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December 8, 2009

VIA ELECTRONIC DELIVERY

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **Supplemental Comments on Proposed Revisions to Forms S-3 and F-3 Regarding Issuances of Non-Convertible Investment Grade Securities**
File Number S7-18-08; Release No. 33-9069

Dear Ms. Murphy:

We are submitting this comment letter at the request of several of our insurance company clients that issue non-convertible investment grade insurance contracts registered on Form S-3 or F-3. We appreciate the Securities and Exchange Commission (the "SEC" or the "Commission") recently reopening for public comment the Commission's proposal to modify the eligibility requirements of Forms S-3 and F-3 to eliminate the applicable provisions permitting primary issuances of non-convertible investment grade securities (the "Investment Grade Transactional Provision") for both issuers of asset-backed securities and issuers of traditional debt instruments and other non-convertible securities.[1] While we understand the Commission's desire to address concerns regarding the use of security ratings by issuers of asset-backed securities, we continue to remain concerned that the broad scope of the current proposal will unduly burden other issuers, particularly insurance companies, that routinely rely upon the Investment Grade

[1] See Security Ratings, Rel. Nos. 33-8940, 34-58071 (July 1, 2008), File No. S7-18-08 (proposing to replace rule and form requirements that rely on security ratings, such as Forms S-3 and F-3 eligibility criteria, with alternative requirements) (the "Proposing Release"); References to Ratings of Nationally Recognized Statistical Rating Organizations, Rel. Nos. 33-9069; 34-60790; IA-2932; IC-28940; File Nos. S7-17-08, S7-18-08, S7-19-08 (Oct. 5, 2009), File Nos. S7-17-08, S7-18-08, S7-19-08 (reopening the comment period for Rel. No. 33-8940).

Transactional Provision, but whose registered securities do not raise the same policy concerns as asset-backed securities. This letter updates and replaces our prior comment letter on this issue.[2]

Certain types of insurance contracts may be deemed to be securities under the Securities Act of 1933, as amended (the "Securities Act") and required to register with the Commission. As insurance company issuers are in the business of issuing insurance contracts (and not simply issuing securities periodically to raise money for specific purposes), these offerings are made on a continuous basis (until such time as the insurance company determines to cease sales, which typically occurs many years after initial registration). Commonly registered insurance contracts include variable annuity and variable life insurance contracts ("Variable Contracts"), and various fixed annuity and life insurance contracts (and guarantees thereon) ("Non-Variable Insurance Contracts"). Variable Contracts and Non-Variable Insurance Contracts are defined and discussed in greater detail in Appendix A.

I. Importance of Continued Ability to Use Forms S-3 and F-3 for Issuers of Non-Variable Insurance Contracts

a. *Adoption of the Proposed Revisions to Forms S-3 and F-3 Would Negatively Impact the Ability of Non-Variable Insurance Contracts to Compete With Variable Contracts*

Adoption of the Commission's proposed revisions to Forms S-3 and F-3 would have a substantial negative impact on a number of insurance companies issuing Non-Variable Insurance Contracts, because it would eliminate the ability to register Non-Variable Insurance Contracts on Form S-3 or F-3 for most insurance companies. Accordingly, we have highlighted in this section some of the burdens that would arise from elimination of Forms S-3 and F-3 as viable options for registration of Non-Variable Insurance Contracts. We believe this discussion will be helpful to the Commission in its consideration of the efficiency, competition, and capital formation effects of its proposed revisions, as required pursuant to Section 2(b) of the Securities Act,[3] as well as in connection with its broader cost-benefit analysis.

There is no registration form specifically designed for Non-Variable Insurance Contracts. Accordingly, such Non-Variable Insurance Contracts, to the extent registered, would need to be registered under the Securities Act on one of the "catch-all" forms for registration under the Securities Act – Forms S-1, S-3, F-1, or F-3. Accordingly, unless the insurance company qualifies to register its Non-Variable Insurance Contracts on Form S-3 or F-3, the insurer would

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[2] *See* Letter to Florence E. Harmon, Acting Secretary, U.S. Securities and Exchange Commission from Sutherland Asbill & Brennan LLP Commenting on Proposed Revisions to Forms S-3 and F-3 Regarding Issuances of Non-Convertible Investment Grade Securities, File Number S7-18-08 (September 5, 2008).

[3] Section 2(b) of the Securities Act states that, for every rulemaking in which the Commission "is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."

be required to file a "full-blown" S-1 or F-1 registration statement, including executive compensation disclosure, management's discussion and analysis ("MD&A"), and selected financial data. Furthermore, foreign private issuers and their subsidiaries may need to produce financial statements with much more extensive reconciliations to generally accepted accounting principles ("GAAP") in accordance with Item 18 of Form 20-F, which is substantially more burdensome than Item 17, the financial statement requirement that currently applies in connection with issuances of investment grade rated securities (including investment grade rated Non-Variable Insurance Contracts).

On the other hand, specific forms do exist for registering Variable Contracts under the Securities Act. The integrated forms for registration of Variable Contracts (*i.e.*, Forms N-3, N-4, and N-6) register not only the Variable Contract under the Securities Act, but also constitute the registration statement for the separate accounts through which the contracts are issued under the Investment Company Act of 1940, as amended (the "Investment Company Act"). Forms N-3, N-4, and N-6 require only brief disclosure about the insurance company and the separate account and relegate all financial statements to the statement of additional information, which is not delivered to investors unless they specifically request it. This is the case even though the insurance company remains responsible and liable for payment of all amounts due under the Variable Contract – amounts that often exceed the assets of the separate account in light of various provided guarantees, such as death benefits, minimum withdrawal benefits, and annuity benefits. Forms N-3, N-4, and N-6, however, can only be used to register Variable Contracts and the separate accounts through which they are issued. In addition, these forms permit audited statutory financial statements (instead of GAAP) where the insurance company would not have to prepare audited GAAP financial statements except for inclusion in the registration statement.[4] Accordingly, because Non-Variable Insurance Contracts are not supported by a separate account, as insurance company general account products, they cannot be registered on Form N-3, N-4, or N-6, as those forms are currently drafted.

In many cases, Non-Variable Insurance Contracts are direct competitors with Variable Contracts.[5] The current registration regime applicable to Non-Variable Insurance Contracts, however, creates an unlevel playing field in marketing and selling these products. In contrast to the information required to be disclosed when registering Variable Contracts, Forms S-1 and F-1 require extensive detailed disclosure about the insurance company. Much of this information is not relevant for Non-Variable Insurance Contract offerings for several reasons. First, insurance companies are in the business of issuing insurance products, and are not seeking to periodically

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[4] *See* Instruction 1 to Item 23(b) of Form N-4; Instruction 1 to Item 24(b) of Form N-6. One situation where this exception does not apply, however, is where the insurer prepares financial information in accordance with GAAP for use by its parent in consolidated financial statements in registration statements or reports under the Securities Exchange Act of 1934. *See* Instruction 1 to Item 24(b) of Form N-6 and Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Rel. Nos. 33-8088, IC-25522 (June 1, 2002).

[5] In its release proposing Rule 151A, the Commission asserted that indexed annuities compete directly with variable annuities and mutual funds. *See* Indexed Annuities and Certain Other Insurance Contracts, Rel. No. 34-58022 (June 25, 2008), File No. S7-14-08 (the "Indexed Annuity Release").

raise capital to finance operations like corporate entities engaged in typical debt and equity offerings. Second, non-variable insurance contracts are not priced or sold like traditional debt and equity securities. Finally, insurance companies, as highly regulated entities, are subject to stringent solvency requirements, compliance with which is periodically monitored by state insurance departments.

In order to attempt to level the playing field, insurance companies have endeavored to register their Non-Variable Insurance Contracts on Form S-3 or F-3, as such prospectuses are more parallel to Variable Contract prospectuses. This is because Form S-3 and F-3 prospectuses are able to focus more on the features of the security, without such relevant information being obscured by including extensive information that is arguably immaterial to investors, such as detailed company information and financial statements. Inability to use Forms S-3 and F-3 would increase the current burden on many issuers of Non-Variable Insurance Contracts, would negatively impact the ability of such issuers to compete effectively with Variable Contracts, and would not be in the interest of investors.

b. Adoption of Rule 12h-7 Does Not Alter the Interest of Many Insurance Companies in Using Forms S-3 and F-3 to Register Non-Variable Insurance Contracts

Pursuant to Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), registration of a security on one of the "catch-all" forms obligates the issuer to comply with the periodic reporting requirements of Section 13 of the Exchange Act, including the filing of annual reports on Form 10-K, quarterly reports on Form 10-Q, as well as various other periodic filings. Accordingly, an insurance company registering a Non-Variable Insurance Contract would be subject to Exchange Act reporting. Insurance companies that have obtained full and unconditional guarantees from their parent companies on their Non-Variable Insurance Contracts typically rely on Rule 12h-5 under the Exchange Act, which grants an exemption from Exchange Act reporting obligations for subsidiary issuers of a guaranteed security. In addition, recently adopted Rule 12h-7 under the Exchange Act provides an elective exemption from Exchange Act reporting for companies issuing registered Non-Variable Insurance Contracts that meet certain conditions.

Many insurance companies currently registered on Forms S-3 and F-3 prefer to remain subject to Exchange Act reporting in order to continue to use such forms, rather than rely on the exemption provided by Rule 12h-7 under the Exchange Act. A number of insurance companies filing periodic reports under the Exchange Act have historically taken advantage of the exception provided by General Instruction I to Form 10-K, which permits a wholly owned subsidiary of a reporting company to omit certain information in its Form 10-K filing (*e.g.*, executive compensation, extensive MD&A, and selected financial data). This means that a Form S-3 filer, whose disclosure requirements are largely met through incorporation of the Form 10-K, is not

required to provide the omitted Form 10-K disclosure in the registration statement.[6] However, if such an insurer terminates Exchange Act periodic reporting, it will lose its eligibility to maintain registration of these insurance products on Form S-3 (as periodic reporting is a condition to use of Form S-3). It will therefore be required to register these insurance products on the Commission's general "catch-all" registration form, Form S-1.

Although Forms S-1 and F-1 permit incorporation by reference of certain information from Form 10-K and 20-F reports, if the insurer no longer files periodic reports, it will not be able to incorporate any information by reference. Accordingly, unless and until the Commission adopts a new registration form designed for (or amends a existing form to accommodate) Non-Variable Insurance Contracts, the insurer would be required to file a "full-blown" S-1 or F-1 registration statement, including executive compensation disclosure, MD&A, and selected financial data. This result may place an insurer in the position of needing to develop more extensive and more burdensome disclosure in order to rely on Rule 12h-7 than it currently does under Exchange Act periodic reporting requirements. Many insurance companies, in fact, have determined that it is preferable at this time to continue to file Exchange Act reports, rather than rely on Rule 12h-7 and develop the full disclosure required by Form S-1. Accordingly, the adoption of Rule 12h-7 has not altered the interest of our clients in continuing to use Form S-3 or F-3 to register their Non-Variable Insurance Contracts. Similarly, the adoption of Rule 12h-7 has not altered the interest of some insurers in continuing to maintain a parent guarantee in order to use Form S-3 or F-3 (and rely on Rule 12h-5).

II. Overview of Comments

a. *Alternative 1 – Permit Insurance Companies to Continue to Use Investment Grade Ratings of Non-Variable Insurance Contracts as a Basis for Form S-3 and F-3 Eligibility, or Simply Permit Insurance Companies to Use Forms S-3 and F-3 to Register Non-Variable Insurance Contracts*

We strongly urge the Commission to reconsider the broad scope of its present proposal, and to narrow its focus to permit insurance companies, as highly regulated entities under state law, to continue to rely upon the Investment Grade Transactional Provision as it currently stands insofar as to register Non-Variable Insurance Contracts.[7] A number of insurance companies routinely rely on the subject provision for issuances of Non-Variable Insurance Contracts, yet would be unable to satisfy the proposed replacement provision, which requires $1 billion of publicly issued non-convertible securities other than common equity. We believe the extensive regulatory oversight to which insurance companies and their life insurance and annuity products

[6] The Commission's Division of Corporation Finance has provided guidance in its "telephone interpretations" indicating that a reduced disclosure Form 10-K is permitted to be incorporated by reference into a Form S-3 registration statement.

[7] While this letter focuses on insurance product offerings, we believe that many of the arguments and policy reasons that would support relief for such products would similarly apply to offerings of other non-convertible securities by insurance companies. We would also urge extending any relief granted for Non-Variable Insurance Contracts to those instruments as well.

are subject, as well as the greater level of investor protection thereby provided to purchasers of Non-Variable Insurance Contracts, mitigates many of the policy reasons behind elimination of the Investment Grade Transactional Provision. Alternatively, if the Commission feels compelled to eliminate the Investment Grade Transaction Provision in all cases, we would argue that insurance companies that are reporting companies under the Exchange Act should per se qualify to use Forms S-3 and F-3, at least with regard to the registration of Non-Variable Insurance Contracts, in light of the extensive state regulatory oversight referenced above.

b. Alternative 2 – Reduce the Proposed Threshold and Allow Insurance Companies to Aggregate Variable Contracts and Non-Variable Insurance Contracts Issued by Such Insurance Companies and Their Affiliates to Satisfy the Proposed Publicly Issued Non-Convertible Securities Threshold for Form S-3 and F-3 Eligibility

If the Commission declines to make either of the two prior changes and adopts the proposal requiring a threshold amount of publicly issued non-convertible securities other than common equity in order to rely on Form S-3 or F-3, we would urge the Commission to (i) reduce the proposed threshold amount from $1 billion to $500 million and allow companies to count all outstanding publicly issued non-convertible securities other than common equity (instead of limiting the threshold to securities issued in the past three years), and (ii) permit an insurance company to include Variable Contracts supported by separate accounts of the insurance company and registered on Form N-3, N-4, or N-6 when determining whether that insurance company satisfies the threshold for publicly issued non-convertible securities other than common equity. Specifically, this approach would recognize the reality that separate accounts are merely creatures of specific state laws and are a part of the insurance company depositor. For example, the assets and liabilities of such separate accounts, while segregated, also appear in the general account financial statements of their respective insurance company sponsors. Furthermore, we propose that an insurance company registrant be permitted to aggregate all publicly issued non-convertible securities other than common equity issued by it and its affiliates that are under common control with the registrant, particularly if the Commission adopts the threshold as proposed.

c. Alternative 3 – Apply Any Proposed Revisions to Forms S-3 and F-3 Prospectively Only to New Offerings

In the event the Commission determines to maintain the broad scope of the current proposal and does not adopt any of the prior suggestions, we would request that the Commission apply any adopted changes to Forms S-3 and F-3 prospectively only to registration statements for new offerings of Non-Variable Insurance Contracts. Otherwise, a number of issuers engaged in continuous offerings of investment grade Non-Variable Insurance Contracts would potentially be required to file post-effective amendments to switch to Form S-1 or F-1, likely resulting in substantial disruptions within the marketplace for such Non-Variable Insurance Contracts.

III. Alternative 1 – Permit Insurance Companies to Continue to Use Investment Grade Ratings of Non-Variable Insurance Contracts as a Basis for Form S-3 and F-3 Eligibility, or Simply Permit Insurance Companies to Use Forms S-3 and F-3 to Register Non-Variable Insurance Contracts

a. Permit Insurance Companies to Continue to Use Investment Grade Ratings of Non-Variable Insurance Contracts as a Basis for Form S-3 and F-3 Eligibility

In its Proposing Release, the Commission notes its concern that investors may be placing undue reliance upon security ratings issued by national recognized statistical rating organizations ("NRSROs"). In the context of asset-backed securities, where complex analyses must be performed with respect to the assets underlying such securities in order to prepare a security rating, this concern appears well placed. Certainly, recent market events have highlighted the risks posed by relying too heavily upon NRSROs to appropriately evaluate the investment structures underlying such asset-backed securities. In view of these concerns, the Commission's proposal to limit acquisitions of such asset-backed securities to investors satisfying heightened eligibility criteria seems appropriate, given that large sophisticated investors are better able to evaluate the relative quality of the assets underlying asset-backed securities without over reliance on security ratings issued by NRSROs. Regardless of whether asset-backed securities are rated, they remain complex investments.

In contrast to asset-backed securities, the process for rating the Non-Variable Insurance Contracts centers primarily on the ability of the issuer to pay its obligations when due. We believe this is consistent with the prior structure of Form S-9, which was replaced by Form S-3 and focused on the underlying quality of the issuer, instead of the security, to determine form eligibility.[8] While NRSROs provide helpful guidance in rating the relative ability of an issuer to repay its obligations under Non-Variable Insurance Contracts, average investors also are better able to evaluate the underlying ability of a single issuer to meet its obligations under such instruments when that ability is not primarily dependent upon payments received on various underlying assets held by the issuer. Notably, the Commission has not proposed imposing investor qualifications on issuances of securities other than asset-backed securities, suggesting that it does not believe that non-asset-backed instruments require the same level of investor sophistication to evaluate.

In addition, insurance companies are subject to extensive state regulation – both at the company level and with respect to the insurance contracts they issue, including Non-Variable Insurance Contracts registered on Form S-3 or F-3. In fact, in recently adopting Rule 12h-7, the Commission's basis for adopting the rule rested, in substantial part, on the extensive state regulation applicable to insurance companies.[9] All insurance contracts must be filed with and approved by state insurance departments to ensure that their terms comply with state law. Applicable regulatory requirements mandate specific investment requirements with respect to

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[8] Proposing Release at 19-20.

[9] Indexed Annuity Release at 48.

reserves maintained in connection with an issuer's contractual obligations and its overall solvency, and also impose liquidity and other financial requirements not applicable to issuers of asset-backed securities or other traditional debt instruments. Insurance companies also must submit to periodic examinations by the insurance authorities in every state in which its contracts are sold. These regulatory requirements provide a greater level of investor protection to purchasers of Non-Variable Insurance Contracts than purchasers of other investment grade debt products, including asset-backed securities.

Given this greater level of investor protection, and the significant level of regulatory oversight already imposed on issuers of Non-Variable Insurance Contracts, we believe that the policy rationale for eliminating the Investment Grade Transactional Provision from Forms S-3 and F-3 does not apply in the context of Non-Variable Insurance Contracts. We believe that the Commission can achieve its goal of addressing the recent concerns regarding security ratings and asset-backed securities without eliminating the Investment Grade Transactional Provision applicable to offerings of Non-Variable Insurance Contracts. By eliminating the Investment Grade Transactional Provision entirely for all offerings, the Commission will cause undue hardship to a significant number of insurance companies that presently rely upon that provision to issue investment grade Non-Variable Insurance Contracts on Form S-3 or F-3. Elimination of the Investment Grade Transactional Provision would impose Form S-1 or F-1 disclosure and updating requirements on such issuers in a number of cases, as insurance companies that issue such Non-Variable Insurance Contracts generally are neither publicly traded nor issue a sufficient number of such Non-Variable Insurance Contracts to satisfy the proposed $1 billion threshold for publicly issued non-convertible securities other than common equity.

We instead believe it would be appropriate to limit the use of the Investment Grade Transactional Provision to qualifying entities such as insurance companies, where other regulatory schemes provide an additional layer of investor protection. Notably, the term "insurance company" is already defined in Section 2(a)(13) of the Securities Act.[10] We believe limiting reliance on the Investment Grade Transactional Provision to insurance companies, as defined in Section 2(a)(13), with regard to Non-Variable Insurance Contracts would acknowledge the substantial regulation to which these entities are subject without detracting from the regulatory and policy reasons behind the Commission's proposal to eliminate the Investment Grade Transactional Provision with respect to issuers of asset-backed securities and other investment grade debt instruments.

More specifically, we propose that Form S-3 be amended to revise the Transactional Requirements in General Instructions I.B.2 as follows:

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[10] Section 2(a)(13) under the Securities Act defines "insurance company" to mean "a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such."

2. *Primary Offerings of Investment Grade Non-Variable Insurance Contracts by Insurance Companies.*

Non-variable insurance contracts to be offered for cash by or on behalf of an insurance company registrant, provided such securities at the time of sale are "investment grade securities," as defined below. A non-variable insurance contract is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act (§240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade. "Non-variable insurance contracts" are securities that do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary state of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction, other than variable annuity and variable life insurance contracts (and guarantees thereon) registered on Form N-3, N-4, N-6, or S-6.

Similarly, we propose that Form F-3 be amended to revise the Transactional Requirements in General Instructions I.B.2 as follows:

2. *Primary Offerings of Investment Grade Non-Variable Insurance Contracts by Insurance Companies.*

Non-variable insurance contracts to be offered for cash by or on behalf of an insurance company registrant, provided such securities at the time of sale are "investment grade securities," as defined below. A non-variable insurance contract is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act (§240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. "Non-variable insurance contracts" are securities that do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary state of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction, other than variable annuity and variable life insurance contracts (and guarantees thereon) registered on Form N-3, N-4, N-6, or S-6. For the registrant's fiscal years ending before December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F. For the registrant's fiscal years ending on or after December 15, 2011, in the case of securities registered

pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20-F.

b. Permit Insurance Companies to Use Forms S-3 and F-3 to Register Non-Variable Insurance Contracts Without An Investment Grade Rating

The Commission may prefer to eliminate the Investment Grade Transactional Provision in its entirety to completely remove any reliance on ratings from Securities Act registration forms. In such case, we would argue that it would be appropriate to amend Forms S-3 and F-3 to specifically identify insurance companies, and parent guarantors of such entities, as qualifying entities to rely on such forms to register Non-Variable Insurance Contracts. Such a position would be based on the existence of other regulatory schemes that provide an additional layer of investor protection and would be a way for the Commission to remedy the disparate treatment of Non-Variable Insurance Contracts compared to Variable Contracts, with regard to the information required to be included in the registration statement (as discussed above).

Accordingly, we alternatively propose that Form S-3 be amended to revise the Transactional Requirements in General Instructions I.B.2 as follows:

2. *Primary Offerings of Non-Variable Insurance Contracts by Insurance Companies.*

Non-variable insurance contracts to be offered for cash by or on behalf of an insurance company registrant. "Non-variable insurance contracts" are securities that do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary state of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction, other than variable annuity and variable life insurance contracts (and guarantees thereon) registered on Form N-3, N-4, N-6, or S-6.

Similarly, we propose that Form F-3 be amended to revise the Transactional Requirements in General Instructions I.B.2 as follows:

2. Primary Offerings of Non-Variable Insurance Contracts by Insurance Companies.

Non-variable insurance contracts to be offered for cash by or on behalf of an insurance company registrant. "Non-variable insurance contracts" are securities that do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary state of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction, other than variable annuity and variable life insurance contracts (and guarantees thereon) registered on Form N-3, N-4, N-6, or S-6. For the registrant's fiscal years ending before December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this

registration statement may comply with Item 17 or 18 of Form 20-F. For the registrant's fiscal years ending on or after December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20-F.

IV. Alternative 2 – Reduce the Proposed Threshold and Allow Insurance Companies to Aggregate Variable Contracts and Non-Variable Insurance Contracts Issued by Such Insurance Companies and Their Affiliates to Satisfy the Proposed Publicly Issued Non-Convertible Securities Threshold for Form S-3 and F-3 Eligibility

a. Reduce the Proposed Threshold for Eligibility and Allow Insurance Companies to Treat Variable Contracts as Publicly Issued Non-Convertible Securities

If the Commission adopts the proposal to eliminate the Investment Grade Transactional Provision in its entirety and does not otherwise provide an appropriate remedy, a number of insurance companies would likely be unable to satisfy either the public float or the proposed publicly issued non-convertible securities thresholds and thus would no longer be permitted to register Non-Variable Insurance Contracts on Form S-3 or F-3. As a practical matter, this result would force such issuers to shift to Form S-1 or F-1, thereby imposing numerous additional burdens on such issuers as a result of the lack of forward incorporation by reference and the updating requirements set forth in Section 10(a)(3) under the Securities Act. If Variable Contracts issued by an insurance company and supported by its separate accounts were included when determining whether the insurance company satisfied the proposed non-convertible securities threshold, many insurance companies would remain eligible to register Non-Variable Insurance Contracts on Form S-3 or F-3. Furthermore, if the threshold were reduced to $500 million and extended to all outstanding publicly issued non-convertible securities (as opposed to those issued in the prior three-year period), more insurance companies would remain eligible to register Non-Variable Insurance Contracts on Form S-3 or F-3.

Variable Contracts are unique instruments that are neither traditional debt nor common equity. The federal securities laws, in effect, provide the separate account supporting a Variable Contract with a legal existence independent of that of its insurance company. Thus, for Investment Company Act purposes, the separate account is treated as the investment company and owner of its assets, and the insurer is treated as the sponsor or "depositor" of the separate account. For purposes of both the Securities Act and the Investment Company Act, a separate account, as a separate entity, is generally treated as the issuer of the Variable Contract. As the depositor, under the Securities Act, the insurance company establishing the separate account is viewed as a co-issuer of the Variable Contracts issued through the separate account. The insurance company, however, remains responsible and liable for payment of all amounts due under the Variable Contract – amounts that often exceed the assets of the separate account in light of various provided guarantees, such as death benefits, minimum withdrawal benefits, and annuity benefits. Consistent with this analytical framework, both the separate account and the insurer sign the Securities Act registration statement for the Variable Contracts, and financial statements for each are included in the registration statement.

In light of the fact that separate accounts are financial divisions of an insurance company providing for the segregation of assets and liabilities, as well as the fact that the insurance company remains liable for all amounts due under Variable Contracts, we believe that Variable Contracts should be counted as non-convertible securities issued by the insurance company for purposes of the $1 billion threshold. Thus, we would urge the Commission to clarify, either in the adopting release or in the relevant registration forms, that an insurance company (as defined in Section 2(a)(13) of the Securities Act) can include gross issuances of Variable Contracts (*i.e.*, total purchase payments received from investors without reduction for any subsequent redemptions) supported by its separate accounts (as defined in Section 2(a)(14) under the Securities Act) when determining whether each insurance company satisfies the eligibility requirements for use of Forms S-3 and F-3.

Although including Variable Contracts as a permissible type of publicly issued non-convertible security that should be included in the calculation of the $1 billion threshold would allow some insurance companies to continue to rely on Form S-3 or F-3, not every insurance company currently issuing a Non-Variable Insurance Contract registered on Form S-3 or F-3 could meet the $1 billion threshold over the prior three-year period, even including Variable Contracts. Accordingly, we would urge the Commission to adopt a lower threshold amount, such as $500 million, and allow companies to count gross issuances for all outstanding publicly issued non-convertible securities other than common equity (instead of limiting it to securities issued in the past three years). We believe that it would be appropriate, particularly in the case of insurance companies, to count all outstanding securities, because registered insurance contracts are continuously offered and generally allow for additional investments over the life of the contract.

b. Allow Insurance Companies to Aggregate Publicly Issued Non-Convertible Securities They Issue With Those Issued By Affiliates

Insurance company complexes often consist of numerous life insurance subsidiaries, some of which may operate in only a single state, such as New York. These smaller subsidiaries may not be able to meet a particular threshold in issued Variable Contracts and Non-Variable Insurance Contracts on their own. Accordingly, we believe it would be appropriate for the Commission to allow an insurance company registrant to aggregate all publicly issued non-convertible securities other than common equity issued by it and its affiliates that are under common control with the registrant. If the threshold is not extended to include issuances of affiliates under common control, we would urge the Commission, at a minimum, to allow insurance company registrants and guarantors registering a Non-Variable Insurance Contract and a full and unconditional guarantee, respectively, on the same registration statement to aggregate both of their publicly issued non-convertible securities for purposes of eligibility to rely on Form S-3 or F-3.

We believe that reducing the threshold amount to $500 million and allowing companies to count all outstanding publicly issued non-convertible securities other than common equity (instead of limiting it to securities issued in the past three years), and permitting inclusion of Variable Contracts and aggregating issuances of affiliates under common control would allow

more insurance companies to continue to utilize Form S-3 or F-3 for the issuance of Non-Variable Insurance Contracts, without otherwise lessening the regulatory and policy purpose behind the Commission's proposal to eliminate the Investment Grade Transactional Provision from Forms S-3 and F-3. Failing to accommodate the realities of Variable Contracts would result in substantial additional burdens for many non-public insurance companies that otherwise would fail to independently satisfy the threshold for publicly issued non-convertible securities other than common equity. We believe these additional burdens would unfairly punish such insurance companies, for what we believe would be no reasonable regulatory or policy purpose.

V. Alternative 3 – Apply Any Proposed Revisions to Forms S-3 and F-3 Prospectively Only to New Offerings

At present, there are several effective registration statements on Forms S-3 and F-3 filed by active issuers of Non-Variable Insurance Contracts. As noted above, Non-Variable Insurance Contracts are generally sold to investors on a continuous basis. In view of the foregoing, to the extent the Commission adopts the proposed revisions to Forms S-3 and F-3, including the elimination of the Investment Grade Transactional Provision, and does not include any of the previously discussed suggested alternatives, we would urge the Commission to "grandfather" current offerings of Non-Variable Insurance Contracts and all future filings related thereto. This approach would maintain the integrity of the Commission's stated policy rationale for such revisions to Form S-3 and F-3, without unfairly burdening existing issuers of registered Non-Variable Insurance Contracts.

More specifically, we request that the Commission clearly indicate in its adopting release that any revisions to Form S-3 or F-3 would not apply to existing effective registration statements on Form S-3 or F-3 and any post-effective amendments thereto, as well as any new registration statements: (1) that are filed solely for the purpose of complying with Rule 415(a)(5) under the Securities Act; (2) that relate back to a prior offering as permitted by Rule 429 under the Securities Act; (3) that have been filed with the Commission at the time of effectiveness of any changes to Forms S-3 and F-3; or (4) that are filed by any successor issuer that assumes the assets and liabilities of the registrant pursuant to a merger, reorganization, or other business combination.

If the Commission is unwilling to extend such ongoing relief to existing continuous offerings, we would request, at a minimum, that existing offerings on Form S-3 or F-3 be allowed additional time to convert to Form S-1 or F-1. We recommend that any required conversion occur no earlier than one year after effectiveness or the next otherwise required post-effective amendment or new registration statement filing, whichever is later. If such revisions were to apply immediately, issuers of Non-Variable Insurance Contracts presently utilizing Form S-3 or F-3 may need to immediately cease sales and file post-effective amendments to switch their respective registration statements to Form S-1 or F-1. Furthermore, this additional time would be needed for any foreign private issuer or subsidiary thereof that may be required to convert its financial statements to comply with the more extensive GAAP reconciliation required by Item 18 of Form 20-F.

Also, with regard to wholly owned subsidiaries of reporting companies that provide reduced disclosure in their periodic reports on Forms 10-K and 10-Q filed under the Exchange Act (as permitted by General Instruction I to Form 10-K and General Instruction H to Form 10-Q), we would ask the Commission to clarify that such companies may similarly provide the same reduced level of disclosure if required to convert from Form S-3 and F-3. The policy reasons supporting reduced disclosure for such issuers under the Exchange Act would appear to be equally present in connection with prospectus disclosure.

VI. Conclusion

We appreciate the opportunity to comment on the Commission's proposals included in the Proposing Release and respectfully ask that the Commission address the requests and provide the clarifications noted above. If you have any questions or if additional information would be helpful, please contact Steve Roth at 202.383.0158 (steve.roth@sutherland.com) or Mary Thornton Payne at 202.383.0698 (mary.payne@sutherland.com).

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

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APPENDIX A
Non-Variable Insurance Contracts

Variable Contracts provide for values that vary directly with the investment performance of the underlying funding vehicle to which the contract owner's payments are applied. Under a Variable Contract, cash value is invested in the insurer's separate account, which typically offers the contract owner a number of mutual fund investment options. Variable Contracts are securities required to be registered under the Securities Act (unless exempt from registration). The underlying separate account[11] is generally registered as a unit investment trust under the Investment Company Act.

Insurance companies also issue various fixed annuity and life insurance contracts. Under a typical fixed deferred annuity or life insurance contract, an insurance company guarantees a specified rate of return to contract owners. Alternatively, some fixed deferred annuity or life insurance contracts credit interest above a guaranteed minimum rate based in part on the movement of one or more financial indices, such as the Standard & Poor's 500 Index ("equity-indexed contracts"). Fixed deferred annuity or life insurance contracts (as well as Variable Contracts) usually have a "surrender" period, during which a contract owner who withdraws more than a specified amount (*e.g.*, 10%) is assessed a surrender charge. The surrender charge is intended to recover the up-front costs that the insurance company assumes in selling the contract, such as the commission paid to the sales agent. Although historically most equity-indexed contracts have not been registered as securities under the Securities Act, recently adopted Rule 151A under the Securities Act would require such contracts to be registered as securities once the rule is effective. Rule 151A, however, has been subject to legal challenge and its future remains in doubt at this point.

Some fixed annuity and life insurance contracts, including some equity-indexed contracts, have market value adjustment ("MVA") features. Under an MVA contract, if a contract owner makes a withdrawal at a time when interest rates are higher than at the time the contract was issued, the contract owner receives less than he or she otherwise would without the MVA. Conversely, if interest rates at the time of withdrawal are lower than at the time the contract was issued, the contract owner receives more than he or she otherwise would without the MVA. Contracts that impose an MVA that may invade principal generally have been registered as securities under the Securities Act. These MVAs may be issued on a stand-alone basis or as an investment option in Variable Contracts.

In addition to the above, stand-alone guaranteed living benefits (such as stand-alone guaranteed minimum withdrawal benefits ("GMWBs")) are relatively new products for which some companies have recently initiated registration under the Securities Act. These products were developed based on popular types of riders that are offered in connection with many

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[11] Section 2(a)(14) of the Securities Act defines "separate account" to mean "an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

variable annuity contracts registered on Form N-4. Unlike such riders, however, stand-alone guaranteed living benefits do not relate to the contract value inside of a variable annuity, but instead relate to the value of the contract owner's investments in a separate and distinct account, such as a mutual fund account, brokerage account, or investment advisory account. It is expected that other types of stand-alone guaranteed living benefits may be developed in the future.

In general, stand-alone GMWBs guarantee regular income payments for the life of a contract owner to the extent that the value of the contract owner's guaranteed investment in the relevant account is not sufficient to provide such payments. Stand-alone GMWBs typically have two phases: an accumulation phase and a payout phase. During the accumulation phase, the contract owner's account usually must be allocated in accordance with restrictions imposed by the insurance company, and withdrawals beyond a specified amount can jeopardize the guarantee. If the contract owner's account value reduces to a specified level – which is usually set at zero – then the payout phase begins. For the remaining life of the contract owner, the insurance company makes income payments that are calculated based on the amount originally invested in the mutual fund, brokerage, or investment advisory account by the contract owner, subject to modifications arising from withdrawals and other factors.

Fixed annuity and life insurance contracts and stand-alone guaranteed living benefits deemed to be securities under the Securities Act are referred to collectively as "Non-Variable Insurance Contracts" herein. In addition, some insurance companies have obtained full and unconditional guarantees from their parent or an affiliated company on their Non-Variable Insurance Contracts. These guarantees are registered on the same registration statement and thus the same form as the Non-Variable Insurance Contracts. For purposes of the modifications we are requesting in this comment letter on the Commission's proposed changes to Forms S-3 and F-3, references to Non-Variable Insurance Contracts also include any parent guarantees of such contracts registered in the same registration statement on Form S-3 or F-3. Such parent guarantees serve only to benefit investors in such Non-Variable Insurance Contracts, and we believe not including such parent guarantees in any relief provided for Non-Variable Insurance Contracts would force insurance company issuers to choose between eliminating such guarantees or instead subjecting themselves to the increased requirements of filing on Form S-1 or F-1.

Other types of Non-Variable Insurance Contracts not described herein that meet this definition may be registered or developed in the future.