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THE Committee OF Annuity Insurers
www.annuity-insurers.org

March 31, 2026

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Statement on Reforming Regulation S-K and Additional Comments on Regulation S-X (File No. CLL-15)

Dear Ms. Countryman,

The Committee of Annuity Insurers (the "CAI") submits this letter to the U.S. Securities and Exchange Commission (the "Commission" or "SEC") in response to the request for public comment by Chairman Paul S. Atkins in his *Statement on Reforming Regulation S-K*.[1] The CAI strongly supports the Commission's comprehensive reform initiative and appreciates the opportunity to submit these comments and recommendations. The issues raised in this letter directly illustrate the concerns identified by the Chairman, more so than perhaps any category of securities offering within the scope of the reform initiative.

A primary focus of this letter is the application of Regulation S-K to regulated insurance contracts that are registered with the SEC on Form S-1. Simply put, Regulation S-K does not produce material information for investors in regulated insurance contracts. Indeed, this determination has *already* been made by the SEC, as none of the SEC's tailored registration forms for insurance contracts (*i.e.*, Forms N-4 and N-6) call for *any* Regulation S-K prospectus disclosures. But not every insurance product type has a tailored registration form. Certain types of regulated insurance contracts continue to be registered on Form S-1 by default, which subjects those offerings to the full set of Regulation S-K company disclosures. As a result, investors in insurance contracts registered on Form S-1 continue to be buried by an avalanche of indisputably immaterial Regulation S-K disclosures, with consequential harm for investors, insurance companies, and the markets for insurance contracts offered to retail investors. This fundamental flaw in the Regulation S-K framework as it applies to Form S-1 offerings is precisely the kind of problem that the Chairman seeks to address and that should be given high priority in the reform initiative.

This letter also responds to Director James Moloney's related statement inviting public comment on Regulation S-X[2], as this letter also focuses on the interim financial statement and accounting requirements for regulated insurance contracts that are registered on Form S-1. Like Regulation S-K, the provisions of Regulation S-X are not calibrated for offerings of regulated insurance contracts. For contracts that default to Form S-1, Regulation S-X continues to impose interim financial statement and accounting requirements that are inconsistent with the Commission's tailored registration forms and impose significant, unnecessary burdens on insurance companies. We highly encourage the Commission to include Regulation S-X as part of the reform initiative, such that the related flaws in the Regulation

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[1] *See* Statement on Reforming Regulation S-K, Paul S. Atkins, Chairman (Jan. 13, 2006), available at https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326.

[2] *See* Coming Attractions From the Division of Corporation Finance, James Moloney, Director of Division of Corporation Finance, available at https://www.sec.gov/newsroom/speeches-statements/moloney-statement-coming-attractions-021326-coming-attractions-division-corporation-finance.

S-K and Regulation S-X frameworks, as discussed further below, may be addressed in a comprehensive and cohesive manner based on our recommendations.

Recommendations for Regulated Insurance Contract Offerings Registered on Form S-1

The following recommendations are important, long overdue reforms to the Regulation S-K and S-X frameworks as they apply to regulated insurance contract offerings that are registered on Form S-1. The CAI stands ready to assist the Commission and its staff in considering and implementing these reforms.

- **Grant Relief From Company Disclosure and Interim Financial Statement Requirements.** The company disclosure and interim financial statement requirements for regulated insurance contracts registered on Form S-1 should be aligned with, and no more extensive than, the requirements of the SEC's tailored insurance contract registration forms (*i.e.*, Forms N-4 and N-6).[3] As such, the Commission should adopt rule or form amendments or formal guidance that would permit the issuer of a regulated insurance contract registered on Form S-1 to omit from the prospectus (i) company disclosures not required by Form N-4 or N-6 and (ii) interim financial statements required by Rule 3-12 of Regulation S-X except in the limited circumstances they are required by Form N-4 or N-6.

- **Permit Incorporation by Reference of Financial Statements.** Consistent with the layered disclosure approach utilized by Forms N-4 and N-6, the Commission should adopt rule or form amendments that permit the issuer of a regulated insurance contract registered on Form S-1 to incorporate the financial statements into the prospectus by reference, rather than including them directly in the prospectus, provided that the financial statements are made available to prospective and existing contract owners free of charge upon request.

- **Expand the Industry Letter on GAAP Relief.** The Commission should direct the SEC staff to expand the "Industry Letter"[4] which, pursuant to Rule 3-13 of Regulation S-X, conditionally permits the use of financial statements prepared in accordance with statutory accounting principles ("SAP"), in lieu of generally accepted accounting principles ("GAAP"), but only for certain product types. Given universal characteristics of regulated insurance contracts, the Industry Letter should be expanded to cover the offering of any regulated insurance contract registered on Form S-1 if the conditions of the Industry Letter are otherwise satisfied.

The CAI's recommendations are concrete, sensible reforms that reflect the unique nature of regulated insurance contracts and are grounded in the SEC's tailored registration forms and other established precedents. The recommendations, if adopted, will facilitate investor decision-making, reduce unnecessary regulatory burdens, foster investor choice, and promote the continued formation of the markets for insurance contracts offered to retail investors. Furthermore, they will eliminate glaring inconsistencies in the SEC regulatory framework which currently imposes fundamentally different disclosure requirements on a product-by-product basis that disregards the universal characteristics of regulated insurance contracts. We therefore urge the Commission to adopt our recommendations as part of the reform initiative.[5]

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[3] As discussed further below, this letter assumes that the relief requested herein may be subject to a condition that the insurance company registrant must be relying on the exemption from periodic and current reporting set forth in Rule 12h-7 under the Securities Exchange Act of 1934 (the "1934 Act").

[4] *See* Permission for Insurance Company Issuers of Index-Linked Life Insurance Policies and Contingent Deferred Annuities to File Certain Financial Statements, Industry Letter from the Division of Investment Management (Apr. 8, 2025) (the "Industry Letter"), available at https://www.sec.gov/files/investment/no-action/industry-letter-040825.pdf

[5] In prior submissions to the Commission, the CAI has urged the SEC to propose new tailored registration frameworks for certain insurance contracts that continue to be registered on Form S-1, such as registered index-linked universal life insurance policies ("RILUs") and contingent

I. Background Information

a. Committee of Annuity Insurers

The CAI is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory, and tax issues affecting annuities. The CAI's 33 member companies represent approximately 80% of the annuity business in the United States.[6] For over 40 years, the CAI has been actively involved in shaping and commenting on many elements of the SEC's regulatory framework as it applies to SEC-registered insurance contracts. The CAI's advocacy efforts before the SEC are focused on achieving a regulatory framework that protects investors, is appropriately contoured to the unique aspects of registered annuity and life insurance products, and minimizes unnecessary burdens and market impediments. The CAI has commented extensively on a wide range of Commission rulemakings and other requests for comment impacting SEC-registered insurance contracts. Of particular note, in recent years, the CAI has submitted several letters and memoranda on how Regulations S-K and S-X can be ill-suited for insurance product offerings.[7]

b. State Regulation of Life Insurance Companies and Their Insurance Contracts

Life insurance companies are subject to extensive state regulation to ensure their financial stability and to protect the public. Companies must obtain a state license authorizing them to issue different types of products. Once authorized, a company must maintain minimum levels of capital and surplus. State regulation prescribes the types of financial assets that may be counted towards capital and surplus as well as the procedures by which a company values its investments. These requirements limit the financial risk a company may assume. In addition, a company must file with state regulators an annual report on its financial condition, including SAP financial statements, which are specifically designed for life insurance companies. Companies are also subject to periodic examination by their principal state regulators to verify the reported information and compliance with state insurance laws and regulations. In the event a company is determined to be financially impaired, the company's principal state regulator works with the company to strengthen its financial condition or, if necessary, oversee its liquidation in a manner that prioritizes meeting the company's obligations to its contract owners.

States also impose significant requirements on the insurance contracts that life insurance companies issue. A company generally must obtain approvals of new policy forms in each state where the company plans to offer the products for sale. In addition, state insurance laws and regulations generally require, among other things, various policy form provisions, and satisfaction of nonforfeiture requirements prescribing

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deferred annuities ("CDAs"). The CAI continues to strongly believe that investors, insurance companies, and insurance markets would be best served by having those insurance contract offerings registered on tailored forms. Nonetheless, the CAI recognizes that this reform initiative presents an opportunity to efficiently and expeditiously address significant flaws in the existing Regulation S-K and S-X frameworks as they apply to regulated insurance contracts registered on Form S-1. However, the CAI continues to recommend that the proposal of new tailored registration frameworks for RILUs and CDAs be included on the SEC's rulemaking agenda.

[6] *See* Appendix A for a list of the CAI's current member companies.

[7] *See, e.g.*, Committee of Annuity Insurers, Letter to Chairman Atkins re Recommendations for Regulatory Modernization (Apr. 29, 2025); Committee of Annuity Insurers, Memorandum to the U.S. Securities and Exchange Commission re Regulatory Modernization and Other Initiatives (Mar. 3, 2025); Committee of Annuity Insurers, Comment Letter on Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, File No. S7-16-23 (Nov. 28, 2023), available at https://www.sec.gov/comments/s7-16-23/s71623-303439-781302.pdf; Committee of Annuity Insurers, Comment Letter on The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22 (June 17, 2022), available at https://www.sec.gov/comments/s7-10-22/s71022-20131983-302449.pdf; Committee of Annuity Insurers, Comment Letter on Modernization of Regulation S-K Items 101, 103, and 105, File No. S7-11-19 (Oct. 22, 2019), available at https://www.sec.gov/comments/s7-11-19/s71119-6322880-194460.pdf; Committee of Annuity Insurers, Comment Letter on Concept Release on Business and Financial Disclosure Required by Regulation S-K, File No. S7-09-16 (July 21, 2026), available at https://www.sec.gov/comments/s7-06-16/s70616-219.pdf.

either minimum amounts payable or maximum charges that can be assessed.[8] State insurance laws and regulations also require adherence to methodologies for computing reserves backing up policy guarantees and benefits, and actuarial assessments regarding the adequacy of the company's reserving.

This robust state regulatory regime provides significant assurances to the public that life insurance companies will be able to meet their contractual obligations. In doing so, state insurance regulation obviates the need for individuals to independently evaluate an insurance company's business, management, and financial results.[9]

c. Overview of SEC-Registered Insurance Contracts

Life insurance companies issue several types of insurance contracts that are deemed to be securities and, when offered to the public, must be registered with the SEC. Registered annuity products include variable annuity contracts (VAs), registered index-linked annuity contracts (RILAs), market value adjustment annuity contracts (MVAs), and contingent deferred annuity contracts (CDAs). Registered life insurance products include variable life insurance policies (VLs) and registered index-linked universal life insurance policies (RILUs). All of these insurance contracts are deemed to be securities because they shift substantial investment risk to the contract owner (or, in the case of CDAs, are deemed to be guarantees of securities).

The products noted above are the most predominant SEC-registered contracts in the market today, but other types of insurance contracts may be registered with the SEC. The market landscape continues to evolve as insurers develop new product types and product features.

The registered insurance contracts issued by life insurance companies can generally be grouped into two categories: "variable" and "non-variable."[10]

- "Variable" contracts (*i.e.*, VAs and VLs) pass through the investment experience of a separate account established by the life insurance company that is unitized, such that contract values and/or benefits fluctuate based on how the separate account's investments perform. Any guarantees in excess of separate account values are supported by the insurance company's general account. Absent an applicable exemption, the public offering of a variable contract is registered under the 1933 Act, and the associated separate account is registered under the Investment

[8] Most states participate in the Interstate Insurance Product Regulation Commission (the "Interstate Compact"). The Interstate Compact was created and established as a joint public agency by compacting states that enacted the Interstate Insurance Product Regulation Compact ("Compact Statute"). The Compact Statute authorizes the Interstate Compact to develop uniform standards and accept, review, and approve policy forms pursuant to such standards. The Interstate Compact was developed as a means of modernization of the product filing and approval process, and was primarily driven by the need to have an entity serve as a central clearinghouse for prompt review and regulatory approval of new policy forms. The approval of a policy form by the Interstate Compact functions as an approval by the compacting states unless a given compacting state has opted out of the applicable uniform standard.

[9] The role of state insurance regulation is a primary reason why Congress decided to exempt traditional life insurance and annuity contracts from the Securities Act of 1933 (the "1933 Act"). As Supreme Court Justice Brennan explained in his concurring opinion for *SEC v. Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959):

> At the core of the 1933 Act are the requirements of a registration statement and prospectus . . . . The emphasis is on disclosure; the philosophy of the Act is that full disclosure of the details of the enterprise in which the investor is to put [his] money should be made so that he can intelligently appraise the risks involved. The regulation of life insurance and annuities by the States proceeded, and still proceeds, on entirely different principles. . . . Prescribed contract clauses are ordained legislatively or administratively. Solvency and the adequacy of reserves to meet the company's obligations are supervised by the establishment of permissible categories of investments and through official examination. The system does not depend on disclosure to the public, and, once given this form of regulation and the nature of the "product," it might be difficult in the case of the traditional life insurance or annuity contract to see what the purpose of it would be.

[10] Several annuity and life insurance products in the market today are "combination" contracts, offering both variable and non-variable investment options. Combination contracts are simultaneously subject to the frameworks applicable to their different types of investment options.

Company Act of 1940 (the “1940 Act”). These separate accounts are registered under the 1940 Act as either a unit investment trust (“UIT”) or an open-end company (with the insurance company serving as the depositor or sponsor, respectively).[11]

- “Non-variable” contracts (*i.e.*, RILAs, MVAs, CDAs, and RILUs) do not pass through the investment performance of a unitized separate account. Instead, contract values and benefits are supported entirely by the insurance company’s general account and/or a non-unitized separate account. Like variable contracts, absent an applicable exemption, the public offering of a non-variable contract is registered under the 1933 Act. However, unlike variable contracts, there is no associated registration or regulation under the 1940 Act. Also of note, because non-variable contracts are not supported by registered separate accounts, absent an exemption, their registration triggers an obligation by the insurance company issuer to file periodic and current reports pursuant to Section 15(d) of the 1934 Act. With respect to the 1934 Act, most insurance companies with registered non-variable contracts are exempt from periodic and current reporting because the insurance companies rely on the exemption provided by Rule 12h-7.[12]

Over the course of several decades, due to the unique disclosure considerations applicable to offerings of regulated insurance contracts, the SEC has adopted tailored registration forms for several insurance product types. Presently:

- VAs supported by separate accounts registered as a UIT, RILAs, and MVAs are registered on Form N-4.[13]
- VAs supported by separate accounts registered as an open-end company are registered on Form N-3.[14]
- VLs supported by separate accounts registered as a UIT are registered on Form N-6.

Other registered insurance contracts – *e.g.*, RILUs and CDAs – generally default to Form S-1, the SEC’s default registration form for domestic public offerings. These contracts are registered on Form S-1 merely due to the absence of an available tailored registration form, not because they more closely resemble equity or debt.[15] It bears emphasis that these contracts are, in fact, indistinguishable from the product types that have a tailored registration form: all SEC-registered insurance contracts issued by life insurance companies – regardless of the SEC form on which they are registered – are regulated insurance contracts providing benefits in accordance with the terms of a state approved policy form, payable by a life insurance company subject to state solvency regulation.

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[11] Today, the overwhelming majority of registered separate accounts are organized as UITs.

[12] The Rule 12h-7 exemption requires that both the insurance company and the registered insurance contract it issues be subject to state insurance regulation; that the insurance company file an annual statement of its financial condition with its principal state insurance regulator; that the security not be listed on any exchange, other trading, or quotation system or other electronic communication network; that the insurance company take steps to ensure that a trading market in the security does not develop; and that the contract prospectus discloses that the insurance company is relying on the exemption.

[13] Form N-4 was exclusively available for registration of VAs until the SEC amended the form in 2024 to provide a tailored registration framework for RILAs and MVAs, which until then were subject to the Form S-1/S-3 registration framework. *See* Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments to Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments, Release Nos. 33-11294, 34-100450, IC-35273 (July 1, 2024) (the “RILA Rulemaking Adopting Release”). *See also* Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, Release Nos. 33-11250, 34-98624, IC-35028 (Sept. 29, 2023) (the “RILA Rulemaking Proposing Release”).

[14] Today, few registration statements on Form N-3 exist. Unless otherwise indicated, discussion of the SEC’s tailored registration forms is primarily in reference to Forms N-4 and N-6.

[15] Such contracts may be registered on Form S-3 in lieu of Form S-1; however, registration of Form S-3 is becoming increasingly rare, as most companies do not satisfy the eligibility requirements for using Form S-3 due to their reliance on Rule 12h-7. At this time, the CAI is not recommending any changes to the Form S-3 framework.

d. Comparison of Company Disclosure and Financial Statement Requirements

Presently, the company disclosure and financial statement requirements applicable to SEC-registered insurance contracts turn almost entirely on whether the SEC has adopted a tailored registration form for a given product type, not necessarily the substantive characteristics of the product or the helpfulness of the information to investors. The following summarizes how company disclosure and financial statement requirements vary among the predominant product types.

- *Company Disclosures.* The SEC's tailored registration forms do not call for *any* Regulation S-K company disclosures in the prospectus.[16] Rather, each form calls for only basic information about the insurance company (*e.g.*, name, address, state of organization), with the company's financial statements available upon request. Yet, Regulation S-K company disclosures generally apply in full to products registered on Form S-1. Accordingly, prospectuses for VAs, VLs, RILAs, and MVAs include only basic company information, whereas prospectuses for RILUs and CDAs must include the full panoply of Regulation S-K company disclosures.

- *Interim Financial Statements.* The SEC's tailored registration forms include a qualified exemption from Rule 3-12 of Regulation S-X. As a result, for VAs, VLs, RILAs, and MVAs, interim financial statements are rarely necessary.[17] However, Rule 3-12 applies in full to products registered on Form S-1. As such, interim financial statements are required for RILUs and CDAs whenever a new registration statement or amendment becomes effective later than 134 days after the insurance company's fiscal year end.

- *Location of Financial Statements.* The SEC's tailored registration forms do not require the insurance company's financial statements to appear directly in the prospectus. Instead, they are included in or incorporated by reference into the Statement of Additional Information and made available upon request. Form S-1 does not use a layered disclosure framework. It requires that the financial statements appear in the prospectus. As a result, for VAs, VLs, RILAs, and MVAs, the insurance company's financial statements *are not* delivered except upon request, whereas, for RILUs and CDAs, the insurance company's financial statements *are* always delivered.

- *GAAP vs. SAP Financial Statements.* The SEC's tailored registration forms permit an insurance company to file SAP financial statements in lieu of GAAP financial statements, provided that certain conditions are satisfied.[18] Form S-1 requires GAAP financial statements unless the SEC has approved the use of SAP financial statements pursuant to Rule 3-13 of Regulation S-X. Fortunately, the Industry Letter permits the use of SAP financial statements in Form S-1

[16] In the Statement of Additional Information for RILAs and MVAs registered on Form N-4, and shareholder reports for separate accounts registered on Form N-3, information concerning changes in and disagreements with accountants required by Item 304 of Regulation S-K must be disclosed. The CAI is not asking the Commission to rescind or otherwise change those limited requirements.

[17] The tailored forms require interim financial statements only in the following circumstances: (i) when the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the insurance company, provided that audited year-end financial statements are not yet available; (ii) the insurance company's financial statements have never been included in an effective registration statement for annuity or life insurance contracts under the 1933 Act; (iii) the balance sheet of the insurance company at the end of either of the two most recent fiscal years shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $2,500,000; or (iv) the balance sheet of the insurance company at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the 1933 Act would show a combined capital surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $2,500,000.

[18] As interpreted by the Commission, the tailored registration forms provide that the insurance company's financial statements must be prepared in accordance with GAAP only if the insurance company prepares GAAP reporting packages or partial GAAP financial statements for use by the insurance company's parent, as defined in Rule 1-02(p) of Regulation S-X, in any report under Sections 13(a) and 15(d) of the 1934 Act, or any registration statement filed under the 1933 Act.

registration statements for RILUs and CDAs if the insurance company issuer relies on the Rule 12h-7 exemption and follows various conditions that are fairly consistent with those of the tailored registration forms. However, the Industry Letter is limited to RILUs and CDAs. For any other regulated insurance contract offering registered on Form S-1, GAAP financial statements continue to be required absent an individual company obtaining permission to use SAP financial statements pursuant to Rule 3-13 of Regulation S-X.

The following table further illustrates how the SEC regulatory framework differs among the predominant product types.

	Default SEC Registration Form	**Regulation S-K Company Disclosures Apply?**	**Regulation S-X Interim Financial Requirements Apply?**	**Financial Statements Appear in the Prospectus?**	**GAAP Financial Statements Required?**
VAs with UIT Separate Account, RILAs, and MVAs	N-4	No	No, subject to form instructions	No	No, subject to form instructions
VAs with Managed Separate Account	N-3				
VLs with UIT Separate Account	N-6				
RILUs and CDAs	S-1	***Yes***	***Yes***	***Yes***	No, subject to Industry Letter

The existing inconsistencies in regulation represent a serious flaw in the SEC framework for these specialized offerings. Rigid adherence to generic form instructions, and disregard for universal characteristics of regulated insurance contracts, has created a disclosure framework where fundamental disclosure requirements can differ dramatically on a product-by-product basis. These inconsistencies in regulation impose real harm by obscuring decision-useful information for investors, increasing unnecessary compliance burdens for insurers, and discouraging the development and offering of new insurance products.

The CAI's recommendations, set forth in more detail below, are intended to address these harms by eliminating the most pressing areas of inconsistent regulation within the scope of the Commission's reform initiative.[19]

II. Recommendation No. 1: For Regulated Insurance Contract Offerings Registered on Form S-1, Grant Relief from Regulation S-K Company Disclosures and Regulation S-X Interim Financial Statement Requirements

As explained further below, in order to align the company disclosure and interim financial statement requirements for product offerings on Form S-1 with the SEC's tailored registration forms, the Commission should adopt rule or form amendments or formal guidance that would permit the issuer of a

[19] As noted above, the adoption of tailored registration frameworks for RILUs and CDAs would provide a more comprehensive solution by addressing these and other significant inconsistencies (*e.g.*, use of summary prospectuses, payment of registration fees) in the overall SEC regulatory framework. Yet, the CAI recognizes that such tailored frameworks are beyond the scope of this initiative and would require more Commission time and resources. As such, the CAI is requesting the relief described herein from the Regulation S-K and S-X frameworks as they apply to regulated insurance contracts registered on Form S-1, but the CAI continues to recommend that the Commission include the adoption of tailored registration frameworks for RILUs and CDAs on its near-term rulemaking agenda.

regulated insurance contract registered on Form S-1 to omit from the prospectus (i) company disclosures not required by Form N-4 or N-6 and (ii) interim financial statements required by Rule 3-12 of Regulation S-X except in the limited circumstances they are required by Form N-4 or N-6. In each case, this relief may be subject to a condition that the insurance company registrant must be relying on the exemption from periodic and current reporting set forth in Rule 12h-7 under the 1934 Act.

➢ **Regulation S-K Company Disclosures are Immaterial to Investors in Regulated Insurance Contracts**

Prospectuses for insurance contracts registered on Form S-1 currently include disclosures covering two general areas: (1) disclosures relating to the product and (2) disclosures relating to the insurance company. On one hand, the disclosures relating to the product are critical, as they describe the material terms and risks of the investment. On the other hand, the disclosures relating to the insurance company (as prescribed by Regulation S-K) do not provide prospective or existing contract owners with decision-useful information. The insurance company disclosures go far beyond providing information relevant to the insurer's ability to meet its financial obligations, and fail to acknowledge the robust state solvency regulations to which insurers are subject and that afford contract owners substantial protection. Furthermore, the content, volume, and detail of the company disclosures are confusing and harmful to potential and existing contract owners, as they deemphasize the product disclosures and task the reader with evaluating information that is not helpful (or even relevant) to their investment decisions.

The specific Regulation S-K company disclosure items that are required in Form S-1 prospectuses include the following:

- **Item 101** (Description of Business)
- **Item 303** (Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A))
- **Item 305** (Quantitative and Qualitative Disclosures About Market Risk)
- **Item 401** (Directors, Executive Officers, Promoters, and Control Persons)
- **Item 402** (Executive Compensation)
- **Item 403** (Security Ownership of Certain Beneficial Owners and Management)
- **Item 404** (Transactions with Related Persons, Promoters, and Certain Control Persons)
- **Item 407** (Corporate Governance)

These and other Regulation S-K items are calibrated to the information needs of investors in equity and debt offerings. They provide detailed information about a company's business, management, ownership, and financial results. However, regulated insurance contracts are fundamentally different than equity and debt securities. An investor's financial interest in a regulated insurance contract issued by a life insurance company is limited to the cash value of the contract and the insurer's financial guarantees. Contract owners do not participate in the insurer's profits or losses, and the insurer's enterprise value has no bearing on the value of the contract or its benefits. The contractual guarantees are subject to the insurer's financial strength and claims-paying ability, but all life insurance companies are subject to robust state solvency regulation, which provides significant assurances that their contractual obligations will be met. Consequently, detailed information about an insurer's business, management, ownership, and financial results is immaterial (if not entirely irrelevant) to a contract owner's investment decisions. That information may be important to a person investing in an equity security, or in a bond that may be bought or sold in the secondary market or issued by an entity whose solvency is not strictly regulated, but it's not decision-useful to owners of regulated insurance contracts, regardless of the applicable SEC registration form.

- **Interim Financial Statements Do Not Provide Meaningful Information About an Insurance Company's Financial Strength and Claims-Paying Ability**

For offerings of regulated insurance contracts, an insurance company's financial statements are relevant to a prospective or existing contract owner's investment decisions only to the extent that the financial statements bear on the insurer's financial strength and claims-paying ability. Unlike equity or debt investors, owners of insurance contracts should not be expected to, for example, evaluate balance sheets, income statements, cash flows, or other financial metrics for the purposes of assessing profitability, growth prospects, or enterprise value. Rather, for a contract owner, all that matters is whether the insurance company will be able to satisfy its contractual guarantees.[20] In fact, this is the very reason why state insurance regulators require life insurance companies to prepare financial statements in accordance with SAP rather than GAAP, as statutory financial statements focus on an insurer's ability to pay future claims and its solvency over the long term.

Given how informational needs of regulated insurance contract owners differ so markedly from those of equity and debt investors, interim financial statements are especially unhelpful to contract owners. Interim financial reporting is designed to help investors compare stub periods, understand the impact of cyclical or seasonal patterns, and generally observe results of operations over a shorter period of time compared to year-end financial statements. But as a result of state solvency regulation and the conservativism with which life insurance companies are required to manage their general accounts, life insurance companies rarely experience short-term changes in their overall financial condition. As such, interim financial statements generally do not provide contract owners with any meaningful information about an insurance company's financial strength and claims-paying ability.

- **The SEC Has Already Determined That Regulation S-K Company Disclosures and Regulation S-X Interim Financial Statements Are Not Material to Investors in Regulated Insurance Contracts**

It cannot be overemphasized that the SEC has *already* determined that Regulation S-K company disclosures and Regulation S-X interim financial statements do not provide owners of regulated insurance contracts with decision-useful information. In this regard, adopting the CAI's recommendation would be a natural extension of the SEC's own policy decisions regarding the efficacy of detailed company disclosures and interim financial statements for offerings of regulated insurance contracts.

With respect to Regulation S-K company disclosures, as previously noted, *none* of the SEC's tailored registration forms call for Regulation S-K company disclosures in the prospectus. Under the tailored forms, the prospectus focuses on the material features, benefits, and risks of the insurance contract, and generally includes only very basic information about the insurance company (such as the insurer's name, address, and state of organization) with the insurer's financial statements available upon request. Likewise, with respect to Regulation S-X interim financial statement requirements, *none* of the SEC's tailored registration forms require interim financial statements except in limited circumstances. The SEC's tailored forms reflect the Commission's considered determination that detailed company disclosures and interim financials are generally unnecessary for offerings of regulated insurance contracts. Indeed, these key aspects of the tailored forms date back to when the forms were first adopted over 40 years ago and remain intact today.

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[20] *See* Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Release Nos. 33-6502, IC-13689 (Dec. 23, 1983) (recognizing the limited utility of insurance company financial statements).

In fact, the Commission just recently re-affirmed its views on these issues in 2024 when it last adopted rule and form amendments to Form N-4. In support of that final rulemaking, the SEC cited the elimination of Regulation S-K company disclosures as a reason for moving RILAs and MVAs from Form S-1 to Form N-4, explaining:

> In general, the disclosure requirements of Forms S-1 and S-3 are not specifically tailored to particular kinds of securities given the wide range of securities offerings that issuers can register on these forms. Forms S-1 and S-3 thus do not include specific line-item requirements addressing disclosures about RILAs and their complex features. These forms also require issuers to disclose information about the offering itself as well as extensive information about the registrant issuing the securities that a RILA investor may view as less important than information about the contract's features.[21]

In addition, as part of the same final rulemaking, the Commission recognized that the qualified exemption from interim financial statement requirements in Form N-4 would be appropriate for RILAs and MVAs. As the Commission stated:

> Requiring insurance companies to register offerings of [RILAs and MVAs] on Form N-4 will also provide those companies greater flexibility to update their registration statements without the need to update certain financial statements. . . . . Regulation S-X currently requires Form S-1 filers to include unaudited interim financial statements in any new registration statement or post-effective amendment that goes effective later than 134 days after the end of the insurer's fiscal year. However, Form N-4 filers are not subject to this requirement. . . . . Consequently, under the final amendments, insurance companies will be able to file and amend their [RILA and MVA] registration statements during certain times of year without the need to update their financial statements. The final amendments . . . provide for the consistent treatment of financial statements for all insurance companies registering offerings on Form N-4 that meet the circumstances permitted by Form N-4.[22]

Moreover, SEC registration is not the only context in which the Commission has tailored its disclosure framework to the unique contours of regulated insurance contract offerings. It has made similar findings in the context of 1934 Act reporting. In 2009, when the SEC adopted the Rule 12h-7 exemption from periodic and current reporting under the 1934 Act, it did so in recognition of how life insurance companies are regulated by the states. As the SEC explained in the Rule 12h-7 adopting release:

> We base [the adoption of Rule 12h-7] on two factors: first, 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; and, second, the absence of trading interest in the securities. . . . State insurance regulation, like [1934 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. Through [1934 Act]

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[21] RILA Rulemaking Adopting Release, pp. 14-15. We note that in the Adopting Release the SEC did not explicitly characterize the Regulation S-K company disclosures as "immaterial" (referring to them as "less important" in the RILA Rulemaking Adopting Release and "less material" in the RILA Rulemaking Proposing Release), but the final amendments to Form N-4 did not include *any* Regulation S-K disclosure items for the prospectus. Certainly, if the SEC believed that Regulation S-K company disclosures would, in fact, provide relevant and material information to prospective and existing contract owners, it would have included some or all of those disclosure requirements in the amendments to Form N-4.

[22] RILA Rulemaking Adopting Release, pp. 212-213. *See also* RILA Rulemaking Proposing Release, p. 183 ("These approaches [to financial statement requirements], in consideration of consistency in treatment among all insurance companies that meet the circumstances permitted by Form N-4, are equally appropriate for RILA filers on Form N-4.").

> reporting, issuers periodically disclose their financial condition, which enables investors and the markets to independently evaluate an issuer's income, assets, and balance sheet. State insurance regulation takes a different approach to the issue of financial condition, instead relying on state insurance regulators to supervise insurers' financial condition, with the goal that insurance companies be financially able to meet their contractual obligations. We believe that it is consistent with our federal system of regulation, which has allocated the responsibility for oversight of insurers' solvency to state insurance regulators, to exempt insurers from [1934 Act] reporting with respect to state-regulated insurance contracts.[23]

Despite these substantial, indeed compelling, precedents – and despite the fact that the underlying rationales are equally applicable to all SEC-registered regulated insurance contracts – for those insurance contracts that continue to be registered on Form S-1 *merely* due to the absence of an available tailored registration form, Regulation S-K company disclosures and Regulation S-X interim financial statement requirements continue to apply in full. Certainly, the SEC's administration of Form S-1 should not elevate form over substance by ignoring universal aspects of regulated insurance contracts and the Commission's policy judgments. Accordingly, for any insurance company that relies on the Rule 12h-7 exemption from SEC reporting, any regulated insurance contract offerings registered on Form S-1 by that company should be exempt from Regulation S-K company disclosure and Regulation S-X interim financial statement requirements, consistent with the SEC's tailored registration forms and other established precedents.

- ***How This Recommendation Could be Implemented***

This recommendation could be implemented by rule or form amendments or formal guidance. The CAI believes its recommendation might be most effectively implemented by amending the General Instructions to Form S-1. Form S-1 could be amended to add a General Instruction IX, which could be titled "Offerings of Regulated Insurance Contracts" and provide:

> The following applies if a registration statement on this Form S-1 is being used to register an offering of an insurance contract by an insurance company that relies on Rule 12h-7 (17 CFR 240.12h-7) to be exempt from filing reports pursuant to Section 15(d) of the Exchange Act.
>
> A. *Regulation S-K Items that may be Omitted*. The registrant may omit the information called for by Item 11, Information with Respect to the Registrant, to the extent that Item 11 directs the registrant to furnish information required by an item of Regulation S-K that would not be required if the offering were eligible to be registered on Form N-4 or N-6.
>
> B. *Regulation S-X Financial Statements.* Notwithstanding Item 11(e) of this Form S-1, the registrant may provide financial statements that meet the requirements for insurance company financial statements under Form N-4 or N-6. In no event shall the registrant be required to provide financial statements that are not required for offerings registered under those forms. In addition, notwithstanding General Instruction VII, the financial statements may be incorporated by reference to an N-VPFS filing with the Commission.

[23] Index Annuities and Certain Other Insurance Contracts, Securities Act Release No. 8996, Exchange Act Release No. 59,221, 74 F.R. 3138 (adopted Jan. 8, 2009).

III. Recommendation No. 2: Permit Incorporation by Reference of Financial Statements into the Form S-1 Prospectus

Consistent with the layered disclosure approach utilized by the SEC's tailored registration forms, the Commission should adopt rule or form amendments that permit the issuer of a regulated insurance contract registered on Form S-1 to incorporate the financial statements into the prospectus by reference, rather than including them directly in the prospectus, provided that the financial statements are made available to prospective and existing contract owners free of charge upon request. For the reasons previously discussed (*i.e.*, the contractual nature of the insurance guarantees, state solvency regulation) financial statements for life insurance companies have limited informational value for investors and can be dozens of pages long. This recommendation will provide investors in products registered on Form S-1 with a shorter, more decision-useful prospectus, and will alleviate unnecessary printing and delivery costs for insurance companies.[24]

For over 40 years, the SEC has recognized the limited utility of insurance company financial statements. When the Commission first proposed tailored registration forms for regulated insurance contracts in 1984, it proposed that the insurance company's financial statements be included in the Statement of Additional Information and made available upon request because "contract owners, participants, and annuitants may not want or need disclosure about the investment performance of the insurance company, and instead may be interested only in the sponsor's solvency."[25] The SEC ultimately adopted the layered disclosure approach, and the tailored forms continue to use that same approach today.

Accordingly, *none* of the SEC's tailored registration forms require the insurance company's financial statements to appear in the prospectus. Every tailored form permits the financial statements to be either included in or incorporated by reference into the Statement of Additional Information and made available upon request. However, Form S-1 requires the financial statements to appear in the prospectus. As a result of this discrepancy, prospective and existing owners of products registered on Form S-1 receive a lengthier, less decision-useful prospectus, and insurance companies bear the additional costs associated with printing and delivering those lengthier documents. The CAI's recommendation would establish a layered disclosure approach for products registered on Form S-1 that generally aligns with the longstanding approach utilized by the SEC's tailored forms.[26]

IV. Recommendation No. 3: Expand the Industry Letter under Rule 3-13 of Regulation S-X to Cover Any Regulated Insurance Contract Offering that is Registered on Form S-1

The Commission should direct the staff to expand the Industry Letter so that it applies to the offering of any regulated insurance contract registered on Form S-1, provided that the insurance company issuer relies on the Rule 12h-7 reporting exemption and otherwise satisfies the conditions set forth in the Industry Letter. The Industry Letter should not be limited solely to RILUs and CDAs, as is the case today.

As discussed, all regulated insurance contracts issued by life insurance companies are subject to the same comprehensive state regulatory regime. Regardless of the product types that a company offers, every state insurance regulator requires its domiciliary life insurance companies to prepare SAP financial statements. SAP financial statements are specifically designed for life insurance companies and focus on an insurer's

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[24] This relief may also be subject to a condition that the insurance company registrant must be relying on the exemption from periodic and current reporting set forth in Rule 12h-7 under the 1934 Act. This change could be implemented by amending the General Instructions to Form S-1, as previously noted.

[25] See fn. 18.

[26] As is currently permitted for RILAs and MVAs, the insurer should be permitted to file the financial statements with the SEC using the filing type N-VPFS, and then incorporate that filing by reference into the Form S-1 prospectus. Also, consistent with the tailored registration forms, the insurance company could be required to send the financial statements within three business days of receiving a request.

solvency and long-term claims-paying ability. For owners of regulated insurance contracts, these are the only aspects of an insurer's financial condition that are material.

The appropriateness of SAP financial statements for SEC purposes has been firmly established by the Commission. Each of the SEC's tailored registration forms permits companies to use SAP financial statements provided that certain conditions are satisfied. This exception from the general requirement to file GAAP financial statements was intended to alleviate the cost and administrative burden on life insurance companies that do not otherwise produce GAAP financial statements. It also recognizes that statutory financial statements may adequately inform contract owners about the financial condition of the issuing insurance company. Arguably, SAP financial statements provide information that is even more relevant to contract owners than GAAP financial statements, as GAAP financial statements are for more generalized use.

The requirement to prepare GAAP financial statements for insurance contracts registered on Form S-1 imposes a substantial time and cost burden on life insurance companies that otherwise are not required to prepare GAAP financial statements or information. This time and cost burden is a major impediment to life insurance companies' offering innovative products, serving as a significant barrier to market entry and limitation on investor choice. The Industry Letter provides critical relief from GAAP financial statement requirements for RILUs and CDAs, but it should go further by extending that relief to any regulated insurance products registered on Form S-1 (subject to the Industry Letter's conditions, including reliance on the Rule 12h-7 exemption). Expanding the Industry Letter to cover any other regulated insurance contracts registered on Form S-1 would eliminate arbitrary line drawing on use of SAP financial statements. Furthermore, it would reduce unnecessary regulatory burdens for life insurance companies and increase investor choice, without diminishing any investor protections.

V. Inconsistent Regulation is Causing Significant Harm to Investors, Insurance Companies, and the Retail Market for Insurance Contracts

The inconsistencies in the regulation of SEC-registered insurance products, as discussed in this letter, cause real-world, avoidable harm to investors, insurance companies, and insurance markets. Investors in insurance contracts registered on the SEC's tailored registration forms – *e.g.*, Forms N-4 and N-6 – are benefiting from shorter, decision-useful prospectuses, focused almost entirely on a contract's material features and risks. Meanwhile, investors in insurance contracts registered on Form S-1 continue to receive an unnecessarily lengthy prospectus containing voluminous immaterial company and financial information without any guide or instruction as to their relative importance. In other words, these investors are being buried by the "avalanche" of immaterial information. Meanwhile, the unnecessary regulatory burdens and costs associated with Form S-1 (*i.e.*, Regulation S-K company disclosures, Regulation S-X interim financial statement requirements, GAAP financial statements) are dissuading companies from developing and offering innovative insurance securities products. This consequently limits investor choice and stunts the growth of the markets for insurance contracts offered to retail investors.

Fortunately, these harms can be easily addressed as part of the Commission's reform initiative. By adopting the CAI's recommendations, the SEC will substantially mitigate (if not eliminate) the harms of inconsistent regulation identified herein. Investors in regulated insurance contracts registered on Form S-1 will receive prospectus disclosures that focus their attention on the material features of the products. Insurance companies will be relieved of the costs and burdens of preparing voluminous and complex company disclosures, as well as the significant unnecessary hurdles that interim financial statements and GAAP financial statements can present. Moreover, the SEC will not only be taking a major step forward in facilitating the formation of the RILU and CDA markets, it would also be largely future proofing the Form S-1 framework for other regulated insurance contracts that may be brought to market in the future.

* * *

The Committee of Annuity Insurers strongly believes that the recommendations discussed in this letter deserve a high priority in the reform initiative. The CAI appreciates the opportunity to submit this letter in response to the Chairman's and Director Moloney's statements, as well as the opportunity to participate in this transparent reform process. The CAI stands ready to assist the Commission and its staff in considering these comments and in implementing the CAI's recommendations so as to significantly improve the disclosure framework for SEC-registered insurance contracts.

Respectfully submitted,

Eversheds Sutherland (US) LLP

FOR THE COMMITTEE OF ANNUITY INSURERS

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The Honorable Mark T. Uyeda, Commissioner
Mr. James Moloney, Director, Division of Corporation Finance
Mr. Brian Daly, Director, Division of Investment Management

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS MEMBER LIST

Allianz Life Insurance Company
American Equity Investment Life Insurance Company
Ameriprise Financial
Athene USA
Augustar Life Insurance Company
Brighthouse Financial
Corebridge Financial
Equitable
Fidelity Investments Life Insurance Company
Fortitude Re
Genworth Financial
Global Atlantic Financial Group
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sammons Financial
Security Benefit Life Insurance Company
Symetra Financial
Talcott Resolution
Thrivent
TIAA
Transamerica
TruStage
USAA Life Insurance Company