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July 28, 2009

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-09-09
Custody of Funds or Securities of Clients by Investment Advisers

Dear Ms. Murphy:

This letter is submitted on behalf of the Committee of Annuity Insurers (the "Committee")[1] in response to the publication of *Custody of Funds or Securities of Clients by Investment Advisers* (the "Proposing Release"), issued by the U.S. Securities and Exchange Commission (the "SEC").[2] The Proposing Release requests comment on proposals to Rule 206(4)-2 (the "Custody Rule") and related forms and rules (the "Proposals") under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). The Committee appreciates the opportunity to comment on the Proposals.

Among other things, the Proposals would amend the Custody Rule to require:

- Mandatory annual surprise examinations by an independent public accountant for advisers with legal custody of client funds or securities;
- A written internal control report (*e.g.*, a Type II SAS 70 Report) from an independent public accountant registered with, and subject to oversight by, the Public Company Account Oversight Board for advisers that maintain, or have a "related person" maintain, custody of client funds or securities;
- Enhanced account statement delivery and notice requirements; and
- Additional disclosure of custody practices on Form ADV, Part IA.

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[1] The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of Committee members is attached at Appendix A.
[2] The Proposing Release was published in Investment Advisers Act Release No. IA-2876 (May 27, 2009).
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As discussed in more detail below, some of the Proposals are incompatible with the structure of the investment advice provided to contract owners ("Contract Owners") of registered variable annuities through asset allocation programs ("Programs"). The Committee believes that application of the Proposals to investment advisers that manage or provide investment advice with respect to Program assets ("Program Advisers") is unnecessary and impractical.

This letter first describes the unique structure underlying registered variable annuity contracts ("VA Contracts") and the Programs, which the Proposals do not appear to contemplate. Second, it discusses the extensive state and federal regulatory framework that has been constructed to protect the assets managed by Program Advisers. Finally, it explains why the Proposals should not apply to Program Advisers.

I. The Unique Structure Underlying Programs

Deferred annuities are contracts between an insurance company and Contract Owners under which the insurance company promises to make payments to the Contract Owners for a specified period beginning in the future, in exchange for one or more purchase payments. In the case of VA Contracts, Contract Owners' purchase payments generally are invested in one or more investment options underlying a separate account of the insurance company that is registered under the Investment Company Act of 1940, as amended (the "Company Act") ("separate account").[3] Contract Owners may apply the value of their payments to the various investment options available in the separate account according to their desired allocation. The investment options underlying VA Contracts typically consist of shares of open-end management investment companies that are themselves registered with the Commission under the Company Act. Pursuant to the VA Contracts, Contract Owners can change their investment allocations among the investment options (on a tax free basis), subject to certain limitations.[4]

Unlike other types of investment products, the assets in VA Contracts, and any resulting appreciation, are legally owned by the insurance company and not Contract Owners. The only asset legally held by Contract Owners with respect to VA Contracts is the contract itself (*i.e.*, the written agreement made by the insurance company to make payments to the Contract Owners in accordance with the terms of the contract), which typically is kept by Contract Owners in their possession. Accordingly, unlike a typical investment adviser relationship in which funds or securities owned by clients are managed or advised on by investment advisers, the funds managed or advised on by Program Advisers are <u>not</u> legally owned by Contract Owners (but by the insurance company).

Upon issuing a VA Contract, an insurance company generally is required under state insurance law to send the VA Contract to the Contract Owner. Thus, the Contract Owner, rather

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[3] Absent an exemption (*e.g.*, for qualified retirement plans) each separate account is registered with the SEC under the Company Act as a unit investment trust and, for accounting and regulatory purposes, the separate account designates a "subaccount" for each investment option.

[4] These Programs also are used with variable life insurance policies.

than the Program Adviser or insurance company, maintains custody of the VA Contract.[5] State insurance "free look rights" (which give the Contract Owner a limited period of time in which to return the VA Contract for a full refund) generally are triggered by delivery of the VA Contract to the Contract Owner.

The assets supporting VA Contracts are held in insurance company separate accounts. The assets in these separate accounts, while owned by the insurance company under state insurance law, are legally segregated from the insurance company's other assets, and are insulated from the claims of the insurer's general creditors. Since the investment experience of the separate account assets determines the VA Contract benefits, the SEC treats each separate account as a distinct investment company that (unless an exemption is available) must register as an investment company under the Company Act.[6] The insurance company is treated as the sponsor or "depositor" of the separate account investment company.[7] The insurance company is the owner of the underlying insurance fund shares held in the separate account (in uncertificated or "book entry" form). The performance of the insurance funds directly affects the cash value of the VA Contracts.

Programs. In the last 15 to 20 years, Contract Owners have increasingly hired Program Advisers registered under the Advisers Act to provide professional asset allocation advice concerning the allocation of their purchase payments among the various investment options that are offered within VA Contracts. The Program Advisers help Contract Owners effectively allocate the payments paid into their VA Contracts and resulting cash values among the

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[5] In discussing a variable annuity asset allocation program substantially similar to the Programs described in this letter, the SEC staff has stated that "Under the Custody Rule, [VA Contract] Payment Arrangements would vest an investment adviser with custody of its clients' funds and securities. You are concerned that the Custody Rule would require an independent third-party custodian to maintain custody of ***the Contract Owner's funds and securities (i.e., the variable annuity contract)*** . . . ." (Emphasis added.) (*See* American Skandia Life Assurance Corp., SEC No-Action Letter (May 16, 2005). As noted, under state insurance law, Contract Owners generally must be provided the VA Contract.

[6] *See Prudential Ins. Co. v. S.E.C.*, 326 F.2d 383 (3d Cir. 1964); 15 U.S.C. § 80a-2(a)(37) (2009) (defining separate account under the Company Act); *see also* 17 C.F.R. §§ 270.0-1(e), .6e-2(a), .6e-3T(a) (2009). *See generally* Tamar Frankel, *Variable Annuities, Variable Insurance and Separate Accounts*, 51 B.U.L. REV. 177 (1971).

[7] Separate accounts funding variable contracts can be structured in one of two ways. The separate account can invest directly in a portfolio of securities or other investments. This type of separate account, which was the predominant structure during the early years of variable contracts, is typically called a "managed account" because it is classified as an open-end management company under the Company Act. Under the managed account structure, the active management of the investment portfolio occurs at the separate account level, like other open-end management companies (*e.g.*, mutual funds).

The second type of separate account structure involves two tiers. Instead of the separate account investing directly in securities or other investments, it is not actively managed, and simply invests in the securities of other specified investment companies whose portfolios, in turn, may be actively managed. This type of separate account is classified as a unit investment trust ("trust account") under the Company Act. The underlying investment company is typically a mutual fund ("insurance fund"). Most VA Contracts on the market today are offered through this two-tier structure involving a trust account and insurance fund. Accordingly, this letter addresses separate accounts structured as trust accounts.

investment options in a manner that is consistent with Contract Owners' risk tolerance, investment objectives and time horizon.[8] VA Contracts frequently offer dozens of underlying insurance funds, from a number of different mutual fund families, as investment options. The choice of investment options plays a key role in determining the cash value of VA Contracts, and thus the amount of payments that ultimately may be paid to investors under the VA Contracts.

Through administrative systems, insurance companies maintain records concerning Contract Owner purchases of VA Contracts. Such systems typically record, among other things, the timing and amount of purchase payments and withdrawals, Contract Owner allocations, cash values, and death benefit values and designate for each Contract Owner an "account" in the Contract Owner's name. Each transaction associated with a VA Contract is entered or fed through a systematic feed and updates a variety of supporting tables that record VA Contract values (such as cash value or death benefit value) and client data at the contract level. Contract data includes owner/annuitant name, social security number, date of birth, owner type and addresses.

Contract Owners (*i.e.*, Program Advisers' clients) may permit their Program Advisers to deduct their advisory fees directly from the separate account that supports the VA Contracts by periodically directing the insurance company to redeem units of the separate account equal in value to the advisory fees owed to the Program Advisers ("VA Payment Arrangements"). In such arrangements, Contract Owners authorize (in writing) Program Advisers to submit redemption requests to the insurance company. While the logistics by which advisory fees are deducted from separate account assets varies across companies, upon receiving requests (typically quarterly) from Program Advisers to deduct their advisory fees, the insurance companies redeem the appropriate number of units of the separate account to pay such fees.

An insurance company generally is required to send confirmation statements to Contract Owners describing each such redemption. In addition, the insurance company typically sends Contract Owners quarterly account statements that identify the funds and securities in their accounts at the end of the period and all transactions in the account during that period, including payments of any advisory fees to Program Advisers. These statements permit Contract Owners to monitor the amount of payments to their Program Advisers and the allocation of their purchase payments and cash values in the separate account. Accordingly, these statements allow Contract Owners that have authorized VA Payment Arrangements to determine if their Program Advisers have appropriately charged for their advisory services.

II. Extensive Regulation of Separate Account Assets Under State and Federal Law

Insurance company separate account assets are subject to extensive regulation under state insurance law and the federal securities laws, including: (i) segregation, examination and reporting requirements under state insurance law; (ii) reporting, internal control and examination

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[8] Program Advisers may also provide advice concerning the allocation of Contract Owners' overall investment portfolio among VA Contracts and other investment vehicles.

requirements under the federal securities laws; and (iii) enhanced audit requirements under the Sarbanes-Oxley Act of 2002, as amended ("Sarbanes-Oxley").

A. State Insurance Regulation of Separate Accounts

Each state has adopted an extensive legal framework governing insurance company separate accounts. The Contract Owner protections afforded by state insurance law include, among other things, separate account segregation and reporting requirements. As noted above, assets in the separate account are the exclusive property of the insurer under state insurance law and such assets are segregated from other assets of the insurer. Accordingly, separate account assets are not subject to the claims of general creditors of the insurance company. State insurance regulatory authorities are charged with overseeing insurance companies domiciled or operating in their state and regularly examine the operations and books and records of insurance company separate accounts to ensure they are in compliance with applicable state insurance law.

Life insurance companies file an annual statement with their domiciliary state, each state where they are authorized to transact insurance and the National Association of Insurance Commissioners. Such companies also file quarterly statements. The annual statement (called a "Blue Book") is prepared on a statutory accounting basis and contains a balance sheet, summary of operations, cash flow statement, analysis of operations by line of business, and numerous schedules, exhibits, responses to interrogatories and notes to financial statements. Where a life insurance company also issues VA Contracts, it also prepares an annual "Green Book" which reports the financial condition of its separate accounts. The Green Book is consolidated into the Blue Book and filed with and reviewed by state insurance regulators.

B. Regulation of Separate Accounts Under the Federal Securities Laws

Financial Statement and Reporting Obligations. In addition to regulation under state insurance law, registered separate account assets are subject to extensive regulation under the federal securities laws. They are registered with and subject to regulation under the Company Act and must regularly update their registration statements, including the prospectus, financial statements, relevant agreements and other exhibits required by Form N-4. In addition, as registered investment companies, separate accounts must submit annual reports to the SEC on Form N-SAR[9] and Contract Owners must be provided with semi-annual shareholder reports.[10] Similarly, Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act") requires VA Contract issuers (and underlying insurance funds) to maintain current prospectuses and registration statements. Registered separate accounts must therefore update their registration statements at least once a year by filing a post-effective amendment and must submit audited

[9] *See* 17 C.F.R. § 270.30a-1 (2009) (requiring annual reports by unit investment trusts).

[10] *See* 17 C.F.R. § 270.30e-2 (2009); *see also* 17 C.F.R. § 270.30b2-1 (2009) (requiring that shareholder and other reports containing financial statements be filed with the SEC).

financial statements with these updates.[11] They also must amend their prospectuses in response to events that are material to Contract Owners.

A VA Contract separate account is registered under the Company Act via Form N-4. Item 23 of Form N-4 mandates that financial statements for the separate account be filed, including: (i) an audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year; (ii) an audited statement of operations of the most recent fiscal year conforming to the requirements of Rule 6-07 of Regulation S-X; (iii) an audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles; and (iv) audited statements of changes in net assets conforming to the requirements of Rule 6-09 of Regulation S-X. Generally, SEC regulations require that all separate account financial statements submitted in connection with the filing of an N-4 be prepared in accordance with generally accepted accounting principals ("GAAP"). In addition, registration statements for VA Contracts must include year-end U.S. audited financial statements for the depositor insurance company. Under certain conditions, interim financial statements for both the insurance company and the separate account may be required.

Independent Audits. Independent auditors must provide their consent to include their audit opinion on audited financial statements in Form N-4 filings. Providing an opinion on the financial statements involves, among other things: a review of the records of the separate account related to transactions (*e.g.*, purchases and redemptions); testing concerning the recording of transactions and the development of the financial statements; verification of the asset levels held by separate accounts; review of the controls in place for calculating and determining accumulation unit and annuity unit values; review of legal letters; obtaining management representation letters; management inquiries and review of the prospectus offering document. Such audits are conducted pursuant to and in accordance with the requirements of Regulation S-X.[12] In addition, officers of the insurance company must sign the registration statements and therefore may be liable for any material misstatements or omissions therein.

Anti-Fraud Provisions. The anti-fraud provisions of the Securities Act and the Securities Exchange Act of 1934, as amended ("Exchange Act"), impose liability in connection with a separate account registration statement. Section 11 of the Securities Act imposes liability on any issuer (the separate account), any director or officer of the issuer who signs the registration statement, or underwriter for the security covered by the registration statement, for any material misstatement or omission in the registration statement as of the effective date. Section 12(a)(2) of the Securities Act imposes liability on any person who offers or sells a security by means of a prospectus that includes a material misstatement or omission. Section 17(a) of the Securities Act and Rule 10b-5 under the Exchange Act are anti-fraud provisions prohibiting a person from

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[11] In some cases, where the VA Contracts are no longer being sold, these annual updates are no longer filed with the SEC; however, the audited financial statements of the separate account are still sent to Contract Owners every year. *See* Great West Life & Annuity Ins. Co., SEC No-Action Letter (Oct. 23, 1990).

[12] Form N-4 requires registrants to provide the name and address of their independent accountant.

offering or selling a security by means of a material misstatement or omission.[13] Together, these provisions effectively require a registration statement to be free of any material misstatements or omissions.

Rule 38a-1. Rule 38a-1 under the Company Act requires every separate account to adopt and implement comprehensive written compliance policies and procedures reasonably designed to prevent violations of the federal securities laws. The separate account must designate a chief compliance officer to administer its policies and procedures. Moreover, the insurance company depositor or principal underwriter must also: (i) approve the policies and procedures; (ii) approve the chief compliance officer; and (iii) annually review the policies and procedures for their adequacy and the effectiveness of their implementation. Together, these requirements are designed to ensure compliance with the federal securities, including requirements relating to the custody of separate account assets.

Sarbanes-Oxley. Sarbanes-Oxley imposes a number of audit and other requirements on separate accounts, since such accounts are considered "issuers" under Sarbanes-Oxley and "audit clients" under Regulation S-X. Accordingly, provisions related to criminal and civil prohibitions on the receipt of certain non-audit services,[14] audit partner rotation requirements,[15] prohibitions on improper influence in the conduct of audits,[16] attorney conduct rules,[17] enhanced SEC review requirements for periodic disclosures made by issuers,[18] criminal penalties for altering documents,[19] criminal and civil protections for whistleblowers,[20] and criminal penalties for securities fraud,[21] all apply to separate accounts. These requirements further assure the safety and soundness of assets maintained in an insurance company's separate account.

III. **It is Unnecessary to Apply All of the Proposals to Program Advisers**

The Proposals would require investment advisers to change their custodial practices with respect to client funds and securities (together "client assets"). For instance, the Proposals would require all registered investment advisers with legal custody of client assets to engage an independent public accountant to conduct an annual surprise examination of client assets (the "surprise examination requirement"). Since the Custody Rule defines "custody" to include any registered adviser with authority or permission to withdraw client funds or securities maintained with a custodian upon instruction to the custodian, all Program Advisers with the ability to obtain

[13] Violations of these provisions may be asserted by the SEC or private litigants.
[14] *See* Sarbanes-Oxley §§ 201 (civil), 208(b) (criminal) (2002).
[15] *See* Sarbanes-Oxley § 203 (2002).
[16] *See* Sarbanes-Oxley § 303 (2002).
[17] *See* Sarbanes-Oxley § 307 (2002).
[18] *See* Sarbanes-Oxley § 408 (2002).
[19] *See* Sarbanes-Oxley § 802 (2002).
[20] *See* Sarbanes-Oxley §§ 806 (civil), 1107 (criminal) (2002).
[21] *See* Sarbanes-Oxley § 807 (2002).

their advisory fees upon instruction to the insurance company would be subject to the annual surprise examination requirement.[22]

The Proposals also would provide that an adviser has custody of client assets that are directly or indirectly held by a "related person" in connection with advisory services provided by the adviser.[23] Investment advisers that maintain, or use a related person to maintain, custody of client assets would be required to obtain an "internal control report" that includes an opinion with respect to the adviser's or related person's controls relating to custody of client assets from an independent public accountant registered with and subject to regular inspection by the Public Company Accounting Oversight Board ("PCAOB") (the "internal control report requirement," together with the surprise examination requirement, the "Proposed Controls"). The internal control report would have to contain, among other things, a description of the relevant controls, the control objectives, the independent public accountant's tests of operating effectiveness that were performed and the results of those tests. The adviser would have to maintain the report in its records and make it available to the SEC staff upon request. Moreover, the Proposed Controls would require investment advisers that maintain, or use a related person to maintain, custody of client assets to obtain its yearly surprise examination from an independent public accountant registered with and subject to regular inspection by the PCAOB.

The Committee submits that in the context of Programs, the investment advisory client does not have "funds or securities" of the type that should be subject to the Proposed Controls. The client of a Program Adviser is the Contract Owner. However, the Contract Owner does not hold legal title to the separate account assets since they are the legal property of the insurance company. A Contract Owner's only asset with respect to a VA Contract is the contract itself. As noted above, insurance companies generally are required under state insurance law to provide the VA Contract to the Contract Owner. The Committee strongly believes that Contract Owners are more than adequately protected by the provisions under (1) state insurance law, (2) the Company Act, (3) the Securities Act, (4) the Exchange Act and (5) the Sarbanes-Oxley Act that, together, provide extensive protection of the assets of the separate account. Collectively, these statutes and the regulations thereunder provide a level of transparency, oversight, independent checks and balances, internal controls, and reporting that is beyond that which would be achieved by the Proposed Controls. Given the requirements and restrictions imposed by the foregoing statutes, the Committee believes that a Program Adviser that is permitted to deduct investment advisory fees is not in a position to misappropriate or misuse client assets. The foregoing statutes and the regulations thereunder make it unnecessary to apply the Proposed Controls to Programs. The Committee strongly believes that the Proposed Controls would simply duplicate requirements

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[22] *See* American Skandia Life Assurance Corp., SEC No-Action Letter, (May 16, 2005) (stating "You acknowledge that the investment advisers that enter into [VA Payment Arrangements] would be deemed to have custody of the Contract Owners' funds and securities under the Custody Rule because the advisers automatically may deduct their advisory fees by redeeming the . . . units of American Skandia's separate account that supports the Contract Owner's variable annuity contract.")

[23] The Proposals would define a "related person" as a person directly or indirectly controlling, controlled by or under common control with an adviser, and would adopt the definition of "control" in the Glossary of Form ADV.

already imposed on insurance company separate accounts and would not enhance investor protection.

The SEC itself has recognized the unique structure and regulatory oversight of VA Contracts in the past and concluded they provide sufficient protection to VA Contract Owners. In proposing rule 26a-2 under the Company Act, the SEC stated:

> [T]he SEC has approved applications for exemptions from sections 26(a)(1) and 26(a)(2)(D) (and section 27(c)(2)) of the Company Act to permit a separate account's sponsoring insurance company to hold the account's assets and to hold those assets in a safekeeping and not in trust *because the [SEC] believes that state insurance laws governing the safekeeping of insurance company assets generally are adequate to ensure the preservation of a separate account's assets*. . . Finally, the [SEC] has issued orders granting exemptive relief from section 26(a)(2)(D) (and section 27(c)(2)) to permit trust accounts to hold the shares of their underlying portfolio companies in uncertificated form because this procedure also does not raise the types of problems with which Congress was concerned in enacting section 26(a). (Emphasis added.)[24]

More recently, the SEC proposed amendments to Form ADV. In discussing Proposed Item 18 of Part 2A of Form ADV, which would require disclosure of certain financial information about an investment adviser to clients, the SEC wrote:

> Moreover, we now propose to exclude advisers from the balance sheet requirement if they require prepaid fees but are qualified custodians or insurance companies. These firms are subject to capital and regulatory requirements, designed to guard against insolvency, that eliminate the need for an adviser to deliver a balance sheet.[25]

Thus, on multiple occasions the SEC has determined that the regulatory scheme for insurance companies and separate accounts adequately ensures the preservation of separate account assets and makes additional requirements unnecessary.

The Committee also notes that trust accounts generally consist of shares issued by underlying insurance funds. The insurance fund shares typically are issued only in book-entry form by the insurance fund's transfer agent and are not certificated. Accordingly, ownership of the insurance funds is reflected solely on the books and records of the insurance fund's transfer agent.[26] Accordingly, the insurance company does not actually take custody or maintain or hold the securities issued by the underlying insurance funds, making application of the Proposed Controls to Programs unnecessary.

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[24] *See Exemptive Relief for Separate Accounts Relating to Custodianship of and Deduction of Certain Fees and Charges From the Account's Assets*, Investment Company Act Release No. IC-13706 (Jan. 9, 1984).
[25] *See Amendments to Form ADV*, Investment Advisers Act Release No. IA-2711 (Mar. 3, 2008).
[26] The uncertificated insurance fund shares are, of course, also reflected in the separate account's financial statements.

The Proposed Controls would impose significant additional administrative and financial burdens on affected Program Advisers and insurance companies. Program Advisers would have to hire an accounting firm to conduct the annual surprise examination and would likely be forced to pay for, or share the costs of, obtaining internal control reports in cases of affiliated custody. While the Proposing Release estimates that investment advisers would have to pay an average fee of $8,100 to comply with the surprise examination requirement,[27] Committee members estimate that the actual cost of the surprise examination would be substantially higher. In many cases, these costs would likely be passed on to clients of Program Advisers, which means that such clients would end up paying higher fees to receive the advisory services provided in Programs. Given the lack of any meaningful customer protection afforded by applying the Proposed Controls to Program Advisers, the Committee does not believe it is in the public interest to apply the Proposed Controls to Program Advisers.

The Committee also believes it is unnecessary and unduly burdensome to impose the surprise examination requirement on investment advisers that are authorized to deduct advisory fees or other expenses directly from a client's account. The Committee is aware of no documented cases of misappropriation or client loss attributable to such payment arrangements and believes that imposing the surprise examination requirement in such cases would be a disproportionate response to the recent enforcement and criminal actions that triggered the Proposals.

Finally, the Committee notes that the structure for VA Contracts is dictated by the mandates of state insurance law and the Company Act. Unlike a typical investment advisory relationship where an investment adviser and client can amend their agreement to avoid custody, change custodians or otherwise amend the custodial arrangement in place with respect to a client's assets, there is no such flexibility available with respect to Programs. Instead, Program Advisers must work within the constraints created by state insurance law and the federal securities laws. As a result (and given the lack of meaningful investor protection benefits and the significant costs that would result from imposing the Proposed Controls on Programs), it would be inappropriate to impose the Proposed Controls on Program Advisers.

IV. Conclusion

The unique and comprehensive statutory scheme created by the interplay of state and federal law within which the Program Advisers operate is very different from the environment in which most investment advisers function. The unique structure underlying VA Contracts, the extensive regulation governing these securities and the distinct nature of the advice offered by Program Advisers have effectively shielded Contract Owners from losses due to investment adviser or insurance company misappropriation or custodian insolvency in the past and will continue to do so in the future. Application of the Proposed Controls to Program Advisers is unnecessary and would not further investor protection. Given the substantial costs that would

[27] *See* Proposing Release at text accompanying footnote 102.

accompany implementation of the Proposed Controls, the Committee requests that Programs, as defined herein, be excluded from the Proposed Controls.

The Committee appreciates this opportunity to comment on the Proposals, and would be happy to answer any questions you may have.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: MICHAEL B. KOFFLER (DGA)

BY: FREDERICK R. BELLAMY (DGA)

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
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
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company