

July 21, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20149-1090

Re: Concept Release on Business and Financial Disclosure
Required by Regulation S-K, File Number S7-06-16¹

Dear Mr. Fields:

We are writing on behalf of the Committee of Annuity Insurers (the “Committee”). The Committee very much appreciates the initiative taken by the Securities and Exchange Commission (“SEC” or “Commission”) to raise important questions about the appropriate scope and application of business and financial disclosure items required by Regulation S-K because it provides a timely opportunity to draw attention to the overly burdensome and unnecessary disclosure requirements for a class of insurance products that are registered as securities with the SEC on Forms S-1 or S-3.

For the reasons explained below, the Committee believes that Forms S-1 and S-3 require disclosure of certain information items about the life insurance company issuers of these insurance products that are not material or relevant to investors who purchase regulated insurance products. Disclosures in response to these information items, which were designed for investors in equity or debt securities, lengthen the prospectuses used to offer these products, operate to obscure the material information about the product itself, potentially confuse investors purchasing the products, and impose significant costs and administrative burdens on the issuing insurance companies. In fact, these costs and burdens have deterred many life insurance companies from offering products that provide attractive lifetime income solutions and retirement savings and income benefits.

The Committee, therefore, requests that the SEC consider adding instructions to Regulation S-K or publishing some other form of guidance that would excuse life insurance company issuers of these registered insurance products from requirements in Form S-1 and S-3 to disclose information that is not material to investors in these insurance products and imposes the heaviest burdens on the insurance company. Specifically, the Committee recommends the following actions:

¹ See Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 F.R. 23,916 (April 22, 2016).

- (1) Add instructions to Regulation S-K that would excuse such issuers from the requirement to disclose management's discussion and analysis, executive compensation and certain other information items designed to enable investors to evaluate the issuer's corporate governance, financial results and future prospects;
- (2) Discontinue requirements to file quarterly reports under the 1934 Act for insurance companies that are subject to reporting obligations solely because they have registered insurance products on Form S-1 or S-3 and to file unaudited interim financial statements in the prospectuses for such products;
- (3) Permit such issuers to include only the most relevant portions of the insurance company's financial statement in the product prospectus while making the full financial statements available to investors upon request and permit the use of financial statements prepared in accordance with statutory requirements.

Background

The Committee of Annuity Insurers is a coalition of 29 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over 80% of the annuity business in the United States. A list of the Committee member companies that support this letter are is attached as Appendix A.

The Committee's member companies issue several types of general account insurance products that have been registered as securities on Form S-1 or S-3.² These products include:

- market value-adjusted fixed annuity contracts and investment options (MVAs), which guarantee an interest rate for assets that remain invested for a specified period(s) and adjust proceeds payable to contract owners who make a withdrawal or surrender prior to the end of the specified period, in order to reflect changes in prevailing interest rates;
- certain index-linked annuity contracts and investment options that credit interest based on the performance of one or more referenced securities or other indices and provide some level of downside protection; and

² Additional information about the key distinguishing features of each of these types of insurance products is provided in Appendix B. MVA annuity contracts and index-linked annuity contracts can be offered on a "standalone" basis or structured as investment options in contracts that offer both general account options and variable options. Whether offered on a standalone basis or as an investment option, the contracts are registered on Form S-1 or S-3.

- living benefit guarantee contracts that insure the contract owner against outliving assets held in an associated mutual fund, brokerage or investment advisory account.³

These products are distinguishable from variable annuity or variable life insurance products both because they do not pass through to contract owners the performance of an insurance company separate account and because the contract values, benefits and guarantees provided by the contracts are paid out of assets held in the life insurance company's general account or a non-insulated separate account which is subject to the claims of the insurance company's general creditors. As a result, these insurance products are not investment company securities required to register under the Investment Company Act of 1940 ("1940 Act") and are not eligible to register under the Securities Act of 1933 ("1933 Act") on one of the specialized forms for variable insurance products.⁴ Due to the absence of a form designed to specifically accommodate these general account insurance products, the contracts must be registered under the 1933 Act on Form S-1 or S-3.

The Concept Release on Business and Financial Disclosure Required by Regulation S-K continues the SEC's Disclosure Effectiveness Initiative by requesting comment on a wide range of issues regarding Parts 1 (Business) and 3 (Financial) of Regulation S-K as well as Risk Factors (Item 503(c)) and other specific item requirements. The request for comments is designed to elicit information that will enable the SEC to determine whether the disclosure requirements continue to be necessary and how best to present information to improve its usefulness to investors. While the Concept Release focuses principally on disclosure in periodic reports required by the Securities Exchange Act of 1934 ("1934 Act" or "Exchange Act"), Regulation S-K also forms the building blocks for disclosure required in Forms S-1 and S-3. Furthermore, a stated purpose of the Concept Release is to elicit information by which the SEC can assess whether specific disclosure requirements are important or useful to making investment decisions and whether the current requirements appropriately balance the costs of disclosure with the benefits. Consequently, the Committee believes that responding to the SEC's request for comment on the Concept Release is an appropriate vehicle for sharing its members' views and concerns regarding the scope and application of Regulation S-K items required to be included in prospectuses for securities registered on Forms S-1 and S-3, as well as in reports filed under the 1934 Act.

Life insurance companies that register their products on Forms S-1 or S-3 deliver disclosure to investors who purchase the products in one of several contexts. Many life

³ These living benefit guarantees are sometimes referred to as "contingent deferred annuities" or "CDAs."

⁴ Variable annuity contracts register on Form N-4; variable life insurance policies register on Form N-6. A third form, Form N-3 for variable annuity contracts funded by separate accounts registered as management investment companies, is no longer used widely.

insurance companies that register their products on Form S-1 take advantage of an exemption under the 1934 Act from the requirement to file periodic reports and disclose all information required by Form S-1 in their product prospectuses. Other life insurance companies disclose company-related information in 1934 Act reports and incorporate that information by reference into the product prospectus. The Committee believes that the disclosure relief it is requesting should apply to all life insurance companies with products registered on Forms S-1 or S-3, including those subject to 1934 reporting obligations solely because they have registered insurance products,⁵ and relieve these companies from these irrelevant and unnecessary disclosure requirements whether the information would appear in the product prospectus or in a 1934 Act report.

I. The Committee requests that the SEC add instructions to Form S-K or provide some other form of guidance that would exempt insurance products registered on Form S-1 and S-3 from requirements to disclose information that is not material to investors who purchase the products.

Among the issues identified in the Concept Release for comment is eligibility for scaled disclosure requirements. The discussion in the Concept Release refers to reduced disclosure requirements that originally provided relief to certain smaller registrants to facilitate their access to the capital markets.⁶ The SEC now seeks comments on whether additional classes of registrants should be eligible for scaling. The Committee believes that scaled disclosure requirements would be appropriate for life insurance companies that issue regulated insurance products registered on Forms S-1 and S-3. Much of the information now required to be disclosed in Forms S-1 and S-3 is not material to investors who purchase general account insurance products and imposes unwarranted burdens on such securities offerings.

In fact, the SEC has already exempted such general account insurance products from certain otherwise generally applicable disclosure requirements imposed by the federal securities laws. Specifically, in 2009, the SEC adopted Rule 12h-7 under the 1934 Act, which exempt insurance companies from 1934 Act's periodic reporting requirements with respect to insurance products that are registered under the 1933 Act, provided certain conditions are satisfied.⁷ The

⁵ Insurance companies required to file periodic reports under the 1934 Act because they have outstanding equity or debt securities would not be relieved from these requirements.

⁶ See Concept Release on Business and Financial Disclosure Required by Regulation S-K, 81 F.R. 23916 at pages 23,985-23,986.

⁷ 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). The exemption requires that both the insurance company and the security it issues be subject to state insurance regulation; that the insurance company file an annual statement of its financial condition with its 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

SEC adopted the rule because state insurance regulation, like Exchange Act reporting, relates to an entity's financial condition. Exchange Act reporting enables investors independently to evaluate an issuer's income, assets and balance sheet. State insurance regulation takes a different approach, instead relying on regulators to supervise the insurer's financial condition - in the form of required capital levels, restrictions on investments and valuation requirements - with the goal that the company be financially able to meet its insurance contract obligations. Because of these protections, the SEC determined that exempting insurers from Exchange Act reporting with respect to state-regulated insurance contracts was consistent with the federal system of regulation, which generally has allocated oversight of insurance company solvency to state regulators.⁸

Life insurance companies are subject to extensive state regulation that is designed to ensure the company is able to meet its obligations to its contracts owners. Companies must obtain a state license authorizing them to issue insurance 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 the company values its investments. These requirements limit the financial risk the company may assume. In addition, the company must file with state regulators an annual report on its financial condition and is subject to periodic examination by its principal state regulator to verify the reported information. In the event an insurance 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, to oversee its liquidation in a manner that prioritizes meeting the company's obligations to its contract owners.⁹

State regulators also impose requirements on the insurance products that life insurance companies may offer. Companies generally must obtain approvals of new annuity or life insurance policy forms in each state where it plans to offer the products. This state regulatory review and the applicable state insurance laws and regulations set forth required policy form provisions, contain nonforfeiture requirements prescribing either minimum amounts payable or maximum charges that can be assessed if the contract is fully surrendered, prescribe the methodologies that the company must use to compute the reserves it holds to back up its insurance contract liabilities, and generally require actuarial assessments regarding the adequacy

trading market in the security does not develop; and that contract prospectus disclose the insurance company is relying on the exemption.

⁸ Id., at page 3155.

⁹ In the event of the liquidation of an insurance company, state law assigns policyholder claims one of the highest priorities. Generally, policyholder claims are subordinate only to approved expenses of administering the liquidation and reasonable guaranty association expenses. The claims of all other creditors of the insurance company have lower priority. See Section 801 of the Insurance Receivership Model Act (Model 555).

of reserves backing up the policy guarantees and benefits.¹⁰ Together with the solvency regulation of life insurance companies, the state insurance product requirements are designed to ensure that insurance companies meet their obligations to their contract owners.¹¹ This robust state regulatory framework obviates the need for individual contract owners to make their own assessment of the company's management and business operations based on the SEC's generally applicable public company-related disclosure requirements.

In the context of Rule 12h-7 under the Exchange Act, the SEC determined that periodic reporting is not necessary for life insurance companies whose only SEC-registered securities are state regulated insurance contracts because the solvency of such insurance companies issuing those contracts is subject to regulation and supervision by a state agency. For similar reasons, the Committee believes that certain information now required to be disclosed by Forms S-1 and S-3 is not material or relevant to an investor's decision to purchase the general account insurance product and should not be required in the contract prospectus. Forms S-1 and S-3 were designed to elicit information relevant to investment in equity or debt securities whose future value depends on the skill and strategic vision of the company's management. In contrast, information about a life insurance company and its management would be material to an investor in a state-regulated insurance product only to the extent it would provide material comfort to the investor that the insurance company can meet its contractual obligations. However, much of the disclosure required in Forms S-1 and S-3, including narrative descriptions of the company's operations and financial results, the identity and business experience of the company's directors and principal officers and extensive detail about the company's compensation structure, fails this materiality standard.

Among the disclosure items that members of the Committee believe are unnecessary for investors in general account insurance products registered on Forms S-1 or S-3 are several of the items in Regulation S-K on which the Concept Release specifically requests comment. These include: Select Financial Data (Item 301), Supplementary Financial Information (Item 302), Management Discussion and Analysis (Item 303) and Quantitative and Qualitative Disclosure about Market Risk (Item 305). Information elicited by all these items is designed to enable investors to evaluate the issuer's operations, financial results and prospects for the future. Among these Items, Management Discussion and Analysis is the most time-consuming and costly to prepare. The information is intended to provide a narrative explanation of the issuer's

¹⁰ The NAIC Model Standard Valuation Law (Model 820) requires that every life insurer doing business in the state annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the insurance commissioner are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of the state. The NAIC Model Actuarial Opinion and Memorandum Regulation (Model 822) sets forth the detailed requirements for such an actuarial opinion.

¹¹ State guarantee funds provide further protection in the event that an insolvent insurance company is unable fully to meet its obligations to contract owners.

financial statements that enables investors to look at the issuer through its management's eyes, to provide context for analyzing the financial statements and to enable investors to ascertain how indicative the issuer's past performance is of its future prospects. Among the information required is management's analysis of the expected effects of known material trends and uncertainties and the reasons underlying management's expectations, which often requires forward looking information about events and developments to take place in the future. While management's analysis of its financial results and future prospects provides valuable information to investors in a company's equity securities, it is not material to the assessment by an investor in state-regulated insurance product as to whether the issuing insurance company can meet its contractual obligations.

Other disclosure Items in Regulation S-K that the Committee believes should not be required in the prospectus for insurance contracts include Executive Compensation (Item 402), Officers and Directors (Item 401), Security Ownership by Certain Beneficial Owners and Management (Item 403), Transactions with Related Persons (Item 404) and Corporate Governance (Item 407). Of these Items, Executive Compensation disclosure is the most burdensome to prepare. This item requires extensive information about all compensation paid by the issuer to its executive officers and directors and an in-depth analysis of all material elements of the issuer's compensation programs. In 2015, a requirement to disclose the ratio of the annual total compensation of the issuer's principal executive officer ("PEO") to the median annual total compensation of all its employees, except the PEO was added to the item. The new requirement will require issuers to calculate the total compensation (including benefits) paid to every employee.¹² Executive Compensation disclosure typically runs 12 pages or more. Such detailed information about the insurance company's executive compensation structure is not relevant to an investor who purchases a state-regulated insurance product because it does not enhance the investors understanding of the insurance product or the risks associated with the insurance company's ability to fulfill its contractual obligations. Nor do investors in registered insurance products have any voting rights with respect to the issuer to which such disclosure would relate.

Meanwhile, these disclosure requirements impose unwarranted costs and administrative burdens on insurance companies that must register their insurance contracts on Forms S-1 and S-3. Preparing the disclosure required by Management Discussion and Analysis (Item 303) and Executive Compensation (Item 402) is particularly burdensome. The Committee, therefore, requests that the SEC recognize that insurance companies' cost to prepare the disclosure clearly outweighs any possible benefits the disclosure provides to investors who purchase the insurance contracts and to take action – either by adding instructions to Form S-K or by providing some other formal guidance – to exempt the class of issuers that are eligible to take advantage of Rule 12h-7, whether they do or do not, from these disclosure requirements.

¹² The comparative compensation disclosure requirement is scheduled to become effective in 2017.

II. Interim financial statements required by Rule 3-12 of Regulation S-X do not provide meaningful information to investors who purchase regulated insurance products, and the Committee encourages the SEC to discontinue the requirement for general account insurance products registered on Forms S-1 or S-3.

The Concept Release also requests comment on the continued need for quarterly reporting under the Exchange Act. Noting broad disagreement about the value of quarterly reporting, the Concept Release specifically questions whether such frequent reporting benefits investors, registrants and the markets and whether the reporting requirements should be different for different types of issuers.

The Committee believes that filing quarterly reports under the 1934 Act is not necessary for insurance companies that are subject to 1934 Act reporting obligations solely because they have general account insurance products registered as securities on Forms S-1 or S-3.¹³ Similarly, the Committee believes it should not be necessary for such companies to include unaudited interim financial statements in the prospectuses for these products. Quarterly reporting is intended to reflect seasonal patterns and other variations in corporate activities during the fiscal year by disclosing financial results over segments of time that are sufficiently short to reveal business turning points. The life insurance business usually is not subject to such short term changes that make such disclosure meaningful. This view is already reflected in SEC Forms N-4 and N-6, used by Committee members to register their variable insurance products, which except in rare situations,¹⁴ require the insurance company to make available to variable contract owners only its audited annual financial statements. In contrast, insurance companies offering general account insurance products registered on Form S-1 or S-3 must include or incorporate by reference quarterly financial statements for all 1933 Act initial registration statements and post-effective amendments filings at any time during the year except during a short window between March and May after the audited annual financial statements become available. The cost associated with preparing these interim financial statements operates to discourage many insurance companies from entering the market and, for those companies that offer products registered on Form S-1, effectively limit their introduction of new contracts or new contract features to the few months when interim financial statements are not required.

¹³ Insurance companies required to file periodic reports under the 1934 Act because they have outstanding equity or debt securities would not be relieved from these requirements.

¹⁴ Forms N-4 (variable annuity contracts) and N-6 (variable life insurance policies) require interim financial information from insurance companies when the balance sheet shows a combined capital surplus of less than \$1 million or when financial statements have not previously been included in an effective registration statement of a separate account that funds a variable insurance product.

III. The Committee also encourages the SEC to move the insurance company financial statements out of the insurance product prospectus and to permit the use of financial statements prepared in accordance with statutory requirements.

The Committee also notes for the SEC's consideration two additional aspects of the treatment of insurance company financial statements in 1940 Act Forms N-4 and N-6 that it believes are appropriate for insurance products registered on Forms S-1 and S-3.

First, Forms N-4 and N-6 require only that comparative balance sheets of the insurance company for the most recent two fiscal years, which provides investors with significant information about the insurance company's financial condition, be included in the Statement of Information ("SAI"), which is not delivered to contract owners, but made available to them on request free of charge.¹⁵ Other financial statements of the insurance company may be included in Part C of the registration statement rather than the SAI, and likewise are made available to investors upon request, free of charge. The SEC should permit insurance companies that register general account insurance products on Forms S-1 and S-3 to take a similar approach by limiting the financial information that must be included in the prospectus, moving most of the audited annual financial statements to Part II of the registration statement and making them available to investors upon request. This approach would continue to provide adequate information about the company's financial condition in the prospectus and would significantly reduce the size of the prospectus that the insurance company delivers to its contract owners, thereby providing investors with prospectuses that set forth the information most relevant and material to their investment decision. Such a layered approach to disclosing the insurance company's financial information would also be consistent with the Commission's goal of emphasizing the most important information, while making more detailed information available to investors who request it.

Second, both Forms N-4 and N-6 provide that if the life insurance company issuing the variable contract would not have to prepare financial statements in accordance with generally accepted accounting principles ("GAAP"), except for use in a registration statement filed on Form N-3, N-4 or N-6, the company may file financial statements prepared in accordance with statutory ("STAT") requirements. This exception from the requirement to file GAAP financial statements, which is designed to alleviate the cost and administrative burden on life insurance companies that do not otherwise produce GAAP financial statements, recognizes that statutory financial statements may adequately inform insurance contract owners about the financial condition of the issuing insurance company. Arguably, STAT financial statements, which focus on insurer solvency, provide information that is even more relevant to insurance contract owners than GAAP financial statements. In contrast to GAAP financial statements, which focus on measurements that are of primary importance to equity investors, such as earnings trends from

¹⁵ Registration Form for Insurance Company Separate Accounts that Offer Variable Life Insurance Policies, Securities Act Release No. 8088, Investment Company Act Release No. 25522 (adopted Apr. 12, 2002).

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period to period, STAT financial statements focus on measures that relate to the insurer's claims paying ability, including the insurer's regulatory assets, liabilities, capital and surplus. The requirement to include GAAP financial statements in Form S-1 and S-3 filings imposes a very 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 has been a major impediment to many life insurance companies' entry into the registered general account insurance product marketplace and has likely served to limit the choices among this suite of products for investors. For these reasons, Committee members strongly believe that STAT financial statements should be permitted in Form S-1 and Form S-3 registration statement for general account insurance products.

The members of the Committee very much appreciate your consideration of the views expressed above. The Committee stands ready to provide any additional information that would be helpful at this juncture and to assist the staff in any way that would facilitate the changes that would improve the effectiveness of the current 1933 and 1934 Act disclosure framework as it applies to registered general account insurance products. Please do not hesitate to contact the undersigned at [REDACTED] or by e-mail at [REDACTED]

Respectfully submitted,



Stephen E. Roth

Counsel to the Committee of Annuity Insurers

cc: William J. Kotapish, Securities and Exchange Commission
Barry D. Miller, Securities and Exchange Commission

Appendix A

**THE COMMITTEE OF ANNUITY INSURERS
MEMBER LIST
July 2016**

AIG Life & Retirement
Allianz Life Insurance Company
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Symetra Financial
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.

Appendix B

General account insurance products registered with the SEC on Forms S-1 and S-3

Market value adjusted (MVA) fixed annuity contracts

Like other annuity contracts, MVA contracts provide guaranteed annuity income options and may provide some form of a death benefit. During the contract's accumulation period, these contracts typically offer a number of interest rate options for different guarantee periods. If the owner of an MVA contract surrenders the contract or withdraws amounts before the end of a guaranteed period, the MVA feature typically adjusts proceeds payable in response to changes in prevailing market interest rates. Proceeds payable to the contract owner increase when those interest rates have declined and decrease when the interest rates have risen. The MVA feature enables the insurance company to offer higher guaranteed interest rates by shifting to the contract owner the interest rate risk associated with having to prematurely liquidate the assets that the insurance company holds to fund the guaranteed interest rates.

Index-linked annuity contracts

Like other annuity contracts, index-linked annuity contracts provide guaranteed annuity income options and may pay a death benefit. During the accumulation period, these contracts credit interest based on a formula that references the performance of one or more securities or other indices. Often the formulas used to calculate the interest are subject to prescribed caps on performance gains and buffers from, or floors on, performance losses. If the contract owner surrenders the contract before the end of the specified period, the proceeds payable to the contract owner are adjusted up or down to reflect whether the referenced index has gained or lost value since the beginning of the specified period, subject to prescribed caps and buffers/floors. Like the MVA feature of a fixed annuity, these index-linked contracts enable the insurance company to offer contract owners the potential for higher contract values over the periods specified in the annuity contract by shifting certain market risks to the contract owners.

Minimum lifetime withdrawal benefit guarantees

Some life insurance companies offer standalone contracts that guarantee the contract owner will receive minimum lifetime payments on that investor's assets held in an associated mutual fund(s), brokerage or investment advisory account without regard to the investment performance of the assets as long as the specified conditions of the guarantee are satisfied. Minimum lifetime payments are determined by reference to the performance of the assets held in the associated account during the accumulation period of the contract. At the end of the accumulation period, payments are guaranteed for contract owner's lifetime so long as the contract owner does not take withdrawals from the associated account in excess of the annual minimum lifetime payment. Any such excess withdrawal typically results in a proportional reduction in the contract owner's annual minimum lifetime payment. The Contract owner's withdrawals are deducted from assets held in the associated account. If the withdrawals combined with poor investment performance

deplete the assets held in associated account and the contract owner has satisfied the conditions of the guarantee, the life insurance company will continue to make the minimum payments to the contract owner out of its general account assets. These contracts are designed to insure the contract owner against outliving the assets held in the associated account. The lifetime guarantees provided by these contracts are similar to living benefit guarantees that are frequently offered as optional benefits in variable annuity contracts.