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May 11, 2011

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

By Electronic Mail

Re: Securities Ratings [Release No. 33–9186; 34–63874; File No. S7–18–08]

Dear Ms. Murphy:

The American Council of Life Insurers ("ACLI") respectfully submits this comment on the recent amendments proposed by the Securities and Exchange Commission that would remove references to, and reliance on, credit ratings from the Form S-3. ACLI is the primary trade association of the life insurance industry, representing more than 300 member companies that account for over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

Our member companies are concerned about the potentially unintended, adverse consequences of the SEC's proposed amendment to Form S-3 under the Securities Act of 1933 (the "Securities Act"), as amended. Specifically, member companies believe that they may no longer meet the eligibility criteria to file on Form S-3, if the proposed amendment is adopted, which would result in the registration of certain securities on Form S-1. Member companies estimate that Form S-1 filings would add substantial cost and burden to the registration process.[1]

Today, many life insurance companies register certain non-variable insurance products, such as market-value adjusted annuities, on Form S-3. In addition to the other requirements of Form S-3, most of these insurance companies rely on Transaction Requirement I.B.2 – Primary Offerings of Non-Convertible Investment Grade Securities – to satisfy the eligibility requirements of Form S-3. Pursuant to the requirement of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the SEC is now proposing the amendment of

[1] We take note of the significant comment letter submitted by Sutherland, Asbill & Brennan (Sutherland) dated March 28, 2011, on the proposal. This submission cogently addresses life insurers' concerns under the proposed initiative. ACLI supports and endorses the explanations and solutions offered in the comprehensive Sutherland letter of comment on these matters.

Transaction Requirement I.B.2 and replace this criterion with a $1 billion threshold of issuances of non-convertible securities registered under the Securities Act, other than common equity, issued for cash over the previous three-year period.

As the SEC has previously recognized, if the amendments to Form S-3 are adopted as proposed, the number and types of issuers currently eligible to use the Form would likely change. Many of the affected issuers would be life insurance companies who have used Form S-3 to register non-variable insurance products. To our knowledge, there has been no past indication by the Commission that the current pool of eligible issuers on Form S-3 was improper or overly inclusive, we believe that the new eligibility criteria should be designed to generally replicate the existing pool of issuers eligible to file on Form S-3. Accordingly, we submit the following proposed alternatives to the currently proposed eligibility criteria of $1 billion in issuances of non-convertible securities registered under the Securities Act, other than common equity, issued for cash over the previous three-year period.

I. ACLI Recommends Alternative Eligibility Criteria to Accomplish the SEC's Congressional Charge, in a Less Burdensome and Costly Manner than the Proposed Amendment to Transaction Requirement I.B.2.

A. The SEC Should Add a New Transaction Requirement to Allow Life Insurance Companies to Register Non-variable Insurance products on Form S-3.

We respectfully suggest that rather than amending, or in addition to amending, Transaction Requirement I.B.2, the SEC should consider adding a new transaction requirement to the Form S-3, allowing insurance companies who meet the Registrant Requirements of Form S-3 to register non-variable insurance products on Form S-3. Today, no form under the Securities Act specifically contemplates the registration of non-variable insurance products. However, there are specific forms for the registration of variable insurance products under the Securities Act, such as Forms N-3, N-4, and N-6.

Non-variable insurance products registered on Forms S-3 and S-1 share general similarities with variable insurance products registered on Forms N-4 or N-6. Forms N-4 and N-6, however, only require limited disclosure about the insurance company, while Form S-1 requires detailed corporate governance disclosure regarding the executive officers and directors of the insurance company, including executive compensation, security ownership and related party transactions. These additional disclosures are less relevant to an investor seeking to purchase an insurance product. The time and cost spent to draft these sections would create a disproportionate burden on insurance companies relative to any identified benefit or investor protection. By adding a new transaction requirement allowing insurance companies to register non-variable insurance products on Form S-3, issuers of these types of products can operate on a comparable regulatory basis.

If the SEC believes that a new transaction requirement allowing insurance companies to register non-variable insurance products on Form S-3 is not appropriate, then we respectfully ask the SEC to consider creating a new form, or amending another form, for the registration of non-variable insurance products. This form should be a "short-form" registration similar to the S-3, N-4 or N-6.

B. The SEC Should Consider Replacing Transaction Requirement I.B.2 with a Risk-based Capital Standard.

Under an alternative approach, we urge the SEC to consider using risk-based capital (RBC) standards, based on the National Association of Insurance Commissioners ("NAIC") Risk Based Capital for Insurers Model Act (the "Model Act"), to replace Transaction Requirement I.B.2. The Model Act includes a formula used to assess an insurer's capital adequacy with references to RBC standards under the insurance laws of the issuer's state of domicile. More specifically, RBC standards are used to determine the amount of material risk applicable to a particular insurance company in relation to the amount of capital required to maintain its operations.

As part of its regulation of the insurance industry, most state insurance regulators use RBC requirements in its assessment of an insurance company. Currently, in these jurisdictions, RBC is required to be reported to state insurance regulators on an annual basis. We believe that because life insurance companies are already required to determine its RBC levels each year, use of RBC levels to determine Form S-3 filing eligibility would make an appropriate alternative requirement.

Under the Model Act, there are different levels of RBC based on an Authorized Control Level RBC. Authorized Control Level RBC is a number determined following the RBC formula. The minimum level of RBC that is a company must maintain to avoid any remedial action is called the Company Action Level RBC, which is 200% of the Authorized Control Level RBC. To maintain its financial strength, most insurance companies strive to maintain an RBC level well above the minimum Company Action Level RBC, typically 200% of the Company Action Level RBC. As a result, we suggest that the insurance company issuers with an RBC level of 200% or more of Company Action Level should be eligible to file on Form S-3. The extensive level of regulatory oversight, including capital adequacy requirements, by state insurance departments results in a higher level of protection for the investor interested in purchasing a registered non-variable insurance product.

C. The SEC Should Consider Allowing All Outstanding Non-convertible Securities Registered under the Securities Act to be Used Toward the $1 Billion Threshold.

Should the SEC continue to believe that a $1 billion threshold is necessary to achieve a "wide following in the marketplace," we suggest that the current proposed language for Transaction Requirement I.B.2 be amended to include all *outstanding*, non-convertible securities, other than common equity, registered under the Securities Act. The securities used in reaching this $1 billion threshold should include all premium payments received for registered fixed products. Inclusion of all outstanding non-convertible securities is more appropriate than inclusion of only issued non-convertible securities over a set period, because the types of contracts registered on Form S-3 are offered on a continuous basis and typically allow for flexible premium payments to be made throughout the term of the contract. The $1 billion of outstanding securities would allow a greater number of insurance companies who currently file on Form S-3 to maintain its eligibility to file on the Form.

II. The SEC Should "Grandfather" All Current S-3 Registration Statements.

All current S-3 registration statements should be "grand-fathered" to the Form S-3, and future amendments to these registration statements should be made on Form S-3. If current Form S-3 registration statements are not "grand-fathered," then the insurance company issuers would need to

convert its S-3 registration statements to Form S-1, assuming they cannot meet the S-3 eligibility requirements. These issuers would need to cease sales of its registered non-variable insurance products until the Form S-1 registration statement is declared effective by the SEC. This would cause a disruption to the availability of these products in the marketplace.

Thank you for your attention to our views. If you have any questions, please let me know.

Sincerely,

Carl B. Wilkerson