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THE Committee OF Annuity Insurers
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VIA ELECTRONIC SUBMISSION

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

Re: Investment Company Names
File No. S7-16-22
Release Nos. 33-11067; 34-94981; IC-34593

Dear Ms. Countryman:

We are submitting this letter on behalf of the Committee of Annuity Insurers (the "Committee") in response to the request for public comment by the Securities and Exchange Commission (the "SEC") on the proposal titled "Investment Company Names" (the "Proposal").[1] The Committee recognizes the importance of investment company names and the SEC's initiative to modernize and enhance the investor protections provided by Rule 35d-1 under the Investment Company Act of 1940 (the "1940 Act").

The Committee 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 Committee's current member companies represent approximately 80% of the annuity business in the United States.[2] For over 40 years, the Committee has been actively involved in shaping and commenting upon many elements of the SEC regulatory framework as it applies to insurance contracts registered under the Securities Act of 1933 and, with respect to variable insurance contracts, the 1940 Act.

For the reasons discussed below, the Committee requests that the SEC, as part of any final rulemaking on the Proposal, provide guidance expressly excluding Traditionally-Named UIT Sub-Accounts (as defined below) from the 80% investment policy requirement and any related recordkeeping requirements. The Committee believes that the 80% investment policy requirement, in this limited context, would be duplicative of applicable law, would not address any legitimate investor protection concerns, and would impose an undue burden on insurance companies issuing variable insurance contracts.

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[1] 87 FR 36594 (Jun. 17, 2022). Of relevance to this letter, under Rule 35d-1 in its current form, if the name of a registered investment company suggests a focus in a particular type of investment, industry, or country or geographic region, or a tax-exempt treatment for distributions, the investment company must adopt a policy to invest at least 80% of its assets in the manner suggested by its name (the "80% investment policy requirement"). *See* Rule 35d-1(a)(2)-(4). The SEC has proposed to expand the 80% investment policy requirement to encompass names with *any* terms suggesting a focus in investments that have, or whose issuers have, particular characteristics. Relatedly, the SEC has proposed a new recordkeeping requirement under Rule 35d-1. As proposed, registered investment companies subject to the 80% investment policy requirement would need to maintain records regarding their compliance with their 80% investment policies. Conversely, registered investment companies that are not subject to an 80% investment policy requirement would be required to maintain records of their analysis as to why an 80% investment policy is not required.

[2] A list of the Committee's member companies is available on the Committee's website at http://www.annuity-insurers.org/about-the-committee/.

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Background On UIT Sub-Account Names

When registering an insurance company separate account under the 1940 Act, the separate account is classified as either an open-end management company or a unit investment trust (a "Managed Account" or "UIT Account," respectively).[3] The appropriate classification depends on the nature of the separate account's operations. In general, a Managed Account invests directly in an actively-managed portfolio of securities or other investments, while a UIT Account typically invests in the securities of another designated investment company (an underlying fund) that, in turn, invests in a portfolio of securities or other investments.[4]

All registered separate accounts provide at least one investment option for the variable insurance contracts that are supported by the separate account. The vast majority of registered separate accounts provide for multiple investment options. Separate accounts that provide multiple investment options are divided into accounting divisions ("Sub-Accounts"), with each Sub-Account constituting a single investment option.

Sub-Accounts of Managed Accounts ("Managed Sub-Accounts") are similar to the series of a mutual fund trust. Each Managed Sub-Account is an actively-managed portfolio with its own investment objective and investment strategies. Sub-Accounts of UIT Accounts ("UIT Sub-Accounts") are similar to feeder funds in master-feeder structures. Each UIT Sub-Account invests all of its assets in the shares of a single designated underlying fund. UIT Sub-Accounts do not have investment objectives or investment strategies. They are unmanaged investment vehicles with the insurance company serving as the depositor.

This letter focuses on the application of Rule 35d-1 to the names of UIT Sub-Accounts that invest in shares of single designated underlying funds.[5] Such UIT Sub-Accounts are named by the insurance company depositor of the related UIT Separate Account. Insurance companies follow a virtually universal naming convention for these UIT Sub-Accounts: UIT Sub-Accounts are almost always given substantially the same names as the underlying funds in which they invest. For example, a UIT Sub-Account investing in "ABC Fund" will very likely be named "ABC Fund Sub-Account." UIT Sub-Accounts that follow this virtually universal naming convention are referred to herein as "Traditionally-Named UIT Sub-Accounts."

The Committee does not believe that the names of Traditionally-Named UIT Sub-Accounts raise any public policy concerns, including those that underlie Rule 35d-1. Insurance companies are not using such names as a marketing tool. Nor are they using such names to communicate any information to investors, other than to clearly communicate the underlying funds in which the UIT Sub-Accounts invest. Indeed, this naming convention serves to reduce investor confusion, as it allows investors to readily identify the underlying fund for every UIT Sub-Account.

The SEC Should Provide Guidance Excluding Traditionally-Named UIT Sub-Accounts From The 80% Investment Policy Requirement

The Proposal could be interpreted as imposing an 80% investment policy requirement on Traditionally-Named UIT Sub-Accounts, as follows:[6]

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[3] *See* Sections 3 and 4 of the 1940 Act.

[4] Except when specifically stated, references in this letter to "UIT Accounts" and "UIT Sub-Accounts" refer only to two-tier UIT Account structures where the UIT Account (either itself or through each of its UIT Sub-Accounts) invests in the shares of a single designated underlying fund.

[5] The Committee is not asking the SEC to provide guidance regarding the application of Rule 35d-1 to the names of registered separate accounts, the names of Managed Sub-Accounts, or the names of any UIT Sub-Accounts that either do not invest in the shares of a single designated underlying fund or do not have substantially the same name as the underlying fund.

[6] Rule 35d-1 in its current form could be interpreted as raising similar issues, about which there is no direct guidance. Given the breadth of the proposed expansion to the 80% investment policy requirement, and the proposal of a new recordkeeping

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- The Proposal could be interpreted as requiring an 80% investment policy for a Traditionally-Named UIT Sub-Account, as the Sub-Account's name could be deemed to suggest an investment focus in a particular underlying fund. For example, if a UIT Sub-Account is named "ABC Fund Subaccount" because it invests in the "ABC Fund," the Proposal could be interpreted as requiring the insurance company to adopt a formal policy requiring the UIT Sub-Account to invest at least 80% of its assets in the ABC Fund.
- The Proposal could also be interpreted as requiring an 80% investment policy for any UIT Sub-Account with an underlying fund whose name suggests a particular investment focus. For example, if a UIT Sub-Account is named "XYZ Value Fund Sub-Account" because it invests its assets in the "XYZ Value Fund," the Proposal could be interpreted as requiring the insurance company to adopt a formal policy requiring the UIT Sub-Account to invest at least 80% of its assets in an underlying fund that, in turn, invests at least 80% of its assets in value stocks.

The 80% investment policy requirement under Rule 35d-1 should not apply to Traditionally-Named UIT Sub-Accounts, and the SEC should provide guidance to this effect in the adopting release for any final rulemaking on the Proposal. The Committee believes that such guidance is appropriate primarily for the following two reasons:

- **Duplicative of Applicable Law.** Any imposition of the 80% investment policy requirement on Traditionally-Named UIT Sub-Accounts (or any UIT Sub-Account) would be duplicative of applicable law. UIT Sub-Accounts that invest in the shares of a single underlying fund rely on Section 12(d)(1)(E) of the 1940 Act to avoid the limitations on fund of fund arrangements set forth in Section 12(d)(1)(A). Consequently, Section 12(d)(1)(E) requires any such UIT Sub-Account to invest 100% of its assets in its underlying fund. In this context, given that the UIT Sub-Account would already be required by law to invest 100% of its assets in its underlying fund, the 80% investment policy requirement under Rule 35d-1 would serve no purpose.
- **No Investor Protection Concerns.** The names of Traditionally-Named UIT Sub-Accounts do not raise investor protection concerns. There is little to no risk that a reasonable investor would be misled, deceived, or confused by the name of a Traditionally-Named UIT Sub-Account. The name clearly and effectively communicates the underlying fund for that Sub-Account. Of course, the underlying fund's name may contain terms suggesting a particular investment focus, but in that case, the underlying fund would be required to adopt an appropriate 80% investment policy. As such, investors would be no less protected if the 80% investment policy requirement applies at the underlying fund level, but not the Sub-Account level, at least in the context of Traditionally-Named UIT Sub-Accounts.

Furthermore, in the absence of the requested guidance, there would be an undue burden imposed on insurance companies. Most insurance companies that issue variable contracts have multiple UIT Separate Accounts, and most UIT Separate Accounts have numerous UIT Sub-Accounts, often dozens or even hundreds. If insurance companies are ultimately required to analyze and potentially adopt 80% investment policies for Traditionally-Named UIT Sub-Accounts, and satisfy the proposed recordkeeping requirements for each such Sub-Account, the burdens on insurance companies could be significant. Even if the burden with respect to any single UIT Sub-Account would be relatively small, the aggregate burden on an insurance company across all of its UIT Sub-Accounts could be considerable.[7]

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requirement, the Committee believes it is important at this juncture for the SEC to provide clarity on these interpretative issues.

[7] The Committee notes the limited exclusion for UITs that currently exists in Rule 35d-1 (for UITs with initial deposits prior to July 31, 2002) and the limited exclusion for UITs that is included in the Proposal (for UITs with initial deposits prior to the effective date of any final rulemaking on the Proposal). While the Proposal is silent on how these exclusions apply to UIT

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If insurance companies are required to adopt 80% investment policies for Traditionally-Named UIT Sub-Accounts, and the associated burdens become too onerous, insurance companies may begin naming UIT Sub-Accounts in a different manner. For example, it's conceivable that insurance companies could begin generically naming Sub-Accounts. Presumably, a shift away from the current naming convention for UIT Sub-Accounts generally would not be in the interest of investors, as a different naming convention may make it more difficult for investors to identify the funds that underlie UIT Sub-Accounts.

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In short, the Committee requests that the SEC, as part of any final rulemaking on the Proposal, provide guidance expressly excluding Traditionally-Named UIT Sub-Accounts that rely on Section 12(d)(1)(E) of the 1940 Act from the 80% investment policy requirement and any related recordkeeping requirements under Rule 35d-1. As discussed further above, the Committee believes that the imposition of any such requirements would be duplicative of applicable law, would not address investor protection concerns, and would result in an undue burden on insurance companies that issue variable insurance contracts.

The Committee appreciates the opportunity to comment on the Proposal. The Committee would be pleased to assist the SEC and its staff in any manner that would be helpful in the SEC's consideration of the Committee's comments. Please do not hesitate to contact the undersigned.

Respectfully submitted,

The Committee of Annuity Insurers

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cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Mr. William A. Birdthistle, Director, Division of Investment Management

Separate Accounts and their UIT Sub-Accounts, the Committee believes the guidance it is requesting would provide sufficient direction as to the applicability of these exclusions.