National Association of Insurance Commissioners
& The Center for Insurance Policy and Research

September 26, 2011

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549

David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: S7-32-11: Acceptance of Public Submissions Regarding the Study of Stable Value Contracts

Dear Ms. Murphy and Mr. Stawick:

We write on behalf of the National Association of Insurance Commissioners (NAIC) regarding the Securities and Exchange Commission and Commodity Futures Trading Commission's Acceptance of Public Submissions Regarding the Study of Stable Value Contracts. The NAIC is the U.S. standard setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. The NAIC respectfully submits the following comment and responses to the notice published in the August 25, 2011 issue of the Federal Register as well as on the commissions' websites.

Overview of Stable Value Contracts

Regulated insurance companies may offer stable value contracts (SVCs) through guaranteed interest contracts (GICs) where the supporting assets are either held in the general account or a separate account.[1] In both cases, the assets of the SVC are owned by the insurance company. A

[1] General account assets are those assets considered the company's assets with no legal separation provisions. Separate account assets are those assets segregated from the companies' general account assets with separate legal status such that the assets can only able to be used to satisfy liabilities of a particular policyholder and not the company's general account liabilities

third option is for an insurer to write a synthetic GIC as an SVC that guarantees the investment performance of the assets owned by someone other than the insurer. In all three cases, the contract holder receives principal preservation and a fixed rate of return over a set period of time regardless of the performance of the underlying assets. These products are commonly used in 401(k), 403(b), 457, and other types of savings plans. They are extremely popular with individual participants and account for more than $500 billion of assets in savings plans. Their popularity is largely attributable to the fact that participant contributions enjoy principal protection while also earning attractive positive rates of return.

We understand that the commissions are in the process of conducting a study to determine whether these products would fall within the definition of swap or security-based swap and, if so, whether to subject such products to the requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L.111-203)(the "Act"). As we have written in the past, we believe Congress intended Title VII to provide regulatory authority for over-the-counter derivatives, a historically unregulated financial market, and not to establish regulatory authority over these and other insurance products sold by regulated insurance companies.[2]

The commissions ask specific questions regarding the regulation of such products and the treatment of such products if they were determined to fall within the definition of swap or security based swaps. Our responses are set forth below. As SVCs are also issued by regulated banks, we defer to the appropriate bank regulators to provide information regarding their regulatory requirements for such products.

4. Are the proposed rules and the interpretative guidance set forth in the Product Definitions Proposing Release useful, appropriate, or sufficient for persons to consider when evaluating whether SVCs fall within the definition of swap? If not, why not? Would SVCs satisfy the test for insurance provided in the Product Definitions Proposing Release? Why or why not? Is additional guidance necessary with regard to the SVCs in this context? If so, what further guidance would be appropriate? Please explain.

As a general matter, we agree with the commissions' proposal to exclude insurance products from the definition of swap and security-based swap; since SVCs are issued by regulated insurers, they should be treated similarly. However, that proposal has not yet been finalized by the commissions, and we continue to have specific concerns regarding the construction of the commissions' proposed approach to identify insurance products. Given such concerns, it is difficult to determine whether the final approach for identifying insurance products will be appropriate for determining whether SVCs fall within the definition of swap or security-based swap.

[2] *See*, NAIC comment letters to the commissions dated September 20, 2010 and July 22, 2011.We also note that stable value products that provide a fixed rate of return based on an underlying asset held in the insurer's general account or, separate account products that provide an interest guarantee based either on an index or portfolio of assets in a separate account, meet the statutory exclusion of swaps and security-based swaps as they perform very similarly to bonds and other similar fixed income instruments. *See*, the Act at Sec. 721(a)(47)(B)(vii)(excluding notes, bonds and evidence of indebtedness).

24. What financial and regulatory protections currently exist that are designed to ensure that SVC providers can meet their obligations to investors and what are the sources for such protections? Does the level of protection vary depending on the SVC provider? How effective are such measures?

Insurance companies providing stable value products are subject to stringent regulatory scrutiny, including holding reserves adequate to cover the contract's obligations, a plan of operation explaining the asset management process and constraints, risk-based capital requirements, reporting, disclosure, actuarial opinions on the adequacy of reserves for the liabilities, and other regulatory requirements. Specifically, insurers issuing these products are subject to reserving requirements incorporated in the NAIC's Accounting Practices and Procedure manual, which state laws and regulations require insurers to use. There is an objective minimum reserve floor based on the present value of the guaranteed benefits discounted at a specified interest rate. With respect to synthetic GICs, the minimum reserve is the larger of zero and the discounted value of benefits reduced by the market value of assets held by the plan's stable value fund.[3]

All SVCs are also subject to an opinion from a qualified actuary, which must state that the reserve makes adequate provision for the contract liabilities to fund the SVC's obligations. Furthermore, that actuary must document the methodology used in his or her certification, as well as the assumptions made in determining that opinion. Actuaries use cash flow testing or other asset adequacy analyses in this regard.

In addition, general account and separate account GICs issued in connection with a specific benefit plan are typically covered by state guaranty funds, which are designed to protect policyholders in the unlikely event of an insurer insolvency where the marshaled assets turn out to be inadequate to meet all covered claims. The extent of such coverage varies from state to state but, in all cases, is within the range of $250,000 to $500,000 per policyholder (synthetic GICs, GICs issued in connection with multiple benefit plans and unallocated annuity contracts covered by the Pension Benefit Guarantee Corporation are not covered by the guaranty funds).

27. If the commissions were to determine that SVCs fall within the definition of swap and should not be exempted from such definition, should the regulatory regime for SVCs be limited or tailored in any way? If so, how? Please explain in detail. Should any of the requirements for capital and margin for SVCs differ from those swaps that are not SVCs? Why or why not? If the requirements for capital and margin should differ, please explain in detail what those differences should be.

As detailed above, insurers providing SVCs are already subject to a number of state insurance regulatory requirements. Even if the commissions were to determine that such products are not excluded from the definition of swap in Title VII, they should defer to such requirements. However, if the commissions decide to impose additional regulatory requirements, they should not impose any that would conflict with state insurance regulation of such products or lessen the protections state regulation provides consumers.

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[3] These reserve requirements are derived from requirements set forth in NAIC model regulations.

We would be particularly concerned with imposition of any new rules that would interfere with state capital and reserving requirements as such inconsistencies portend disruption to the regulation of insurers. In such an event, we would be happy to work with the commissions in identifying which requirements under consideration would be problematic in this regard.

Conclusion

We appreciate the opportunity to make this submission and look forward to continuing the open and constructive dialogue we have had with the commissions to date. Should you wish to discuss this submission or any other matter relating to the NAIC's views on the rulemaking process, please do not hesitate to contact Ethan Sonnichsen, Director of Government Relations, at (202)471-3980, Moira Campion McConaghy, Government Relations Manager, at (202)649-4997, or Mark Sagat, Government Relations Policy Counsel, at (202)471-3987.

Sincerely,

Susan E. Voss

Susan E. Voss, Commissioner
Iowa Insurance Division
NAIC President

Therese M. Vaughan

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