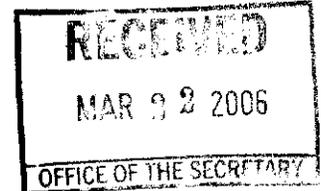


March 21, 2006



Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: **File No. S7-10-05; Release Nos. 34-52929, IC-27182**
Internet Availability of Proxy Materials

Dear Ms. Morris:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee").¹ The letter responds to a request for comments by the Securities and Exchange Commission (the "Commission" or the "SEC") on its proposal to amend certain of its proxy rules to permit the delivery of proxy materials through the Internet.² The proposed amendments (the "Proxy Proposal") would give issuers an alternative method of distributing proxy materials to shareholders.

The Proxy Proposal is based on a "notice and access" approach. Under the Proposal, an issuer would be permitted to post its proxy materials on a publicly accessible Internet site (other than EDGAR). The issuer would then be required to provide shareholders with a notice informing them that the materials are available and explaining how to access the materials. The issuer also would be required to provide any shareholder that so requests with a copy of the materials in paper or by e-mail.

Recognizing that some investors purchase and hold shares of corporate issuers and mutual funds through intermediaries such as banks and broker-dealers, the Proxy Proposal would

¹ The Committee of Annuity Insurers is a coalition of 29 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over half of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A. This comment letter addresses variable annuities only, since fixed annuities are not subject to the proposed rules discussed in the letter.

² SEC Release Nos. 34-52929; IC-27182 (Dec. 8, 2005), 70 Fed. Reg. 74598 (Dec. 15, 2005) ("Proposing Release").

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impose certain requirements on such intermediaries. Under the Proposal, an intermediary would be permitted to follow the "notice and access" model only if an issuer requests it to do so and, in such cases, the intermediary must follow that model. If so requested, the intermediary would be required to furnish proxy materials to beneficial owners of the issuer's securities (*e.g.*, customers of a broker-dealer where the broker-dealer is the record holder of the securities and the customers are the beneficial owners).

While the Proxy Proposal specifically addresses the role of intermediaries such as banks and broker-dealers, the Proposal does not address the role of insurance companies issuing variable annuity contracts.³ Today, in most cases, variable annuity contracts are issued through a two-tiered structure. The top tier consists of a separate account of the issuing insurance company, which is a segregated investment account established under state insurance law that holds variable annuity assets and liabilities separate and apart from the assets and liabilities of the insurance company's general account. Absent an exemption from the Investment Company Act of 1940 (the "Investment Company Act" or "Act"), the separate account is required to register under the Act. Generally, separate accounts are registered as unit investment trusts and are divided into subaccounts. The bottom tier of this two-tiered structure typically consists of a number of series mutual funds, and each subaccount corresponds to, and is invested exclusively in, a particular series, or portfolio, of one of the funds.⁴

Under this two-tiered investment structure, the insurer could be viewed as an intermediary for purposes of the rule amendments that would be implemented as a result of the Proxy Proposal, because the insurer is the legal owner of the mutual fund shares that are purchased to fund the insurer's variable annuity contracts, while owners of the contracts may be viewed as having an indirect interest in the underlying mutual fund shares.⁵ Moreover, as discussed below, the insurance company in this case may be required to seek voting instructions from its contract owners with regard to the voting of proxies of the mutual funds underlying the contracts. In fulfilling this obligation, the insurer, like broker-dealers, also would forward to contract owners related proxy materials.

³ Because this comment letter is submitted on behalf of the Committee of Annuity Insurers, it addresses the Proxy Proposal as it may relate to variable annuity contracts, but not as it may relate to variable life insurance policies. However, the recommendations discussed herein may apply equally to variable life insurance policies.

⁴ One (or more) of the mutual fund complexes may be managed by an affiliate of the insurance company, but most products offer a large number of portfolios that are part of unaffiliated mutual fund complexes.

⁵ While the Committee's comments in this letter address the role of insurance companies issuing variable annuity contracts as intermediaries for purposes of the Proxy Proposal, these comments should not be viewed as addressing in any way the status of such insurance companies as "intermediaries" under any other current or proposed Commission rule, including recently adopted Rule 22c-2 under the Investment Company Act. Any reference in this letter to "insurance company intermediary" or any similar reference is solely for purposes of this letter's discussion of the Proxy Proposal.

For these reasons, the Committee respectfully requests that the Commission clarify the role of insurance companies issuing variable annuity contracts as potential "intermediaries" for purposes of the Proxy Proposal.⁶ In addition, the Committee hereby expresses its support for certain recommendations made by the Investment Company Institute in its comment letter on the Proxy Proposal dated February 13, 2006. The Committee's recommendations are discussed in detail below.

The Committee's Recommendations Regarding Internet Availability of Underlying Fund Proxy Materials

The Committee requests clarification from the Commission as to whether and how the Proxy Proposal would apply in the context of variable annuity contracts. As noted, insurance companies issuing variable annuities could be viewed for purposes of the Proxy Proposal as intermediaries having legal obligations similar to those of broker-dealer and bank intermediaries if they are required to seek voting instructions from, and forward issuer proxy materials and shareholder reports to, their variable annuity contract owners. However, variable annuity issuers in these situations would not appear to be covered by the Proxy Proposal because, unlike the case for broker-dealers and banks, the requirement for insurance companies to provide pass-through voting to variable contract owners generally arises out of Section 12(d)(1)(E) of the Investment Company Act, and not from Rules 14b-1 and 14b-2 under the Securities Exchange Act of 1934 (the "Exchange Act").⁷ Because the Proxy Proposal would amend only these rules, if the Commission determines that insurance companies issuing variable annuity contracts should be

⁶ Some variable annuity contracts invest directly in actively managed separate accounts of insurance companies, which are registered as "open-end management investment companies." This letter does not address these separate accounts, since they would come under the Proxy Proposal directly as management investment companies. That is, the insurance company would not act as an intermediary for these investment companies since the variable annuity contract owner directly owns the interests in the management separate account and would be voting directly as owners of the interests in that separate account. References in this letter to "variable annuity contracts" or "variable annuities" therefore are intended to refer only to those variable annuity contracts issued through a UIT separate account/underlying mutual fund structure as discussed above.

⁷ Section 12(d)(1)(E) provides exemptions from certain otherwise applicable investment restrictions imposed by Section 12(d)(1) of the Investment Company Act that are necessary for registered (and some unregistered) separate accounts organized as UITs to invest in underlying mutual funds in accordance with the two-tiered structure described above. One of the conditions for reliance on the exemptions provided by Section 12(d)(1)(E) is that a separate account either seek voting instructions from contract owners or vote its shares of the underlying funds in the same proportion as the vote of all other fund shareholders. Pass-through voting requirements may also be effectively imposed by certain provisions of Rules 6e-3(T) and 6e-2 under the Investment Company Act, as well as by certain "mixed and shared funding" exemptive orders granted under the Act. These exemptive orders may effectively impose pass-through voting obligations on certain unregistered separate accounts that are not subject to Section 12(d)(1) and therefore do not need to rely on the exemptions provided by Section 12(d)(1)(E) (e.g., separate accounts the assets of which are derived solely from certain specified tax-qualified retirement plans and that therefore are excepted from the definition of "investment company" by Section 3(c)(11) of the Investment Company Act).

governed like other intermediaries under the Proxy Proposal, the Commission may need to adopt a new rule to accomplish this result.⁸

Under this approach, an insurance company intermediary would be required to forward to variable annuity contract owners an underlying fund's Notice of Internet Availability of Proxy Materials (the "Notice"), unless the insurance company prepared its own Notice. If it forwarded the fund's Notice, the insurance company would be required to add to the Notice information as to how contract owners could return voting instruction forms to the insurance company (as with other intermediaries, the insurance company, as record holder of the mutual fund shares, typically votes the mutual fund proxy pursuant to voting instructions it receives from the variable contract owners). The insurance company could post the voting instruction form on an Internet web site, along with the mutual fund's proxy materials, or it could send the voting instruction form with the Notice. Finally, the insurance company would have to request and forward a paper or e-mail copy of the proxy materials from the mutual fund in response to requests from variable annuity contract owners.

As discussed, under the Proxy Proposal an intermediary is permitted to use the new web-based approach only if the issuer requests it to do so, and, if so requested, the intermediary must use such an approach. The Committee agrees with the comments set forth in the Investment Company Institute's comment letter referred to above (the "ICI letter"), that intermediaries (as noted, the Committee recommends that such term include insurance company intermediaries) be permitted to use the web-based approach even if a particular underlying mutual fund chooses not to use it. The Committee believes in this regard that intermediaries should be permitted to achieve the cost savings inherent in the web-based approach whether or not an underlying mutual fund uses that approach.

The Committee's Recommendations Regarding Internet Delivery of Underlying Fund Shareholder Reports

The Committee also endorses the recommendation in the ICI letter that investment companies be permitted to use the web-based approach to provide shareholder reports to investors in mutual funds in the same way that operating companies would be permitted under the Proxy Proposal to use the web-approach to provide annual reports to security holders. Moreover, the Committee urges that this approach also be available to insurance companies issuing variable annuity contracts that, as discussed below, are required to forward to contract owners underlying fund semi-annual and annual shareholder reports.

⁸ The Commission could adopt the new rule under Section 12(d) of the Investment Company Act, since, as stated above, that section contains provisions that govern the pass-through voting of mutual fund shares held in unit investment trusts registered under the Act (or exempt from registration by virtue of Sections 3(c)(1) or 3(c)(7) of the Act). Section 14(b) of the Exchange Act, on the other hand, which governs broker-dealer and bank intermediaries, does not address insurance company intermediaries.

Pursuant to Rule 30e-2 under the Investment Company Act, registered insurance company separate accounts organized as UITs are required to send to variable annuity contract owners owning units of such separate accounts, the annual and semi-annual shareholder reports of the underlying mutual funds in which such separate accounts invest. Because it is not unusual for an insurance company to enter into participation agreements (the agreement by which a mutual fund permits an insurance company UIT separate account to purchase shares of that mutual fund) with multiple mutual fund families, the number of shareholder reports that an insurance company is required to forward to its variable annuity contract owners can be voluminous. Considerable savings could be achieved if the web-based approach could be used to forward these shareholder reports to contract owners. Authorization to use the web-based approach could be effected in a manner similar to the way householding (sending one report to a household where several family members may hold the same mutual fund shares) was effected, *i.e.*, through amendments to Rule 30e-1 (shareholder reports for the direct owners of mutual fund shares) and Rule 30e-2 (shareholder reports for underlying funds available to holders of interests in unit investment trusts) under the Investment Company Act.

Conclusion

The Committee appreciates the time and resources that the Commission and its staff have devoted to this important proposal. We appreciate the Commission's careful consideration of the Committee's specific recommendations.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY:


Stephen E. Roth

BY:


W. Thomas Conner

FOR THE COMMITTEE OF ANNUITY
INSURERS

Cc: The Honorable Christopher Cox
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Cynthia A. Glassman
The Honorable Annette L. Nazareth
Raymond A. Be, Division of Market Regulation
Susan Nash, Division of Investment Management

APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS

Aegon USA, Inc.
Allstate Financial
Allmerica Financial
American International Group, Inc.
AmerUs Annuity Group Co.
AXA Equitable Life Insurance Company
F & G Life Insurance
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
Merrill Lynch Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
The Phoenix Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sun Life of Canada
USAA Life Insurance Company