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November 17, 2008

**VIA ELECTRONIC DELIVERY**

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: **Supplemental Comments on Proposed Rule 12h-7**  
**File Number S7-14-08; Release Nos. 34-58769 and 34-58022**

Dear Ms. Harmon:

On behalf of the Committee of Annuity Insurers (the "Committee"),<sup>1</sup> we are submitting this supplemental comment letter on proposed rule 12h-7 (the "Proposed Rule") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which would provide an exemption from the reporting requirements of Sections 13 and 15(d) of the Exchange Act for insurance companies that issue non-variable insurance contracts registered under the Securities Act of 1933, as amended (the "Securities Act"). The Committee appreciates the Securities and Exchange Commission (the "Commission") recently reopening the period for public comment on the Proposed Rule.<sup>2</sup> Although the Committee previously submitted a comment letter strongly supporting the adoption of the Proposed Rule, providing specific suggested revisions thereto, and commending the Commission for recognizing the need for, and undertaking the effort to create,

<sup>1</sup> The Committee of Annuity Insurers is a coalition of 33 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 two-thirds of the annuity business in the United States.

<sup>2</sup> See Indexed Annuities and Certain Other Insurance Contracts, Rel. Nos. 33-8933, 34-58022 (June 25, 2008), File No. S7-14-08 (proposing rules 12h-7 and 151A); Indexed Annuities and Certain Other Insurance Contracts, Rel. Nos. 33-8976, 34-58769 (Oct. 10, 2008), File No. S7-14-08 (reopening the comment period for proposed rules 12h-7 and 151A).

such an exemption,<sup>3</sup> the Committee would like to take this opportunity to suggest an additional revision to the Proposed Rule that would allow for a period of transition to any issuer that subsequently fails to meet the conditions of the Proposed Rule, as finally adopted.

### ***Reaffirmation of Prior Comment Letter***

Before discussing its supplemental comment, the Committee would like to strongly reaffirm the specific comments contained in its previous comment letter suggesting alternatives to the structure of the Proposed Rule, particularly with regard to the requirements of condition (e) of the Proposed Rule. The Committee continues to believe strongly that adoption of a rule providing an exemption from the reporting requirements of Sections 13 and 15(d) of the Exchange Act for insurance companies that issue SEC-registered non-variable insurance contracts is necessary and appropriate in the public interest and consistent with the protection of investors.

The Committee also urges the Commission to embrace the suggestions contained in the prior comment letter regarding needed changes to the existing registration process for these non-variable insurance contracts. More specifically, the Committee advocated development of a more streamlined prospectus for non-variable insurance contracts that focuses primarily on the features of the insurance contract being sold – either through adoption of a new registration form or amendment of existing forms. The Committee also argued that, where insurers are not otherwise required to prepare financial statements in accordance with generally accepted accounting principles (“GAAP”), they should be able to prepare financial statements in accordance with the statutory requirements of state insurance regulations for inclusion in a Form S-1 or Form S-3 registration statement, as is currently the case for Forms N-4 and N-6.

In addition, the Committee again respectfully requests that the Commission move forward with adoption of the Proposed Rule separately from proposed rule 151A under the Securities Act. As indicated in our previous comment letter, delaying the adoption of the Proposed Rule while potential issues relating to proposed rule 151A under the Securities Act are resolved would benefit neither annuity issuers nor the investing public and would continue to impose significant costs on insurance companies issuing or contemplating issuing non-variable insurance contracts.

### ***Supplemental Comment on the Proposed Rule***

The Committee requests that the Commission include a transition period for filing required reports under the Exchange Act for any issuer previously relying on the Proposed Rule that no longer meets its conditions. In such circumstances, issuers not previously subject to reporting obligations pursuant to Sections 13 and 15(d) of the Exchange Act may face the difficult and time-consuming tasks of analyzing and crafting the disclosure and collecting the

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<sup>3</sup> See Letter to Florence E. Harmon, Acting Secretary, U.S. Securities and Exchange Commission from the Committee of Annuity Insurers Commenting on Proposed Rule 12h-7, File Number S7-14-08 (September 10, 2008).

information required by such reports, such as management's discussion and analysis and executive compensation. In addition, such an issuer may potentially need to develop GAAP financial statements, which would be an extremely burdensome and lengthy process. Accordingly, the Committee suggests that the Commission address in the Proposed Rule itself the timing for submission of reports required by Sections 13 and 15(d) of the Exchange Act by issuers no longer eligible to rely on the Proposed Rule. We believe there is support for allowing transition periods under the Exchange Act and that such a transition period would be justified by these circumstances.<sup>4</sup>

Most insurance company issuers that would be relying on the Proposed Rule, as finally adopted, are large organizations that have been in operation for many years. Most of these companies would not have previously filed any reports under the Exchange Act and thus would lack the existing institutional knowledge to create such reports quickly. Given the substantial burdens such an insurance company issuer would face in preparing such reports, the Committee believes a transition period is justified and is recommending a period of no less than 180 days. The Committee does not believe that many insurance companies would be in a position to comply with Exchange Act reporting requirements in much less than six months, particularly if a company does not already prepare GAAP financial statements.

Furthermore, the Committee does not feel it would be beneficial for the issuer initially to be required to file an annual report on Form 10-K for the *preceding* fiscal year. Given the length of this requested transition period, the annual report on Form 10-K for the preceding fiscal year may contain significantly stale financial information by the time it is filed and, in many cases, the requested transition period may not expire until after the end of the current fiscal year. Instead, we would suggest that the first report required should be the annual report on Form 10-K for the *current* fiscal year. Such a requirement would allow the insurance company issuer adequate time to meet its reporting obligations under the Exchange Act, while also submitting an initial report that will be more useful and current at the time of its submission.

The Committee thus requests that the following provision be added to Rule 12h-7:

If the exemption provided by this rule ceases to be available to an issuer, the issuer shall comply with the periodic reporting requirements pursuant to section 15(d) of the Act, but in no event shall any periodic reports be required to be filed prior to filing the annual report on Form 10-K for the issuer's current fiscal year. The annual report on Form 10-K for the issuer's current fiscal year shall be filed by the later of (i) 180 days after the exemption ceases to be available or (2) the date the annual report on Form 10-K would otherwise be due for such issuer.

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<sup>4</sup> See Rules 12h-1(f)(2) and (g)(2) and Rule 12h-3(e) under the Exchange Act.

***Conclusion***

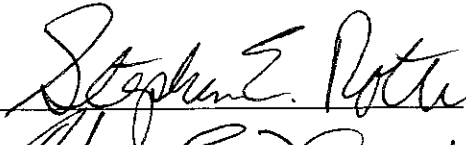
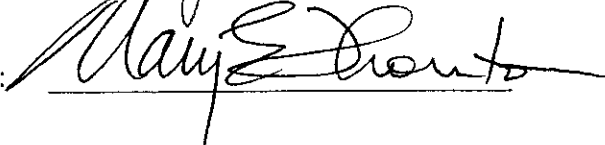
The Committee appreciates the opportunity to supplement its comments on the Proposed Rule and respectfully asks that the Commission address the requests in this and the Committee's prior comment letter. If you have any questions or if additional information would be helpful, please contact Steve Roth at 202.383.0158 ([steve.roth@sutherland.com](mailto:steve.roth@sutherland.com)) or Mary Thornton at 202.383.0698 ([marythornton@sutherland.com](mailto:marythornton@sutherland.com)).

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY:

BY:

FOR THE COMMITTEE OF ANNUITY INSURERS

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