EVERSHEDS SUTHERLAND

THE Committee OF Annuity Insurers
www.annuity-insurers.org

Eversheds Sutherland (US) LLP
700 6th Street, N.W. - 7th Floor
Washington, D.C. 20001

D: +1 202-383-0100
F: + 1 202-637-3593

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The Honorable Walter J. Clayton III
Chairman
Securities and Exchange Commission
100 F St, N.E.
Washington, DC 20549

Dear Chairman Clayton:

On behalf of the Committee of Annuity Insurers (the "Committee"), we welcome you to your important new leadership role as Chairman of the U.S. Securities and Exchange Commission.

The Commission is a primary regulator governing the offering of many of the annuity contracts that our member companies issue to investors and retirement savers across the country. As we describe in more detail below, the annuities that our member companies develop and offer to investors play a prominent and unique role in assisting the public in saving for retirement and, most importantly, not outliving their assets. Because there is a compelling public interest both in facilitating the availability of these retirement solution products and in ensuring that investors receive effective disclosure and recommendations that are in their best interest, we would like to take this opportunity to set forth certain important policy and regulatory goals affecting the offering of these products. We urge you to accord these goals a high priority as you begin your tenure at the Commission and the process of setting the Commission's regulatory agenda.

The Committee

The Committee is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory and tax issues affecting annuities. The Committee's current 29 member companies represent over 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A. For over 35 years, the Committee has been actively involved in shaping and commenting upon many elements of the SEC regulatory framework as it applies to annuity products registered with the SEC under the Securities Act of 1933 (the "1933 Act") and, with respect to variable annuities, which are also regulated under the Investment Company Act of 1940 (the "'1940 Act").

The Importance of Annuities and Lifetime Income Guarantees

Annuities play a crucial role in the private retirement system and are vital to the retirement security of millions of Americans. Other than Social Security and defined benefit plans, annuities are the only investment products that offer Americans lifetime income benefits that guarantee they will not outlive their retirement income. That protection alone makes them vital components of an individual's retirement security. In addition, however, annuity contracts can also protect against other significant risks to which individuals are exposed in retirement, including inflation risk, investment risk, interest rate risk, and liquidity risk, thereby allowing middle class individuals to acquire, in a single integrated holding, insurance against a number of different risks to their investment and retirement security.

The U.S. annuity market is very substantial. Total assets held in reserves for all types of annuities (including individual, group, fixed and variable) has grown steadily in recent years, with an estimated $3.3 trillion held in reserves as of the end of 2015. However, today's annuity industry is unrecognizable from the one that only offered traditional fixed annuities at the time the federal securities laws were originally enacted. It now offers a wide spectrum of fixed, fixed indexed and variable annuities in the retail and retirement markets, and it continually innovates, in response to market conditions and investor preferences, in order to offer retail investors a wide spectrum of annuities that provide attractive investment choices, up-to-date contract feature functionality and cutting edge lifetime income guarantees.

Variable annuities have evolved considerably since they were first determined by the U.S. Supreme Court in 1959 to be securities subject to the 1933 and 1940 Acts. Today, they typically offer a wide array of investment styles and managers to choose from, provide a range of death benefit guarantees, and provide innovative guaranteed lifetime income options that afford customers the flexibility to take specified periodic withdrawals from their contracts for life without the sacrifice of liquidity associated with traditional annuity payout options. Our member companies also offer an array of annuity products registered with the Commission under the 1933 Act that are not variable annuities subject to the 1940 Act but offer more upside potential than traditional fixed annuities and different types of downside protection. These products include market value adjusted fixed annuities, index-linked annuities, and contingent deferred annuities. For your reference, Appendix B briefly outlines the different types of SEC-registered annuity products, including both variable and non-variable products.

Key Policy and Regulatory Goals

1. *Improving Disclosure Effectiveness for Registered Annuity Products*

We ask that the Commission accord the highest priority to advancing a more rational and accommodating SEC disclosure framework for annuity products -- with respect to both variable annuities and SEC-registered general account (non-variable) products.

Variable Annuity Summary Prospectus Initiative. With respect to variable annuity products, we believe that it is critical for the Commission and its staff to prioritize rulemaking that would serve to significantly improve the effectiveness of variable annuity disclosure and promote and enhance investors' understanding of the operation and utility of variable annuity contracts. In 1985, the Commission adopted combined registration statement forms for registering variable annuities under the 1933 and 1940 Acts. Importantly, those forms have only been modified in minor respects since then. Meanwhile, the registration statement form for mutual funds (Form N-1A) was substantially revised in 2009, permitting fund shares to be offered using a summary prospectus. Yet, the Committee and other industry groups have been advocating for a variable annuity summary prospectus for a number of years – in fact, since before the Commission approved a summary prospectus for mutual funds. Simply put, making variable annuity disclosure more effective through a layered disclosure approach and in synch with the mutual fund disclosure regime is long overdue.

In recent meetings with the Division of Investment Management staff we have advocated for:

- A user-friendly Summary VA Prospectus that clearly explains key information regarding the VA contract, enabling investors and their financial advisors to make reasoned, informed purchase decisions.
- A notice plus access equals delivery model for in-force contract owners.
- A Statutory Prospectus & Statement of Additional Information that is streamlined and updated annually (or more frequently) and is available on-line at any time—both for new investors and in-force contract owners.

We strongly encourage you to accord the variable annuity summary prospectus rulemaking initiative the highest priority as part of the Commission's overall efforts to improve disclosure effectiveness.

Relief From Certain Regulation S-K Requirements for Annuity Contracts Registered on Forms S-1 and S-3. As noted above, much of the recent annuity product innovation has been in the area of SEC-registered annuity products that are not investment company securities – i.e., non-variable products. However, to register these products under the 1933 Act, currently the same amount of company-related information s that is required for common equity or debt offerings by public operating companies must be included in the prospectuses for these products. In 2010, the Commission recognized the specialized nature of these regulated insurance product offerings when it adopted Rule 12h-7 under the Securities Exchange Act of 1934 (the "1934 Act"), generally exempting insurance companies offering these registered products from the periodic reporting requirements of the 1934 Act to which they otherwise would be subject. Now is the time to provide similar relief from the 1933 Act disclosure framework so that the state-regulated insurance companies wanting to register these products, as well as the investors purchasing them, are not burdened with prospectuses stuffed with unnecessary, immaterial and irrelevant company-related information.

In this regard, last year in response to the Commission's Concept Release on Business and Financial Disclosure Required by Regulation S-K (S7-06-16), the Committee and other life insurance industry trade groups submitted comment letters advocating that the Commission provide relief from these unnecessary and burdensome disclosure requirements. In particular, we urged that insurers registering these regulated insurance products with the Commission be exempt from the following:

- Certain company-related disclosure requirements currently imposed by Forms S-1 and S-3 through Regulation S-K, such as executive compensation and MD &A , that were designed for prospectuses for equity investors, but are both irrelevant and immaterial in the context of regulated insurance product offerings and impose unnecessary cost burdens on insurance company issuers.
- Requirements to file quarterly reports and/or include quarterly financial statements in Form S-1 filings for regulated insurance products; such information is not required for variable annuity offerings.
- Requirements to include financial statements in Form S-1 prospectuses; instead include them in part 2 as is now done through the Statement of Additional Information for variable annuities.

We believe this relief should be relatively simple and straightforward. More importantly, it will remove what have been significant impediments to more companies offering these investment products to retirement savers – which ultimately will increase the number and variety of offerings and therefore will inure to the benefit of investors. We therefore ask that you prioritize this relief from Regulation S-K, as well as from related Form S-1 and S-3 requirements, as needed. We urge that this relief be included in the proposed regulations that the Commission staff has been working on in connection with the above Concept Release, or in some other initiative that could be proposed this year.

Use of SAP Financial Statements in Insurance Product Offerings. We also believe that insurance companies issuing annuity products registered only under the 1933 Act should be permitted to include financial statements in their Form S-1 or S-3 registration statements that are prepared on the basis of statutory accounting principles (SAP) adopted by the National Association of Insurance Commissioners rather than GAAP financial statements. The Commission has long permitted insurance companies issuing variable annuities to include SAP financial statements in their variable annuity registration statements. Regardless of the type of product, when investors purchase regulated insurance products they should look to the insurance company's financial condition to answer one key question: will the insurance company be able to pay its claims and meet its contractual obligations. SAP financial statements are designed to present just that type of financial information. The added costs that insurance companies must incur to prepare GAAP financial statements when they are not otherwise required to do so is very substantial – so much so that the current requirement to include GAAP financials in the registration statements for these annuity products is impeding more carriers from offering these types of products. Providing GAAP relief in this space would not, in fact, deprive investors of any material financial information – and, indeed, it would provide such investors with the same financial information that the Commission already explicitly permits variable annuity investors to receive. Therefore, we urge the Commission to help facilitate and further stimulate this growing retirement space by proposing and adopting GAAP relief for non-GAAP insurers this year.

2. *Adopting a Best Interests Standard of Conduct*

The Committee applauds your recently-released statement requesting public comment on the standards of conduct for investment advisers and broker-dealers. We support efforts to advance a workable framework for imposing a uniform standard of conduct on broker-dealers and advisers that would be applicable to all retail investor accounts, including retirement and non-retirement accounts.

As you know, Section 913 of the Dodd-Frank Act authorized the Commission to establish a standard of care for broker-dealers that would be the same as that for investment advisers. That section is designed to preserve investors' choice among distribution channels, products, services, and the form and means of compensation. It does so, for example, by providing that the receipt of sales based compensation or limiting investments available to proprietary products or a limited range of products shall not in and of itself constitute a violation of that standard.

In contrast to the principles set forth in Section 913, the fiduciary rules and related exemptions recently adopted by the U.S. Department of Labor ("DOL") reflect a hostility toward sales-based compensation. DOL's fiduciary rule has and will continue to adversely impact retirement security by reducing access to, and use of, guaranteed lifetime income options. Unlike Section 913, which protects longstanding and appropriate compensation arrangements, the DOL rules in practice provide a disincentive to the sales of annuities and lifetime income guarantees because the rules impose major burdens on current compensation models, particularly commissions, which are an accepted and appropriate compensation model for annuities that aligns inherently with the nature of the product. Put simply, this is at odds with the needs of the American investing public.

As the Commission considers a possible uniform standard of care for broker-dealers and investment advisers, the Committee urges that the standard fully and carefully embrace investors' choice among distribution channels, products, services and the form and means of compensation. In contrast to the DOL rules, the standard put forth by the SEC should not serve as a disincentive to sell lifetime income guarantees.

Secretary of Labor Acosta has stated publicly that the Commission has "critical expertise" in this area and hopes that the Commission will be a "full participant" in considering the standard of care for brokers and advisers. We applaud this spirt of cooperation, and along these same lines we note that given the Commission's role as a primary regulator of brokerage and advisory accounts, it is uniquely positioned to ensure a workable standard that serves all retail investors, while at the same time avoiding confusion and inconsistency.

Other Initiatives

E-Delivery of Reports and Prospectuses. We urge the SEC to undertake a rulemaking that would permit the use of e-delivery by investment product issuers, broker-dealers and investment advisers. Under existing guidance (established almost 20 years ago), these parties are generally unable to rely on e-delivery to satisfy disclosure delivery obligations because the investor e-delivery enrollment process, as prescribed by the now antiquated guidance, is virtually unworkable, i.e., investors must actively consent to delivery in a manner that connotes their ability to receive documents via the delivery method to which they are consenting. Accordingly, paper delivery, which is the default option, continues overwhelmingly to be the method of delivery, despite persistent investor complaints, significant environmental waste and the indisputable explosive growth of internet usage and reliance. The Committee urges the Commission to advance a rulemaking that would make e-delivery the default option, with paper documents available at all times upon request. Further, as the Committee has advocated, the rulemaking should provide that delivery is satisfied by posting required reports and prospectuses on the relevant website, and by providing investors notice of such posting along with information regarding how to access the site.

Substitution Transactions. As noted above, variable annuity contracts (and variable life insurance policies) offer a wide array of mutual funds as underlying investment options. Variable contracts have always provided for the right of insurance companies to substitute the shares of the mutual fund options underlying such contracts for other mutual funds. While Section 26(c) of the 1940 Act was enacted in 1970 and did not contemplate variable contract substitution transactions, the Commission and the staff to date have interpreted Section 26(c) as requiring that such variable contract substitutions be approved by the Commission before they can be effected. That process is a comprehensive and lengthy one. The Committee encourages the Commission to consider whether a safe harbor rule could be adopted or a no-action letter issued that would facilitate all or at least many of the mutual fund substitution transactions that now must be submitted to the Commission staff in advance for individual approval.

Other Matters. The existing federal securities law framework governing the offering and regulation of annuity products is complex. A patchwork of applicable statutory requirements and exemptions, as well as implementing, interpretative and exemptive rules adopted by the Commission over the years, govern how the Commission regulates our members' annuity products, particularly under the 1933 and 1940 Acts. Yet markets and technology have evolved considerably, as have the other federal and state regulatory frameworks that apply to our members and their annuity products and to those who offer and recommend these products. Accordingly, there are several other areas where the Committee believes that improvements can be made to the current federal securities regulatory framework in order to better level playing fields and address anomalies that have emerged. We look forward to discussing these other areas with the Commission and the staff.

Conclusion

We appreciate your consideration of the regulatory and policy goals highlighted above, and we stand ready to provide you with any further information that may further your consideration. The Committee is prepared to meet with you and the other Commissioners on any or all of these initiatives in an effort to ensure they are accorded the high priority we believe they are due. As a significant regulator of these products, the Commission can contribute materially to improving investors' access to the unique benefits these products provide while fulfilling its investor protection mission. In that regard, we would also note that in order for the Commission to effectively fulfill its regulatory role with respect to annuities and other SEC-regulated insurance products, it is critical for it to maintain and focus staff expertise regarding these products and how they uniquely fit into the statutory and regulatory framework that the Commission administers.

We look forward to constructive dialogue on these and other matters during your tenure as Chairman.

Sincerely,

THE COMMITTEE OF ANNUITY INSURERS

Stephen E. Roth

Stephen E. Roth
Eversheds Sutherland (US) LLP

cc: The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
David W. Grim, Director, Division of Investment Management
Heather Seidel, Acting Director, Division of Trading and Markets
William H. Hinman, Director, Division of Corporation Finance

Appendix A

2017
THE COMMITTEE OF ANNUITY INSURERS
MEMBER LIST

AIG
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
National Life Group
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Symetra Financial Corporation
The Transamerica companies
TIAA
USAA Life Insurance Company
Voya Financial, Inc.

Appendix B

TYPES OF ANNUITY CONTRACTS REGISTERED WITH THE SEC

Variable annuity contracts

Variable annuity contracts are investment company securities. Most variable annuity contracts are deferred annuities with a deferral period during which contributions to the contract can be made, and an annuitization period during which the insurance company makes scheduled annuity payments. The contract values during the deferral period reflect the investment experience of the insurance company's separate investment account. The separate account can be actively managed, but more typically it invests in a number of designated underlying mutual fund options that the contract owner can choose from, with there often being between 60 and 80 such options. The separate account is registered as an investment company under the 1940 Act. In addition to traditional annuitization options, variable annuity contracts typically provide significant additional insurance guarantees in the form of guaranteed death benefits and guaranteed living benefits that are available during the contract's deferral period. The living benefit guarantees provide either guaranteed lifetime withdrawal benefits, guaranteed minimum income benefits, or guaranteed minimum account value benefits. Most variable annuities sold over the past decade or more have included guaranteed lifetime withdrawal benefits which guarantee that the contract owner can take prescribed periodic withdrawal amounts from their contracts for as long as they live regardless of the actual investment experience of the mutual fund options to which their contract values are allocated.

Market value adjusted (MVA) fixed annuity contracts

Like other annuity contracts, MVA fixed annuity contracts provide annuity income options and may provide some form of a death benefit. During the contract's accumulation period, these contracts typically offer a number of guaranteed interest rate options for different terms of years. The contracts guarantee the prescribed interest rates if the amounts remain in the contract at the end of the period, but if the owner of an MVA contract surrenders the contract or withdraws amounts before the end of a period, the MVA feature adjusts proceeds payable to reflect changes in prevailing market interest rates. Proceeds payable to the contract owner increase when those interest rates have declined but decrease when interest rates have risen. The MVA feature enables the insurance company to offer higher guaranteed interest rates by shifting to the contract owner the interest rate risk associated with having to prematurely liquidate the assets that the insurance company holds to fund the guaranteed interest rates.

Index-linked annuity contracts

Like other annuity contracts, index-linked annuity contracts provide annuity income options and may pay a death benefit. During the accumulation period, these contracts credit interest based on a formula that references the performance of one or more securities or other indices. Often the formulas used to calculate the interest are subject to caps on performance gains and buffers from, or floors on, performance losses. If the contract owner surrenders the contract before the end of the specified term, the proceeds payable to the contract owner are adjusted up or down to reflect whether the referenced index has gained or lost value since the beginning of the specified period, subject to the stated caps and buffers/floors. Like the MVA feature of a fixed annuity, these index-linked contracts enable the insurance company to offer contract owners the potential for higher contract values over the periods specified in the annuity contract by shifting certain market risks to the contract owners.

Contingent deferred annuity contracts

Some life insurance companies offer annuity contracts that provide lifetime income guarantees related to assets investors hold in their retail brokerage or investment advisory accounts. Specifically, these contracts guarantee that the contract owner will receive minimum lifetime payments from those assets without regard to the investment performance of the assets so long as the contract owner does not take withdrawals from the associated account in excess of the annual minimum lifetime payment. Any such excess withdrawal typically results in a proportional reduction in the contract owner's annual minimum lifetime payment. The Contract owner's withdrawals are deducted from assets held in the associated account. If the withdrawals combined with poor investment performance deplete the assets held in the associated account and the contract owner has satisfied the conditions of the guarantee, the life insurance company will continue to make the minimum payments to the contract owner. These contracts are designed to insure the contract owner against outliving the assets held in the associated account. The lifetime guarantees provided by these contracts are very similar to guaranteed lifetime withdrawal benefits that are frequently offered as optional benefits in variable annuity contracts.