

SAP versus GAAP

This exception from the general requirement to file GAAP financial statements first appeared in Form N-4 for variable annuities when the form was adopted in 1985⁵ and was later incorporated into Form N-6 for variable life policies, which was adopted in 2002.⁶ When proposing Forms N-4 and N-6 for variable contracts with instructions permitting the use of SAP financial statements, the SEC recognized that guarantees associated with annuity payments and other benefits provided by the contracts, which are backed by the insurance company's general account, depend on the solvency of the insurance company and that contract owners, participants and annuitants who invest in such contracts may not want or need disclosure about the financial performance of the insurance company, but instead may be interested only in the company's solvency.⁷

Similar to owners of variable contracts, owners of the Contracts are likely to be most interested in financial information relevant to assessing the ability of the Company to fulfill its contractual obligations, rather than the financial performance of the Company itself. SAP financial statements are designed to provide precisely this type of information. SAP financial statements contain detailed information about an insurance company's balance sheet including its regulatory capital and surplus, which serve as financial cushions for paying policyholder claims. Furthermore, SAP financial statements enable state regulators to determine an insurance company's ability to meet policyholder obligations based on the availability of readily marketable assets when obligations are due. GAAP financial statements, on the other hand, assist investors in understanding the Company's going concern value. Due to the absence of any secondary market in the Contracts, investors in the Contracts do not need information regarding the Company's going concern value. SAP financial statements will provide owners of the Contracts with sufficient information to assess the solvency of the Company and the ability of the Company to fulfill its contractual obligations; GAAP financial statements would not provide additional disclosure sufficiently valuable to contract owners to justify the significant costs and administrative burdens of preparing and auditing the additional set of financial statements.

Recent Precedents

On the basis of the accommodation contained in Forms N-4 and N-6, the SEC has an established line of precedents granting relief under Rule 3-13 for insurance companies to file SAP financial statements audited by an independent auditor, in lieu of financial statements prepared in accordance with GAAP, in registration statements on Form S-1 for certain insurance contracts.⁸ Notably, all of the SEC letters contain the following footnote: "The staff notes that it would be receptive to considering applications under Rule 3-13 from other registrants seeking to file SAP financial statements in lieu of GAAP financial statements in registration statements filed for products similar to the [c]ontracts described here, under circumstances similar to those

⁵ See *Registration forms for Insurance Company Separate Accounts that offer Variable Annuity Contracts*, Securities Act Release No. 33-6588 and Investment Company Act Release No.14575 (June 14, 1985) ("Form N-4 Adopting Release").

⁶ See Form N-6 Adopting Release.

⁷ See *Registration Form for Insurance Company Separate Accounts that Offer Variable Annuity Contracts*, Securities Act Release No. 33-6502 and Investment Company Act Release No. 13689 (December 22, 1983).

⁸ See *Nationwide Life Insurance Company* (October 17, 2019), *Forethought Life Insurance Company* (October 17, 2019), *Symetra Life Insurance Company and First Symetra National Life Company of New York* (August 8, 2019), *Lincoln Benefit Life Company* (March 15, 2019), *MONY Life Insurance Company of America* (March 7, 2019), *Allianz Life Insurance Company of North America* (September 28, 2018), *Athene Annuity and Life Company* (September 28, 2018), *Great-West Life & Annuity Insurance Company* (September 28, 2018), *Midland National Life Insurance Company* (September 28, 2018), and *Great-West Life & Annuity Insurance Company and Great-West Life & Annuity Insurance Company of New York* (November 16, 2016), available at <https://www.sec.gov/divisions/investment/im-noaction.shtml#list>

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April 21, 2020
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described above.”⁹ The Company believes the facts and circumstances in this case are substantially similar to those in the precedent cases noted herein.

Conclusion

For the reasons stated herein, and with recent precedent in mind, we respectfully request, on behalf of the Company, that the Staff grant relief pursuant to Rule 3-13 of Regulation S-X to permit the Company to file SAP financial statements audited by an independent auditor in its registration statement on Form S-1 for its Individual Fixed Contingent Deferred Annuity Contracts in lieu of GAAP financial statements.

Thank you for your attention to this matter. Please contact me at (312) 443-1823 if you need additional information or have any questions concerning this request.

Best regards,

A handwritten signature in black ink that reads "Michael K. Renetzky". The signature is written in a cursive style with a large, stylized initial "M".

Michael K. Renetzky

⁹ For example, see footnote 9 to the SEC’s letter to *Nationwide Life Insurance Company* (October 17, 2019).