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May 17, 2010

VIA HAND DELIVERY

Elizabeth M. Murphy
Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Aviva USA Corporation's Petition for Rulemaking

Dear Ms. Murphy:

On behalf of our client, Aviva USA Corporation ("Aviva"), we hereby petition the U.S. Securities and Exchange Commission (the "Commission") to issue, pursuant to Rule 192(a) of the Rules of Practice, an amendment to Rule 7-02 of Regulation S-X under the Securities Act of 1933, as amended (the "Securities Act"), concerning the use of financial statements prepared in accordance with statutory accounting principles ("SAP") by certain life insurance company issuers. Aviva's proposed amendment would extend the current provisions of Rule 7-02 to permit additional life insurance companies to use SAP financial statements in lieu of financial statements prepared in accordance with generally accepted financial principles ("GAAP") in certain specified circumstances.

More specifically, the proposed amendment would allow issuers of insurance contracts registered under the Securities Act on Form S-1 (referred to herein as "non-variable insurance products") to use SAP financial statements in the registration statements for such products on a basis consistent with that currently permitted for life insurance company depositors of variable annuity and variable life insurance products. Aviva submits that permitting the use of SAP financial statements in such limited circumstances is consistent with the purposes and policies behind the applicable securities laws and Commission precedent, and important because the use of SAP financial statements will help to significantly reduce the burden on insurance companies registering non-variable insurance products. Further, permitting the use of SAP financial statements in such limited circumstances will help to level the playing field between issuers of non-variable insurance products and issuers of variable annuity and variable life insurance products.

We would welcome the chance to discuss any questions you may have regarding the proposed amendment.

I. BACKGROUND

A. Description of Aviva

Aviva, an Iowa corporation, is an indirect, wholly owned subsidiary of Aviva plc, a public limited company incorporated under the laws of England and Wales. Aviva plc, the ultimate holding company of Aviva, had consolidated assets of approximately £354 billion as of December 31, 2009. Aviva plc is listed on the London Stock Exchange and the New York Stock Exchange.

Aviva issues fixed annuity and life insurance products through its direct wholly owned subsidiaries, Aviva Life and Annuity Company and Aviva Life and Annuity Company of New York. Furthermore, Aviva issued variable annuity products through Aviva Life and Annuity Company.[1]

Aviva is contemplating registering certain fixed (*i.e.,* non-variable) annuities or life insurance products under the Securities Act, including products with indexed interest crediting features and/or market value adjustment features. Aviva, as a wholly owned subsidiary of a foreign incorporated holding company, does not currently produce GAAP financial statements or GAAP information for any purpose.

B. Description of the Proposed Amendment

Aviva's proposal relates to insurance company financial statements filed in a registration statement on Form S-1 for "covered securities." The proposed amendment would allow such financial statements to be prepared in accordance with statutory accounting requirements if the issuer would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in such registration statement. Aviva is not proposing to extend this relief to reports filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act").[2] "Covered securities" are securities where:

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[1] Those variable annuity products, however, are no longer sold. As discussed in Section II.A. below, the Commission permits insurance company depositors to include SAP financial statements in variable annuity registration statements if such insurance companies would not otherwise have to prepare GAAP financial statements. Aviva Life and Annuity Company does not prepare GAAP financial statements.

[2] Accordingly, the proposed rule would only provide relief from the need to prepare audited GAAP financial statements for those insurance companies taking advantage of an exemption from the obligation to file Exchange Act reports, such as that provided by Rule 12h-7 under the Exchange Act.

(1) The issuer is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State;

(2) The securities do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary State of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction; and

(3) The issuer files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State.

Covered securities thus would include any non-variable insurance products registered with the Commission under the Securities Act on Form S-1. Non-variable insurance products include registered annuity or life insurance contracts with market value adjustment features, registered contingent annuity contracts that provide guaranteed amounts based on assets held in brokerage or advisory accounts, registered indexed annuity or life insurance contracts, registered guarantees of any non-variable insurance products, and any registered innovative non-variable annuity or life insurance contracts that may be developed in the future. Non-variable insurance products do not include variable annuity and variable life insurance products issued through separate accounts.

A copy of the proposed amendment to Rule 7-02 of Regulation S-X is attached as Appendix A.

C. Treatment of Non-Variable Insurance Products under the Current Regime

At this time, there is no registration statement form specifically designed for non-variable insurance products. Accordingly, non-variable insurance products, to the extent registered, are registered under the Securities Act on Form S-1 (or Form S-3, if available), the "catch-all" form for registration under the Securities Act. Tailored forms, however, exist for registering similar types of insurance products – variable annuity and variable life insurance products – under the Securities Act and under the Investment Company Act of 1940, as amended ("Investment Company Act"). These integrated forms (*i.e.,* Forms N-3, N-4, and N-6) register not only the insurance contract under the Securities Act, but also the separate accounts through which the contracts are issued under Investment Company Act. Forms N-3, N-4, and N-6, however, can only be used to register variable annuity and variable life insurance contracts. Accordingly, non-variable insurance products, as general account products, cannot be registered on Form N-3, N-4, or N-6, as those forms are currently drafted.

Registration of a security on Form S-1 generally obligates the registrant to prepare audited GAAP financial statements in compliance with the requirements of Regulation S-X. Unless the registrant is a mutual insurance company (or a wholly owned stock insurance company subsidiary of a mutual insurance company) as set forth in Rule 7-02 of Regulation S-X, GAAP financial statements would be required. Accordingly, most insurance company registrants, as stock insurance companies, must include audited GAAP financial statements as part of their Form S-1 registration statements. Moreover, Form S-1 lacks specific disclosure items and accompanying instructions tailored to the terms, features, benefits, and charges associated with insurance contracts. Conversely, however, Form S-1 calls for disclosure of company and management-related narrative and financial information that may be immaterial or irrelevant to persons considering the purchase of non-variable insurance products, and that may obscure information more essential to the investment decisions potential purchasers are making. Aviva submits that ability to meet contractual obligations is the only financial factor of relevance to purchasers of non-variable insurance products; such purchasers are not concerned with financial results from an issuer's ongoing operations.

Forms N-3, N-4, and N-6 also generally obligate the registrant to include audited GAAP financial statements. However, each of those forms contains an exception from the Regulation S-X GAAP financial statement requirements. Life insurance company depositors that issue variable annuity and variable life insurance products through separate accounts on Forms N-3, N-4, or N-6 are not required to include GAAP financial statements if the insurer would not need to prepare GAAP financial statements for any reason other than for inclusion in the registration statement.[3] 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.[4]

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[3] *See* Form N-3, Item 28(b), Instruction 1 ("If the insurance company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Form N-3 or N-4, its financial statements may be prepared in accordance with statutory requirements."); Form N-4, Item 23(b), Instruction 1 ("If the insurance company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Form N-3 or N-4, its financial statements may be prepared in accordance with statutory requirements."); Form N-6, Item 24(b), Instruction 1 ("If the Depositor would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N-3, N-4, or N-6, its financial statements may be prepared in accordance with statutory requirements. The Depositor's financial statements must be prepared in accordance with generally accepted accounting principles if the Depositor prepares financial information in accordance with generally accepted accounting principles for use by the Depositor's parent, as defined in Rule 1-02(p) of Regulation S-X [17 CFR 210.1-02(p)], in any report under sections 13(a) and 15(d) of the Securities Exchange Act or any registration statement filed under the Securities Act.").

[4] In light of the burdens of the current prospectus disclosure regime for non-variable insurance products (*e.g.*, lack of tailored disclosure requirements, inclusion of lengthy company information that may be immaterial to purchasers of non-variable insurance products, need for GAAP financials), Aviva, along with others in the insurance industry, has advocated for the Commission to adopt a new registration form with disclosure requirements that are more appropriate and suitable for the registration of non-variable insurance products (or alternatively, amend existing registration forms, such as Forms N-4 and N-6). Aviva has argued that adoption of a new registration form or modification of an existing registration form would ensure that only essential and material disclosure is provided to investors to assist them in deciding whether to purchase a particular non-variable insurance product. Further, allowing non-variable insurance product 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.

D. Statutory Authority

Sections 7(a), 10, 19(a), and 28 of the Securities Act provide the Commission with the authority to amend Regulation S-X. Each of those sections provides the Commission with the general authority to adopt rules and to determine what information is required to be part of a registration statement. Most specifically, Section 19(a) provides that:

> The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

The Commission has the authority to adopt amendments to Regulation S-X. Furthermore, an amendment to Rule 7-02 of Regulation S-X to extend the ability for insurance companies that issue non-variable insurance products to use SAP financial statements under circumstances that are materially similar to those that the Commission currently permits for life insurance company depositors issuing variable annuity and variable life insurance products would be consistent with Commission precedent and with recent statements by the Commission in which it encouraged insurance companies to work with the Commission in adopting rules that would level the playing field between non-variable insurance products and variable products.[5] As discussed in more detail below, variable annuity and variable life insurance contracts have for decades contained a number of guarantees that extend beyond the assets in the separate account and which are supported by the general account of the depositor, such as death benefits and, more recently, guaranteed minimum withdrawal or income benefits. Accordingly, the same public policy considerations are present for variable and non-variable insurance products regardless of the form on which the security is registered, and the same basic rules should apply for both.

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[5] *See* Securities Act Release No. 8996, 74 Fed. Reg. 3138 (Jan. 8, 2009).

II. DISCUSSION

A. The Ability to Use SAP Financial Statements Is Consistent With Full and Fair Disclosure of the Securities Sold, the Prevention of Inequitable and Unfair Trading Practices, and Investor Protection.

The registration regime currently applicable to non-variable insurance products imposes a significant burden on insurance companies by requiring audited GAAP financial statements in the registration statements for such products. The significant costs required to develop and maintain GAAP financial statements, when such financial statements are otherwise unavailable, also hinders the development of non-variable insurance products. This requirement to produce GAAP financial statements is particularly burdensome in light of the fact that the Commission has found SAP financial statements to be an appropriate substitute for GAAP financial statements in similar circumstances.

For over 35 years,[6] the Commission has recognized that the ability to use SAP financial statements by insurance companies under certain circumstances is consistent with the purposes and policies of applicable federal securities laws – full and fair disclosure of the securities sold, the prevention of inequitable trading practices, and investor protection.[7] The Commission permits insurance companies to include SAP financial statements in their registration statements in certain circumstances. First, the Commission permits insurance companies to include SAP financial statements if the insurance company is a mutual insurance company or a wholly owned stock insurance company subsidiary of a mutual life insurance company (Rule 7-02 of Regulation S-X). Such companies may include SAP financial statements in all filings made with the Commission, including Exchange Act reports. Second, the Commission permits stock life insurance companies, as insurance company depositors, to include SAP financial statements in variable annuity and variable life insurance registration statements on Forms N-3, N-4, and N-6 if such insurance companies would not otherwise be required to prepare GAAP financial statements (and the insurance company does not prepare financial information in accordance with GAAP for use by its parent company).[8]

Accordingly, Aviva submits that extending the ability to use SAP financial statements to insurance companies that issue non-variable insurance products (in circumstances that are materially similar to those under which issuers of variable annuity and variable life insurance companies may use such financial statements) is consistent with Commission precedent and will help to level the playing field between similar types of insurance products.

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[6] *See, e.g.,* Securities Act Rel. No. 5644 (Nov. 14, 1975).

[7] *See* Preamble to the Securities Act; Preamble to the Exchange Act; and Section 1 of the Investment Company Act.

[8] *See supra* note 3.

B. State Insurance Regulation Provides Important Safeguards That Support an Exception from the General Rule to Include GAAP Financial Statements.

Life insurance companies that issue non-variable insurance products, like life insurance companies that issue variable annuity and variable life insurance products, are subject to extensive regulation by state insurance departments of both their respective states of domicile, as well as the states in which they conduct business. Insurance companies are subject to periodic examinations by state insurance regulators in their state of domicile and states in which they conduct business, including review of their books, records, and operations. Life insurance companies generally must file annual reports with their respective insurance regulators regarding their operations and financial condition.[9] Those reports include SAP financial statements that are generally required to be in the form adopted by the National Association of Insurance Commissioners.[10] That form requires, among other things, a report of an independent certified public accountant; the insurance company's balance sheet reporting admitted assets, liabilities, capital, and surplus; statement of operations; statement of cash flows; statement of changes in capital and surplus; and notes to financial statements.[11] Furthermore, the state insurance regulatory framework requires companies to maintain sufficient levels of capital, surplus, and risk-based capital, as well as restricts the investments made by the companies' general accounts. The overriding purpose of all these state insurance regulatory measures is to ensure that the companies are financially secure enough to meet their contractual obligations.

These protections were most evident in the recent 2008-2009 financial crisis. During that crisis, the insurance sector, in part due to state insurance solvency regulation, proved to be relatively resilient.[12] For example, it is widely accepted that the federal government's "bailout" of American International Group ("AIG") occurred not because of the company's insurance business, but because of the systematic risk created by AIG's credit default swaps contracts.[13] Those contracts were entered into by AIG Financial Products, a unit of AIG that was not subject

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[9] *See, e.g.,* IOWA ADMIN. CODE 98.1 – 98.20 (2008); CAL. INS. CODE §900.2 (1991/1992); and N.Y. COMP. CODES R. & REGS, tit. 11, §§ 89.1 – 89.3 (Regulation 118) (1984/2009).

[10] NAIC ANNUAL FINANCIAL REPORTING MODEL REGULATION (Model Law 205).

[11] *Id.* at §5.

[12] *See* Therese M. Vaughan, *The Economic Crisis and Lessons from (and for) U.S. Insurance Regulation,* J. Ins. Reg., available at http://www.naic.org/documents/cipr_jir_vaughan.pdf at 5.

[13] *See* Editorial Desk, *Regulator Shopping,* N.Y. Times, May 21, 2009 at 34; *American International Group: Examining What Went Wrong, Government Intervention And Implications For Future Regulation Before the Senate Comm. On Banking, Housing and Urban Affairs,* 111th Cong, 1st Sess. (2009) (statement of Eric Dinallo, Superintendent of the New York State Insurance Department); Therese M. Vaughan, *The Economic Crisis and Lessons from (and for) U.S. Insurance Regulation,* J. Ins. Reg., available at http://www.naic.org/documents/cipr_jir_vaughan.pdf at 5; Review & Outlook, *AIG's Black Box,* Wall St. J., March 3, 2009, A12.

to state insurance regulation. AIG's U.S.-based insurance businesses remained functional and solvent.[14]

The Commission itself has recognized that the important safeguards provided by state insurance departments, including the conservative nature of SAP financial statements, make federal financial regulation, in certain respects, duplicative of state regulation and, in certain circumstances, unnecessary. The Commission recently adopted Rule 12h-7 under Exchange Act.[15] That Rule exempts securities that do not constitute an equity interest in the insurance company from the periodic reporting requirements of the Exchange Act as long as those securities and their issuers satisfy the conditions of Rule 12h-7. As the Commission recognized in its release adopting Rule 12h-7, state insurance regulation is:

> focused on insurance company solvency and the adequacy of insurers' reserves, with the ultimate purpose of ensuring that insurance companies are financially secure enough to meet their financial obligations. State insurance regulators require insurance companies to maintain certain levels of capital, surplus, and risk-based capital, limit the amount of risk that may be assumed by insurers, and impose requirements with regard to valuation of insurer's investments. Insurance companies are required to file annual reports on their financial condition with state insurance regulators. In addition, insurance companies are subject to periodic examination of their financial condition by state regulators . . . . State insurance regulation, like Exchange Act reporting, relates to an entity's financial condition. We are of the view that, in appropriate circumstances, it may be unnecessary for both to apply in the same situation, which may result in duplicative regulation that is burdensome.[16]

The Commission explained that a "key basis for the exemption is that investors are already entitled to the financial condition protections of state law and that, under our federal system of regulation, Exchange Act reporting may be unnecessary."[17] Given that the Commission has recognized the important protections provided by state insurance regulation in the context of Exchange Act reporting requirements, Aviva believes the Commission should recognize those same protections in the context of the ability to use SAP financials statements under the limited circumstances discussed herein.

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[14] *See* Editorial Desk, *Regulator Shopping,* N.Y. Times, May 21, 2009 at 34.

[15] Securities Act Release No. 8996, 74 Fed. Reg. 3138 (Jan. 8, 2009) (the "Rule 12h-7 Adopting Release").

[16] *Id.* at 3154 (citations omitted).

[17] *Id.* at 3155.

C. SAP Financial Statements Are an Appropriate Substitute for GAAP Financial Statements for Non-Variable Insurance Product Registration Statements.

As noted above, the Commission has recognized that SAP financial statements focus on insurer solvency and provide important and necessary financial information to investors.[18] GAAP financials, on the other hand, focus more on presenting results from a company's ongoing operations. In fact, SAP financial statements typically provide non-variable insurance product owners with financial information that is based on more conservative assumptions than GAAP financial statements, and ultimately may help investors by providing them with more focused and relevant information on whether the insurance company will be able to pay the guaranteed benefits provided under the non-variable insurance product when due. For example, the balance sheet, a financial statement highly relevant to a non-variable insurance product owner as it relates to an insurer's claims paying ability, is often viewed as using more conservative assumptions under SAP than under GAAP.

Further, the ability to use SAP financial statements in such circumstances may encourage competition in that insurance companies that issue non-variable insurance products would not have the initial and on-going costs of maintaining GAAP financial statements if such financial statements are otherwise unavailable. Moreover, financial statements in Form S-1 are required to be included in the prospectus, while variable products include their financial statements in the statement of additional information, a document that is not delivered but is available to investors on request.[19] Accordingly, non-variable insurance products, even if permitted to use SAP financials, would still be providing more financial information to investors than is the case with variable contracts.

A high-level discussion of SAP accounting prepared by Aviva is attached as Appendix B. Further, to illustrate the accounting differences between SAP and GAAP financial statements, Aviva has prepared a chart attached as Appendix C summarizing by category the differences between those accounting practices. Unlike GAAP financial statements which focus on items that are of importance primarily for equity investors – such as measurements of emerging earnings from a business from period to period – SAP financial statements stress measurements that relate to insurance contract owners (*i.e.*, an insurer's claims paying ability).

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[18] *See, e.g.*, Rule 12h-7 Adopting Release at 3154-3155; Securities Act Rel. No. 8933, 73 Fed. Reg. 37,752, 37,764 (Jun. 25, 2008).

[19] It is noteworthy that Forms N-3, N-4, and N-6 require that only the insurance company depositor's balance sheets be included in the statement of additional information; these registration forms do not deem other financial information of the insurance company depositor, including its income statements, sufficiently relevant to investors to be required in the statement of additional information. Instead, this information is required only in Part C (Other Information).

Aviva, as a wholly owned subsidiary of a foreign incorporated holding company, is not required to prepare GAAP financial statements and does not produce GAAP information for any purpose. However, before it was acquired by Aviva plc in 2006, a subsidiary of Aviva, then named AmerUs Life Insurance Company ("AmerUs") prepared GAAP financial statements. The chart attached as Appendix C provides a comparison of AmerUs's balances under its audited SAP financial statements to its GAAP financial statements for the 12-month period ending December 31, 2005, the last year AmerUs prepared GAAP financial statements, and provides references to the discussion of SAP accounting provided in Appendix B.[20] That comparison shows:

- AmerUs's total assets under SAP (approximately, \$8.1 billion) were less than they were under GAAP (approximately, \$9.9 billion) (a variance of approximately \$1.8 billion); and

- AmerUs's total capital and surplus under SAP (approximately, \$469.7 million) were less than they were under GAAP (approximately, \$770.7 million) (a variance of approximately \$301 million).

These differences illustrate the conservative reporting requirements of SAP. Aviva submits that given SAP's conservative assumptions, particularly those made in the balance sheets, audited SAP financial statements may prove more valuable to a non-variable insurance product owner whose focus is on whether the insurance company will be able to provide the guaranteed benefits under the insurance product when due.

D. The Requirement to Prepare GAAP Financial Statements In Order to Issue Registered Non-Variable Insurance Products Is Extremely Burdensome.

Many insurance companies that offer unregistered non-variable insurance products do not have the audited GAAP financial statements required for issuers on Forms S-1. These insurance companies neither file reports under the Exchange Act nor register securities under the Securities Act. Instead, these life insurance companies have audited SAP financial statements that are required under state insurance law.

To initially develop the historical GAAP financial statements required by such Forms and Regulation S-X would be a time consuming and expensive process for any insurance company. Aviva submits that it would take an average life insurance company at least six months and a team of internal and external personnel to develop those statements. The total cost for the development of historical GAAP financial statements alone could be as high as between \$4 million and \$8 million. Further, in addition to the costs of initially preparing audited GAAP financial statements, a life insurance company would have the ongoing expenses of updating both GAAP and SAP financial statements. Given the magnitude of these costs, and the fact that

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[20] Due to the acquisition of AmerUs by Aviva and subsequent merger of AmerUs with and into Aviva Life and Annuity Company, as well as the development of various accounting pronouncements and guidance in the intervening years, it would have been extremely time consuming and difficult for Aviva to update the AmerUs information in later fiscal years.

they would be incurred only if registering a non-variable insurance product, such costs would be a direct cost of issuing such product and an insurance company therefore likely would seriously consider "passing through" to non-variable insurance contract owners the initial and on-going costs associated with the preparation of GAAP financial statements in pricing the product. Thus, this "pass through" of costs would serve to make a non-variable insurance product less attractive to consumers and thus less competitive.

E. The Disclosure Issues and Concerns Pertaining to Non-Variable and Variable Contracts Are Substantially Similar.

From a federal securities law perspective, the disclosure issues and concerns pertaining to non-variable insurance products and variable products are substantially similar. 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.

Variable contracts for decades generally have contained a number of guarantees that extend beyond the assets in the separate account and which are supported by the general account of the depositor, such as death benefits and, more recently, guaranteed minimum withdrawal or income benefits. These general account obligations are similar to other general account obligations of the insurance company, such as the obligations created by non-variable insurance products. Accordingly, the same public policy considerations are present regardless of the form on which the security is registered, and the same rules should apply for both variable and non-variable insurance products.

F. The Inability to Use SAP Financial Statements on the Same Basis As Life Insurance Company Depositors of Variable Contracts Is Anti-Competitive.

The Commission has recognized that continuously offered non-variable insurance products compete directly with continuously offered variable annuity and variable life insurance products.[21] Nevertheless, the Commission applies different financial statement standards depending on the product that is being registered. Thus, the inability of issuers of non-variable insurance products registered on Form S-1 to use SAP financial statements on the same basis as life insurance company depositors of variable products puts such life insurance company issuers of non-variable insurance products at a competitive disadvantage. Not only is there little if any regulatory rationale for requiring life insurance company issuers of non-variable insurance products to prepare GAAP financial statements in all circumstances, such requirement is inconsistent with the purposes and policies underlying the National Securities Markets Improvement Act of 1996 ("NSMIA"). The purpose of NSMIA is to promote efficiency and

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[21] *See, e.g.,* Securities Act Rel. No. 8933, 73 Fed. Reg. 37,752, 37,771 (June 25, 2008).

capital formation in the financial markets, as well as to protect investors and provide more effective and less burdensome regulation.[22]

As discussed above, the preparation of GAAP financial statements is an expensive process. Permitting life insurance companies that issue non-variable insurance products to use SAP financial statements under circumstances materially similar to those where the Commission currently permits life insurance companies depositors to use SAP financial statements would help to level the playing field between non-variable insurance products and variable insurance products. The proposed amendment would ensure that similar insurance products would be accorded similar financial statement treatment under the federal securities laws. Non-variable insurance products would no longer have to develop expensive and time consuming GAAP financial statements. Not having the expense involved in preparing GAAP financial statements may encourage insurance companies to develop more and innovative non-variable insurance products. Further, leveling the playing field between similar products is supported by the regulatory goals of the Obama Administration. Those goals include promoting the consistent regulation of similar financial products.[23]

III. CONCLUSION

For all the foregoing reasons, Aviva believes that amending Regulation S-X to extend the ability to use SAP financial statements to life insurance companies that issue non-variable insurance products is both strongly supported by public policy and consistent with Commission precedent. Aviva submits that the relief currently provided to variable contract issuers in Forms N-3, N-4, and N-6 should be extended to insurance companies registering non-variable insurance products. Further, there is no real basis to continue to distinguish between mutual insurance companies and stock insurance companies on the issue of financial statements. The same burdens and costs incurred by insurers in preparing GAAP financial statements, which differ from those prepared in accordance with SAP, are present regardless of the form on which the security is registered (N-3, N-4, and N-6 vs. S-1) or the ownership structure of the insurance company (mutual vs. stock), and the same public policy considerations should apply. Further, such extension will help to level the regulatory playing field between life insurance companies that issue those products, while still providing investors with the information they need to make important investment decisions. Therefore, Aviva petitions the Commission to amend Rule 7-02 of Regulation S-X, substantially in the form set forth in Appendix A, so that life insurance companies that issue non-variable insurance products may use SAP financial statements on the same basis as life insurance company depositors that issue variable annuity and variable life insurance products.

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[22] *See Conference Report to Accompany H.R. 3005,* H.R. Rep. No. 104-864 (1996).

[23] *See* Department of Treasury, *Financial Regulatory Reform – A New Foundation: Rebuilding Financial Supervision and Regulation*, June 17, 2009 at 7, available at http://www.financialstability.gov/docs/regs/FinalReport_web.pdf.

* * *

Thank you again for your time and consideration of this rulemaking proposal. Please contact Stephen E. Roth at 202.383.0158 or Mary Thornton Payne at 202.383.0698 with any questions or comments you may have.

Sincerely,

Stephen E. Roth

Stephen E. Roth

Mary Thornton Payne

Mary Thornton Payne

Attachment

cc: Susan Nash, Esq.
William J. Kotapish, Esq.
Richard C. Cohan, Esq.
Pamela K. Ellis, Esq.

APPENDIX A

§ 210.7-02 General requirement.

(a) The requirements of the general rules in §§210.1–01 to 210.4–10 (Articles 1, 2, 3, 3A and 4) shall be applicable except where they differ from requirements of §§210.7–01 to 210.7–05.

(b) Financial statements filed for mutual life insurance companies and wholly owned stock insurance company subsidiaries of mutual life insurance companies may be prepared in accordance with statutory accounting requirements. Financial statements prepared in accordance with statutory accounting requirements may be condensed as appropriate, but the amounts to be reported for net gain from operations (or net income or loss) and total capital and surplus (or surplus as regards policyholders) shall be the same as those reported on the corresponding Annual Statement.

(c) Financial statements filed in a registration statement on Form S-1 for covered securities may be prepared in accordance with statutory accounting requirements if the issuer would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in such registration statement. An issuer's financial statements must be prepared in accordance with generally accepted accounting principles if the issuer prepares financial information in accordance with generally accepted accounting principles for use by the issuer's parent, as defined in Rule 1-02(p) of Regulation S-X [17 CFR 210.1-02(p)], in any report under sections 13(a) and 15(d) of the Securities Exchange Act [15 U.S.C. 78m(a) and 78o(d)] or any registration statement filed under the Securities Act.

(d) For the purposes of this rule, covered securities are securities where:

(1) The issuer is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State;

(2) The securities do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary State of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction; and

(3) The issuer files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State.

APPENDIX B
Statutory / GAAP Differences

Reference Item #	US GAAP	Statutory Accounting
1	**Debt Securities**	
	Classified into one of three categories • Held-to-maturity (amortized cost) • Trading (fair value through earnings) • Available-for-sale (fair value through other comprehensive income – "OCI")	Subject to the Valuation Standards of the NAIC or fair value election • Securities are assigned different NAIC Designations (i.e., NAIC 1 through 6) based on the quality of the security. Based on this designation, the security may be held at amortized cost or the lower of fair value or cost • Fair value election is similar to U.S. GAAP Redeemable Preferred Stock • NAIC Designation of RP1 through RP5 as reported at book value (generally amortized cost) • NAIC Designation of RP6 is recorded at the lower of book value or fair value
	Interest Income included in the period earned and includes: • Amortization of premium and discount • Cash	Interest income – similar to U.S. GAAP
2	**Equity Securities**	
	Classified into one of two categories • Trading (fair value through earnings) • Available-for-sale (fair value through OCI)	Unaffiliated Common Stock • Reported at fair value as determined by the NAIC Securities Valuation Office (SVO) or other approved sources • Other analytical or pricing mechanisms (i.e. matrix or model pricing) Non-redeemable Preferred Stock • NAIC Designation of P1 through P5 is reported at book value (generally cost) • NAIC Designation of P5 is reported at lower of book or fair value
	Dividend income included in earnings in the period received	Dividend income – similar to U.S. GAAP
3	**Mortgage Loans**	
	• If purchased at Par – Outstanding Principal • If purchased at Premium or Discount – Amortized cost	• If purchased, recorded at amount paid
4	**Real Estate**	
	• Recorded at cost less accumulated depreciation with any associated mortgage reported as a liability	• Reported net of encumbrances (i.e., mortgage) with parenthetical disclosure of the amount of the related encumbrance

Reference Item #	US GAAP	Statutory Accounting
5	**Joint Ventures and Partnerships**	
	• Ownership percentage and degree of control determine whether the cost, equity, or consolidation method applies	• Generally accounted for using the equity method • If ownership is less than 10% or the reporting equity lacks control, investment is accounted for based on U.S. GAAP equity
6	**Investment in Subsidiary, Controlled, and Affiliated (SCA) Entities**	
	• Ownership percentage and degree of control determine whether the cost, equity, or consolidation method applies	Entity Method • Insurance Entity – Recorded based on underlying audited Statutory equity adjusted for any unamortized goodwill • Non-insurance Entity – Recorded based on underlying audited U.S. GAAP equity adjusted to a Statutory basis if certain conditions are met No audited financial statements results in non-admitted assets
7	**Securities Lending**	
	When securities are retained: • No impact on valuation of securities unless the collateral is worth less than the securities • Payable for securities lent and receivable for the securities to be received back is established	• Similar to U.S. GAAP accounting
8	**Unrealized Gains and Losses**	
	• Component of Accumulated Other Comprehensive Income (AOCI) net of deferred taxes	• Recorded as a direct credit or charge to surplus
9	**Realized Gains and Losses**	
	Upon the sale of an investment (excluding trading securities and cash flow and foreign currency hedges): • Reported in earnings on a pre-tax basis • Should be reported as a separate line item or disclosed in the footnotes • Shall not be deferred to future periods either directly or indirectly	• Reported net of applicable income taxes • For Life companies, realized gains and losses are classified as interest-related or credit-related and are reported in interest maintenance reserve (IMR) or asset valuation reserve (AVR) • IMR is amortized to earnings over the original term of the sold debt security • AVR is a liability calculated at each reporting period with factors applied to the types of asset holdings. Changes in AVR reported directly to surplus

Reference Item #	US GAAP	Statutory Accounting
10	**Other Than Temporary Impairments (OTTI)**	
	• Focus is generally on the intent to NOT SELL the security as well as whether the company would be required to sell the security prior to anticipated recovery • If the entity does not have the intent to sell, and it is not more likely than not that the entity will be required to sell, a company will recognize credit-related OTTI through earnings and OTTI due to other factors through OCI • If the entity has the intent to sell or it is more likely than not that the entity will be required to sell, a company will recognize the full amount of the OTTI through earnings	• Under Statutory accounting in regards to bonds, interest rate-related declines in fair value would be considered other-than-temporary only when the insurer intends to sell the investment before recovering its cost • Declines in fair value related to credit-related declines in value are considered other-than-temporary impairments and will be recognized through earnings • For equity securities, the evaluation is usually consistent on both a U.S. GAAP and Statutory basis
	Disclosures for Investments	
	• Summary of amortized cost and fair value of available-for-sale securities by security type • Summary of amortized cost and fair value of fixed maturity securities by maturity length • Components of unrealized gains and losses, including a separation of unrealized losses between greater than and less than 12 months • Breakout of realized gains and losses and investment income by security type • Breakout of net investment income by security type • Specific Fair Value disclosures required • Risks and uncertainties disclosures regarding OTTI determinations	• Similar to U.S. GAAP as all U.S. GAAP disclosures must be considered unless specifically rejected by the NAIC

Reference Item #	US GAAP	Statutory Accounting
11	**Income Taxes**	
	• Both current and deferred expenses are reported in the income statement, in addition to changes in the valuation allowance	• Statutory adopts many of the provisions of U.S. GAAP with some significant differences ▪ State and local income taxes ▪ Where in financial statements deferred income taxes are reported ▪ Determination of valuation allowance or admissibility of asset • Only report current income expense in the income statement, in addition to changes in the valuation allowance • Deferred tax assets are admitted only up to certain thresholds
12	**Reinsurance**	
	• Certain conditions are required to be met for a contract to be accounted for as reinsurance (i.e. risk transfer) • Contracts that do not result in the reasonable possibility that the reinsurer may realize a significant loss from the insurance risk assumed are accounted for as deposits	• Risk Transfer - Risk transfer analyses can be quite complex and differences can exist between statutory accounting and U.S. GAAP
	• "Gross Presentation" – Amounts for reinsurance ceded transactions are not netted against the related accounts in the balance sheet	• Ceded reserves/reserve credits - Recorded as offset to policyholder benefit liability • Ceded premium/benefits - Recorded as offset to premium/policyholder benefits
	• Ceding enterprises are required to disclose the nature, purpose, and effect of reinsurance transactions, including the premium amounts associated with reinsurance assumed and ceded • Required disclosure of concentrations of credit risk associated with reinsurance receivables and prepaid reinsurance premiums	• Footnote disclosures are similar to those required under U.S. GAAP • Reinsurance recoverable balances that are past due by 90 days or more are non-admitted • A portion of the reinsurance recoverable may be non-admitted. This may occur when a recoverable exists from an unauthorized reinsurer where no collateral was secured.

Reference Item #	US GAAP	Statutory Accounting
13	**Traditional Life Products**	
	• Premiums – Recognized as revenue when due from policyholders	• Premiums – Similar to U.S. GAAP accounting
	• Future Policyholder Benefits (Reserve) – The present value of estimated future policy benefits to be paid less the estimated future net premiums to be collected from policyholders are accrued when the premium revenue is recognized.	• Statutory Policy Reserves – Generally calculated as the excess of the present value of future benefits to be paid to or on behalf of policyholders less the present value of future net premiums • Difference between the policy reserves at the beginning and end of the reporting period shall be reflected in the change in reserves
	• Claim Expenses – Recognized when insured events occur	• Similar to U.S. GAAP accounting
	• Deferred Acquisition Costs – Acquisition costs that vary with and are primarily related to the acquisition of insurance contracts are capitalized and charged to expense in proportion to premium revenue recognized	• Expensed immediately with no deferral
	• Dividends – Accrue all incurred dividends	• Dividends - accrue dividends due and unpaid, dividends apportioned (or not yet apportioned) for payment in the following twelve months, and dividends left on deposit to accumulate interest
	Deposit type contracts	
	• Premiums – Not recognized as revenue on income statement	• Similar to U.S. GAAP accounting
	• Reserve Setting – Generally represents a best estimate of future costs	• Reserve Setting – Set by actuarial guidelines established by the Actuarial Standards Board
14	**Deferred Acquisition Costs (DAC)**	
	Represents deferred costs capitalized on the balance sheet	Expensed immediately with no deferral
15	**Surplus Notes**	
	• Surplus notes recognized as borrowings in liabilities	• Recognized as surplus due to long-term nature and regulator approval for repayment

APPENDIX C

Example
Statutory to GAAP analysis

Dollars in Thousands

	Statutory Balance	Difference	GAAP Balance	Reference to Statutory / GAAP Differences in Appendix B
Assets				
Total invested assets (includes Separate Account)	$7,880,463	($164,776)	$8,045,239	Reference items 1 - 10
Accrued investment income	$92,494	($45)	$92,539	
Reinsurance receivables	$13,417	($645,361)	$658,778	Reference item 12
Premium receivables	$43,697	$22,106	$21,591	
Other assets	$7,219	($37,225)	$44,444	
Deferred Acquisition Costs, Value of Business Acquired, Bonus Interest	$0	($1,025,400)	$1,025,400	Reference item 14
Deferred tax asset & tax receivable	$35,771	$35,773	($2)	Reference item 11
Total Assets	**$8,073,061**	**($1,814,928)**	**$9,887,989**	
Liabilities				
Policy reserves	$6,868,221	($1,173,958)	$8,042,179	Reference items 12, 13
Dividends payable to policyholders	$54,832	($153,694)	$208,526	Reference items 13
Policy and contract claims	$12,328	($12,544)	$24,872	Reference item 12
Deferred income tax & tax payable	$0	($72,548)	$72,548	Reference item 11
Separate Account liabilities	$447,899	$5,269	$442,630	Reference item 1
Asset Valuation Reserve & Interest Maintenance Reserve	$60,635	$60,635	$0	Reference item 9
Accrued expense & other liabilities	$147,413	($117,119)	$264,532	Reference item 12
Borrowed money & notes payable	$12,005	($50,000)	$62,005	Reference item 15
Total Liabilities	**$7,603,333**	**($1,513,959)**	**$9,117,292**	

	Statutory Balance	Difference	GAAP Balance	Reference to Statutory / GAAP Differences in Appendix B
Capital and Surplus (Stockholders' Equity)				
Common Stock	$10,000	$0	$10,000	
Paid-in surplus	$238,593	($453)	$239,046	
Surplus note	$50,000	$50,000	$0	Reference item 15
Stockholders equity (including accumulated other comprehensive income)	$171,135	($350,516)	$521,651	* *See Footnote*
Total Capital and Surplus	**$469,728**	**($300,969)**	**$770,697**	
Total Liability and Capital and Surplus	**$8,073,061**	**($1,814,928)**	**$9,887,989**	

* *Most of the off-setting entries of items 1 - 18 are reflected in equity*

SUTHERLAND ASBILL & BRENNAN LLP