terms, and makes available the issuer's annual financial statements would provide all

name of the state or other jurisdiction under whose laws it is organized, and, if the issuer is controlled by another person, the name and general nature of that entity's business. *See, e.g.*, Item 5 of Form N-4.

¹⁸ The Committee proposes instead that issuers be permitted to include financial statements in Part II of the registration statement (similar to Form N-4 and Form N-6's placement of the financial statements in the statement of additional information), as long as the issuer provides financial statements on request to any prospective or existing contract owner and the prospectus includes a toll-free number and address to submit requests for financial statements.

¹⁹ As a matter of policy, the Commission has recognized that certain disclosure requirements of Form S-1 are not appropriate for specific types of securities. *See, e.g., Asset-Backed Securities*, Rel. Nos. 33-8518, 34-50905 (Jan. 7, 2005) (Final Rule), Rel. Nos. 33-8518, 34-50905 (Jan. 19, 2005) (Corrections), Rel. Nos. 33-8518A, 34-50905A (Dec. 5, 2005) (Technical Amendments).

material information necessary to evaluate the contract and should be adequate to address any concern a contract owner may have regarding the issuer's ability to meet its contractual obligations.²⁰ Allowing non-variable insurance contract issuers to provide a more streamlined prospectus also would be consistent with the objectives of the Commission and its Staff to streamline and improve prospectus disclosure.

B. Amendment of Form N-4 and Form N-6

If the Commission does not modify Form S-1 disclosure requirements, the Committee respectfully requests that the Commission amend Forms N-4 and N-6 to permit issuers to register their non-variable insurance contracts on that form (as applicable) rather than on Form S-1.

Form N-4 permits its use by separate accounts that offer variable annuity contracts that are registered under the Investment Company Act of 1940, as amended (the "Investment Company Act") as unit investment trusts and by variable annuity contracts funded by separate accounts that would be required to be registered under the Investment Company Act as unit investment trusts except for the exclusion provided by Section 3(c)(11) thereunder.²¹ "Variable annuity contract" is defined in General Instruction D to Form N-4 as "any accumulation contract . . . pursuant to which the value of the contract . . . varies according to the investment experience of the separate account in which the contract participates." Form N-6 contains similar instructions.²² Non-variable insurance contracts, which do not provide for investment in a separate account, may not register on Form N-4 and Form N-6.

From a federal securities law perspective, the disclosure issues and concerns pertaining to non-variable and variable insurance contracts are substantially similar.²³ At the most fundamental level, both are contracts issued by an insurance company that guarantee the terms and features of the contract. The only information that is material to either type of investor is information concerning the specific terms and features of the contract and the issuer's ability to satisfy its contractual obligations thereunder. Aside from information specific to the separate account and the interests issued therein, the type of information material to the purchaser of a registered non-variable insurance contract is fundamentally the same as that provided to a variable insurance contract investor (*e.g.*, contract fees and charges, example of expenses,

²⁰ The availability of the depositor's annual financial statements has been deemed by the Commission to be adequate financial information for variable insurance contract investors under Forms N-4 and N-6.

²¹ General Instruction A to Form N-4.

²² See General Instructions A and B to Form N-6.

²³ The insurance industry has previously raised with the Commission Staff the possibility of amending Form N-4 to permit the registration of market-value adjusted annuity contracts. On October 6, 1999, as part of a broader initiative to simplify variable annuity prospectuses, the National Association for Variable Annuities (now, the Association for Insured Retirement Solutions) informally submitted proposed revisions to Form N-4, which included revisions to permit registration of market-value adjusted annuity contracts on that form.

allocation of purchase payments and transfers of contract values, annuitization options, death benefit provisions, purchases, contract value, and redemptions, and tax consequences).²⁴

Accordingly, the Committee believes the Commission could amend Forms N-4 and N-6 to permit issuers to register their non-variable insurance contracts on those forms, rather than on Form S-1. The Committee respectfully requests that the Commission consider the possible amendment of Forms N-4 and N-6 to permit registration of non-variable insurance contracts thereon.

C. Adoption of a New Registration Form

If the Commission does not modify Form S-1 disclosure requirements or amend Form N-4 and Form N-6 to allow registration of non-variable insurance contracts, the Committee respectfully requests that the Commission adopt a new registration statement form that is specifically tailored to non-variable insurance contracts and their issuers.

V. Conclusion

The Committee appreciates the opportunity to comment on the Proposed Rule and respectfully asks that the Commission address the requests and provide the clarifications noted above. If you have any questions or if additional information would be helpful, please contact Steve Roth at 202.383.0158 (steve.roth@sutherland.com) or Mary Thornton at 202.383.0698 (marythornton@sutherland.com).

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: 

BY: 

FOR THE COMMITTEE OF ANNUITY INSURERS

²⁴ There are a number of other ways the current regulatory treatment of non-variable insurance contracts differs from that of variable insurance contracts. The Committee would encourage the Commission Staff to consider treating non-variable insurance contracts similarly to variable insurance contracts in other contexts as well. In particular, the Committee believes that non-variable insurance contracts should be permitted to (i) file amendments to registration statements in reliance on Rule 485 under the Securities Act, which permits automatic effectiveness; (ii) pay registration fees annually in arrears and “net” purchases and redemptions, as permitted for variable insurance contracts by Rule 24f-2 under the Investment Company Act; and (iii) advertise performance in a manner similar to variable insurance contracts. The Committee expounds on these topics in more detail in its separate comment letter on proposed rule 151A.

Ms. Florence E. Harmon
September 10, 2008
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cc: Chairman Christopher Cox
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes
Andrew J. Donohue, Director, Division of Investment Management
Susan Nash, Associate Director, Division of Investment Management
William J. Kotapish, Assistant Director, Division of Investment Management
Keith E. Carpenter, Special Senior Counsel, Division of Investment Management
Michael L. Kosoff, Attorney, Division of Investment Management

APPENDIX A
THE COMMITTEE OF ANNUITY INSURERS

AEGON USA, Inc.
Allstate Financial
AIG Life Insurance Companies
AVIVA USA Corporation
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
OM Financial 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