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THE Committee OF Annuity Insurers
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November 28, 2023

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities (File No. S7-16-23)

Dear Ms. Countryman,

The Committee of Annuity Insurers (the "CAI," "we," "our," or "us") is submitting this comment letter in response to the request for public comment by the Securities and Exchange Commission (the "SEC" or "Commission") on the proposed rulemaking titled "Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities" (the "Proposal").[1] The primary purpose of the Proposal is to require the use of Form N-4 for registered index-linked annuity ("RILA") offerings[2] under the Securities Act of 1933 (the "1933 Act"). In brief, we fully and whole-heartedly support the primary purpose of the Proposal.

The CAI 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 and state policy with respect to securities, regulatory, and tax issues affecting annuities. The CAI's current member companies represent approximately 80% of the annuity business in the United States.[3] For over 40 years, the CAI has been actively involved in shaping and commenting upon many elements of the SEC's regulatory framework applicable to insurance contracts, such as variable annuity contracts ("VAs"), variable life insurance policies ("VLs"), RILAs, registered index-linked life insurance policies ("RILUs"), market value adjustment annuity contracts ("MVAs"), and contingent deferred annuities ("CDAs").[4] As discussed further in this letter, the SEC should also expand Form N-4 to include MVA offerings and Form N-6 to include RILU offerings, as the Proposal has already firmly laid the groundwork for the logical and natural extension of those forms to MVAs and RILUs.[5]

Virtually all life insurance companies currently offering RILAs are members of the CAI. Therefore, the CAI is particularly appreciative of the opportunity to submit these comments on the Proposal, which would provide a tailored SEC registration and disclosure framework for RILA offerings. We commend the SEC and the staff in the SEC's Division of Investment Management for their

[1] Release Nos. 33-11250, 34-98624, IC-35028 (Sept. 29, 2023) [88 FR 71088 (Oct. 13, 2023)] (the "Proposing Release").

[2] RILA offerings to be registered on Form N-4 would include standalone RILA contracts as well as index-linked investment options in combination RILA/VA contracts.

[3] We have included a list of the CAI's current thirty-two member companies in the Appendix to this letter.

[4] VA offerings through managed and unit investment trust ("UIT") insurance company separate accounts are registered with the SEC on Form N-3 and Form N-4, respectively. VL offerings through UIT separate accounts are registered with the SEC on Form N-6. For variable products, Forms N-3, N-4, and N-6 are dual registration forms under both the 1933 Act and the Investment Company Act of 1940. RILA, RILU, MVA, and CDA non-variable product offerings are currently registered with the SEC under the 1933 Act on Form S-1 or Form S-3.

[5] To the extent applicable, any comments we make with regard to the proposed registration, disclosure, filing, and offering framework for RILAs also apply to MVAs and RILUs.

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thoughtful and thorough efforts in proposing a comprehensive RILA offering framework, especially in light of the expedited rulemaking timeline required by the RILA Act.[6] We agree with the SEC that by adapting the existing VA registration and disclosure framework to RILAs—a framework that is familiar to investors, insurance companies, and the SEC staff—the Proposal would modernize and enhance the registration and disclosure of RILA offerings in ways that will greatly assist investors in evaluating these offerings, as well as provide efficiencies for insurance companies and the Commission in connection with registered insurance product offerings.

I. THE KEY ELEMENTS OF THE PROPOSAL

We enthusiastically support many key elements of the Proposal. The proposed new RILA framework would significantly improve the SEC's regulation of RILA offerings, to the benefit of both investors and insurance companies.

A. IMPORTANT ELEMENTS OF THE PROPOSAL THAT HAVE OUR FULL SUPPORT

Although we have substantial comments on the entire Proposal as summarized later in this section and as set forth in more detail under "II. Our Specific Comments on the Proposal," we first wish to emphasize below our broad support for various important elements of the Proposal and the SEC's reasoning in support of those elements.

a. Use of Form N-4. The SEC is proposing that RILA offerings must be registered on Form N-4. We agree with the SEC's proposal to adapt Form N-4 for RILAs rather than creating a new registration form. The SEC's proposed approach leverages investors', registrants', and the SEC staff's experience with the existing Form N-4 framework; helps to achieve more uniformity in regulation; simplifies the registration of combination RILA/VA products; and facilitates the ability of investors to compare and contrast different RILA and VA products.

To accommodate RILA offerings on Form N-4, the SEC is also proposing extensive amendments to Form N-4 that specifically address the features and risks of RILAs. While we have numerous comments on specific form items and instructions as proposed, we likewise fully support many of the core components of the proposed form amendments, including those relating to:

i. Scope of Required Company-Related Information. We wholly support the Commission's determination that the types of company-related disclosures in Regulation S-K that are generally applicable to public equity and debt offerings are neither necessary nor appropriate in the context of RILA offerings. We concur with the SEC's reasoning that, through Regulation S-K, Form S-1 and Form S-3 require "extensive information about the [insurance company issuer] that may be less material . . . than information about the contract's features," and that the focus of the disclosures should be "on the provisions of the [contract] itself . . . [as] the investor's exposure to the insurance company generally is limited to the company's ability to honor any guarantees associated with the contract."[7] The extensive company-related disclosures

[6] *See* Division AA, Title I of the Consolidated Appropriations Act, 2023, Pub. L. 117-328; 136 Stat. 4459 (Dec. 29, 2022) (authorizing the registration of RILA offerings on Form N-4 if the Commission fails to adopt a registration form for RILAs within 18 months of enactment).

[7] *See* Proposing Release, pp. 14-16. For these reasons, we would adamantly object to the inclusion in Form N-4 of additional company-related disclosures under Regulation S-K, including (but not by any means limited to) management's discussion and analysis of financial condition and results of operations (Item 303) and executive compensation (Item 402).

under Regulation S-K are immaterial to investors in insurance products, ill-suited to insurance product offerings, and are extraordinarily burdensome for insurance companies to prepare, and therefore should be phased out from the SEC's regulatory framework in this context.[8]

ii. **Use of SAP Financial Statements.** We also whole-heartedly support the extension of Form N-4's longstanding financial statement instructions to RILA offerings, such that RILA issuers will be permitted to use financial statements prepared in accordance with statutory accounting principles ("SAP") rather than generally accepted accounting principles ("GAAP") provided that the requirements of Form N-4 are satisfied. We agree with the SEC's assessment that the use of SAP financial statements "appropriately recognizes the cost burdens that would be imposed if the Commission were to require GAAP financial statements in cases where the [insurance company] is not otherwise required to prepare financial information in accordance with GAAP," and that "SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by state law, appear to provide sufficient material information for investors evaluating RILAs."[9] We also note that the use of SAP financial statements, given their focus on financial strength and claims-paying ability, is entirely consistent with the scope of company-related information under the proposed amendments to Form N-4. The use of SAP financial statements also promotes the formation of capital markets by substantially reducing the burdens on many insurance companies offering or seeking to offer RILAs.

b. **Use of VA Filing Rules for RILAs.** In conjunction with the proposed registration of RILA offerings on Form N-4, the SEC has also proposed a number of rule amendments under Regulation C. Except as otherwise discussed in this letter, we fully support the proposed rule amendments. We are especially supportive of the proposed amendments to Rules 415, 485, and 497 (as well as Rules 456 and 457, as discussed later below).

i. **Rule 415.** The proposed amendments to Rule 415 will eliminate the need for RILA issuers to file a new initial registration statement at least once every three years, a burdensome and arbitrary requirement that RILA issuers have been forced to carefully navigate under the Form S-1/S-3 framework to avoid disruption to their continuous offerings and, for many, the need to prepare interim financial statements.

ii. **Rule 485.** The proposed amendments to Rule 485 will allow RILA issuers to file routine annual updates, and to make immaterial changes, to their RILA registration statements with post-effective amendments that are eligible for immediate and automatic effectiveness. Under the Form S-1/S-3 framework, the inability to file basic post-effective amendments without SEC staff review and comment, and to go effective without SEC acceleration, has been unduly restrictive and burdensome for RILA issuers and wasteful of SEC staff resources.

iii. **Rule 497.** The proposed amendments to Rule 497 will simplify the SEC's regulatory framework by allowing issuers with both RILAs and VAs to conform their definitive

[8] We do not oppose the proposed application to RILA issuers only of single Item 304 of Regulation S-K in connection with changes in and disagreements with accountants on accounting and financial disclosure. Because the financial statements will appear in the Statement of Additional Information (the "SAI"), any disclosure in response to Item 304 should also be placed in the SAI as proposed.

[9] *See* Proposing Release, p. 182.

materials and supplement filing practices, and will facilitate the ability of investors to find definitive materials and supplement filings on EDGAR.

For the reasons above and the other reasons discussed in this letter, we fully support the SEC's efforts to achieve substantial uniformity in the filing rules for RILAs and VAs. Indeed, we view the proposed amendments to Rules 415, 485, and 497 (and Rules 456 and 457) as being critical to the viability of the proposed RILA registration framework, as well as satisfying Congress's intent under the RILA Act.

c. **Optional Use of Summary Prospectuses under Rule 498A.** Consistent with the inclusion of RILAs on Form N-4, the SEC is proposing to permit RILA issuers to make use of the summary prospectus framework for VAs and VLs. We fully support the extension of Rule 498A to RILAs as proposed. Since its adoption in 2020, the SEC's variable product summary prospectus framework under Rule 498A has been a success, following the success of the SEC's mutual fund summary prospectus framework under Rule 498. We believe that a summary prospectus framework for RILAs will be equally successful, and that the existing Rule 498A summary prospectus framework will suit RILA offerings well. Investors and registrants will benefit from Rule 498A's layered disclosure framework, which is specifically designed to provide insurance product investors with key information relating to a contract's terms, benefits, and risks in a concise and reader-friendly presentation, with access to more detailed information available online and electronically or in paper format on request.

d. **Registration Fee Framework.** Also consistent with the inclusion of RILAs on Form N-4, the SEC is proposing that RILA issuers pay SEC registration fees using the same method as VA offerings. Specifically, pursuant to proposed amendments to Rule 456, issuers registering RILAs on Form N-4 would be deemed to be registering an indeterminate amount of securities upon effectiveness of the registration statement. Furthermore, pursuant to proposed amendments to Rule 457, RILA issuers would be required to pay fees annually in arrears based on their net sales using amended Form 24F-2. We unreservedly support the SEC's proposed registration fee framework for RILAs, primarily for the following reasons:

   i. **Unlimited Registered Interests and Payment in Arrears.** The proposed amendments will eliminate the substantial and unfamiliar burdens that RILA issuers face in (i) paying registration fees in advance based on imprecise (and, in turn, overly conservative) future sales estimates and (ii) closely tracking their remaining pool of registered interests to avoid overselling in violation of the 1933 Act. In addition, RILA issuers will no longer have to carefully plan when to register additional interests.

   ii. **Reducing the Cost of RILA Offerings.** The proposed amendments will facilitate capital formation by finally allowing RILA issuers to calculate registration fees based on net sales. Under the Form S-1/S-3 framework, RILA issuers are not allowed to use netting in the calculation and tracking of registration fees. Without the ability to base fees on net sales, RILA offerings have to date been significantly more expensive than VA offerings.

Here, too, we fully support the SEC's efforts to achieve substantial uniformity in the rules for RILAs and VAs. The SEC's proposal will simplify registration fees for RILA offerings and facilitate the ability of insurance companies to bring RILAs to market.

B. ASPECTS OF THE PROPOSAL ABOUT WHICH WE HAVE SUBSTANTIAL COMMENT

Although we broadly support many key elements of the Proposal, this letter raises numerous issues and comments related to several aspects of the Proposal that could be improved, changed, eliminated, or otherwise addressed as part of the final rulemaking. In this regard, the remainder of this letter primarily focuses on the following topics:

a. **Important Dates.** We commend the Commission for proposing a staggered Effective Date, Delayed Effective Date, and Compliance Date (as defined in Section II.A.a. below) in order to make the new Form N-4 available immediately upon the Effective Date, while allowing extra time for the SEC and insurers to prepare for the full implementation of the new RILA regulatory framework. This is consistent with Congress's intent in directing the Commission to prepare and finalize a new form for RILAs within 18 months of enactment of the RILA Act. At the same time, we believe the date staggering gives rise to questions about which rules will apply to Forms N-4, S-1, and S-3 at various times until the conversion to the new framework is complete, and the Commission should clarify the effect of these staggered dates. In addition, the CAI asserts that the new Inline XBRL requirements should be subject to a longer compliance period.

b. **Form N-4 Items and Instructions.** We have a significant number of comments on the SEC's proposed amended items and instructions for Form N-4. Our comments relate to a wide range of disclosure topics, but as reflected in our comments, we are particularly concerned about select issues, such as: (i) excessive repetition, especially with respect to numerical maximum potential loss disclosure; (ii) redundant explanations and examples in the Overview section and Key Information Table ("KIT") that undermine the SEC's rationale for switching the order of those sections; and (iii) the improper characterization of limits on earnings and contract adjustments as "fees" or "charges." In addition, we are also concerned about certain other, fundamental issues related to the proposed Form N-4 amendments that we address in dedicated subsections of this letter as listed below.

c. **Filing Current Cap, Participation, and Other Upside Feature Rates.** We strongly object to the Proposal's requirement that current RILA upside rates be included in the Form N-4 prospectus on its effective date and subsequently updated as needed via Rule 497 filings. RILAs have been offered for more than a decade absent such requirements, and the RILA rate-setting and communication process is well-established and functions without any inherent investor confusion or complaint. The current process provides the investor with the same information in the same timeframe as the proposed "497" process, without any of the significant costs, human resource burdens, and investor confusion that would arise from an overwhelming number of Rule 497 filings. While the CAI believes that the current process is appropriate and should remain unchanged, we have also included as part of our comments a potential alternative that would achieve the SEC's goals without registrants having to make impractical, costly, and confusing Rule 497 filings.

d. **Rate Sheeting on Form N-4.** The Proposal does not address the rate sheeting process that is captured under ADI 2018-05 "Use of Rate Sheet Supplements in Connection with Variable Insurance Products," which is the SEC staff's standing variable product rate sheeting guidance. Given the increasing prevalence of guaranteed benefits in connection with RILA offerings, the final rulemaking should clarify that such guidance also applies to RILAs registered on Form N-4.

e. **Guaranteed Rate Limits for Future Index-Linked Options.** We fully appreciate the long-term nature of RILA contracts and the need for investors to have some expectation of their investment options on a long-term basis. We are concerned, however, that the proposed requirement to disclose a guaranteed minimum limit on index losses for the life of the contract for each index-linked option would unreasonably constrain insurance companies from offering competitive upside rates or even certain classes of index-linked options altogether. In addition, RILA issuers need the flexibility to innovate, and guaranteed minimums could have an inadvertent chilling effect on product innovation, and, in turn, investor choice. The CAI is confident that this issue can be addressed in different, more investor-friendly, ways without impeding capital formation and investor choice.

f. **Financial Statement and Accounting Matters.** As previously noted, we believe the use of SAP financial statements for RILA offerings is appropriate because it will provide investors with sufficient and better-tailored information to assess the company's solvency. Furthermore, this relief will promote market competition, enhance investor choice, and facilitate comparability across the broad insurance marketplace. For similar reasons, we also believe that extending the relief provided by Form N-4 from requirements to prepare interim financial statements to companies that issue RILA contracts is appropriate.

   Numerous insurance companies have obtained permission from the Commission pursuant to Rule 3-13 of Regulation S-X ("Rule 3-13") to include SAP financial statements in registration statements for RILA contracts on Form S-1. Because the Rule 3-13 letters have been based on facts and considerations consistent with and derived from the existing financial statement instructions in Form N-4, the CAI does not object to the SEC's plan to rescind those Rule 3-13 letters or portions thereof that grant permission to use SAP financial statements in Form S-1 registration statements for RILAs or index-linked options in combination RILA/VA contracts.

g. **Unregistered Fixed Option Disclosure Requirements.** The Commission is proposing new Items 6(e) and 17(c) under Form N-4 to prescribe disclosures for unregistered fixed options offered in connection with a RILA or VA contract. With respect to such unregistered fixed options, insurance companies generally rely on the insurance exemption set forth under Section 3(a)(8) of the 1933 Act. Given that longstanding judicial precedent and Commission guidance have consistently recognized that Section 3(a)(8) is an exclusion from all provisions of the 1933 Act, not just the registration provisions, we seriously question whether the Commission has legal authority to prescribe the specific content, format, and location of any prospectus disclosures about unregistered fixed options. We believe that an insurance company should have the flexibility to provide disclosure about an unregistered fixed option in the manner it deems appropriate, so long as the disclosures are accurate in all material respects and do not obscure or impede the disclosures about the security being registered.

h. **Payment of Registration Fees on Form 24F-2.** We fully support the use of Form 24F-2 to pay RILA registration fees. However, we have three important recommendations regarding the proposed amendments to Form 24F-2 for RILA offerings. First, for greater clarity, we recommend that a separate line item be added to Form 24F-2 for unsold interests that were registered using Form S-1/S-3 registrations statements. Second, with respect to combination contracts, we recommend that the proposed guidance set forth in Instruction C.4. regarding net zero fee transactions be expanded to also include (i) transfers from index-linked options to variable separate account subaccounts, and (ii) transfers from variable separate account subaccounts to index-linked options. Third, the Commission should confirm that a RILA issuer would be permitted to file a single Form 24F-2 annually to pay registration fees for all of its ongoing RILA offerings, and pay registration fees on a net basis across all such offerings, rather

than making multiple Form 24F-2 filings and paying registration fees on a RILA offering-by-offering basis. This would be consistent with the manner in which variable product separate account registration fees are paid.

i. **Registration of MVAs on Form N-4.** The SEC should expand the Proposal to allow insurance companies to register MVA offerings on Form N-4. We largely agree with the Commission that "RILAs and registered MVAs differ only with respect to the manner in which interest is calculated and credited," and that because of this, "many of the disclosures [the Commission is] proposing for RILAs on Form N-4 would also be appropriate for registered MVAs."[10] As such, the proposed changes to Form N-4 can accommodate registered MVA offerings with only a few minor modifications. We believe the inclusion of MVAs on Form N-4 is important, as it would achieve greater uniformity in regulation, relieve many MVA issuers of the burdens of the Form S-1/S-3 framework, and better serve investors by providing a comparable disclosure regime with clear, relevant, and layered disclosure.[11]

j. **Registration of RILUs on Form N-6 (and Conforming Amendments for VL).** In addition to our recommendation for registered MVA offerings to be registered on Form N-4, we urge the Commission to make conforming changes to Form N-6 to allow for the registration of RILUs on that form (and to make conforming rule amendments related to the registration of RILUs on Form N-6). For the same reasons that Form N-4 would provide a better registration framework for RILAs, Form N-6 would provide a better registration framework for RILUs. Naturally, in order to amend Form N-6 to allow for the registration of RILUs, Form N-6 should also be amended to remain consistent with the amendments to Form N-4 for VAs. While we understand that the RILA Act does not specifically require the SEC to amend Form N-6, *there will never be a better time for the Commission to efficiently provide a tailored registration form for RILUs and keep Forms N-4 and N-6 aligned*.

k. **Reliance on Rule 12h-7.** We proffer some practical comments below related to the proposed Rule 12h-7 facing sheet and Item 6(a) representations, which should be revised to make clear that they only apply to an insurance company registrant (not a separate account registrant) and only to an insurance company as an issuer of a RILA (not to an insurance company in its role as depositor of a registered separate account). *In addition*, for reasons discussed in detail later in this letter, we also urge the Commission to announce an interpretative and/or non-enforcement position relating to reliance on Rule 12h-7 that would apply to legacy RILA contracts registered on Form S-3 and issued prior to the Compliance Date. Specifically, many such contracts may not reserve the right to prohibit assignments because insurance companies registering RILAs on Form S-3 have not been relying on Rule 12h-7. However, these insurers could not now unilaterally endorse such contracts to add an anti-assignment provision without violating law and therefore should be deemed in compliance with the condition set forth in paragraph (e) of Rule 12h-7.

l. **Product Offerings on Form S-1 and Form S-3.** We recognize the challenge in adopting tailored registration forms for all non-variable annuity and life insurance product offerings as part of this expedited rulemaking. However, while we fully appreciate that the RILA Act did not address all registered non-variable annuity and life insurance products, to mitigate the

[10] *See* Proposing Release, p. 208.

[11] Although we fully support the logical extension of Form N-4 to MVA offerings, the Commission should make such a transition from Form S-1/S-3 to Form N-4 optional for MVA offerings that no longer involve the issuance of new contracts (*i.e.*, closed blocks). For some companies, the costs of transitioning a closed block of MVAs could significantly outweigh the benefits.

significant harms that inconsistent regulation would impose upon investors, insurance companies, and the SEC, it is important that the SEC take meaningful steps toward a more fundamentally consistent disclosure framework for *all* registered offerings of non-variable annuity and life insurance products. To that end, with respect to non-variable annuity and life insurance product offerings registered on Form S-1, we urge the SEC to announce a non-enforcement policy that would permit the registrant to (i) omit from the Form S-1 prospectus company-related disclosures that are not required by Form N-4; (ii) use SAP financial statements in the Form S-1 prospectus if consistent with the instructions set forth in Form N-4; and (iii) include interim financial statements in the Form S-1 prospectus only in the limited circumstances required by Form N-4. In addition, with respect to insurance companies that file periodic and current reports under the Securities Exchange Act of 1934 (the "1934 Act") solely because they have non-variable annuity and life product offerings registered under the 1933 Act, as part of any other ongoing or future rulemaking that would impose *new* company-related disclosure or financial statement requirements, consistent with the disclosure framework set forth for RILAs in the Proposal, the SEC should not apply those new requirements to such insurance company issuers.

m. Marketing Materials. With respect to the proposed amendments to Rule 156, the CAI is not opposed to the amendments. However, we are concerned with the implication in the Proposing Release that misleading marketing practices are "common" in the RILA marketplace. We *unequivocally* object to any such characterization. With respect to the SEC's proposal not to amend Rule 482, we appeal to the SEC to reconsider. For the reasons discussed in this letter, the SEC should amend Rule 482 to permit RILA advertising under that rule, conditioned upon a requirement that such advertisements do not contain historical performance data for the RILA or any particular index-linked option. In the event that the SEC chooses not to amend Rule 482 as requested, in the alternative, the SEC should amend Rule 433 under the 1933 Act to include RILAs registered on Form N-4 as a type of offering for which free writing prospectuses may be used without an additional prospectus delivery requirement.

n. Other Important Comments

i. Confirmations under Rule 10b-10. To harmonize, as necessary and appropriate, the offering framework for all contracts registered on Form N-4, the Commission also needs to amend Rule 10b-10(b)(1) to include RILAs, so like VAs, certain RILA transactions can be confirmed using a quarterly statement in lieu of an immediate confirmation.

ii. Insurance Company Costs to Support Index-Linked Options. The Commission has requested comment on whether initial "value" disclosure similar to what issuers provide about the valuation of structured notes should be provided about RILAs. As we discuss in some detail, because a RILA represents a long-term investment that includes both investment and insurance elements and is continuously offered, rather than being helpful to retail investors, an oversimplified numerical disclosure of a RILA's initial "value," calculated at the time the prospectus is issued, would at best be irrelevant and at worst be confusing and potentially misleading to retail investors. See "Insurance Company Costs to Support Index-Linked Options" later in this letter.

II. OUR SPECIFIC COMMENTS ON THE PROPOSAL

A. IMPORTANT DATES

a. Effective Date, Delayed Effective Date, and Compliance Date

In the Proposing Release, the Commission proposes an Effective Date, a Delayed Effective Date, and a Compliance Date, as follows:

- The amendments to Form N-4 and Rule 498A would become effective "as soon as possible" after adoption of the final amendments (the "Effective Date").[12]

- All other rule amendments would be delayed six months from the date the final rules are published in the Federal Register (the "Delayed Effective Date"). This would include (i) amendments to several rules under the 1933 Act other than Rule 498A (*e.g.*, Rules 415, 457, 485, and 497); (ii) amendments to Form 24F-2; and (iii) amendments to Regulation S-T (related to EDGAR contract identifiers and Inline XBRL).

- The mandatory compliance date for the entire rulemaking would be one year after the final rules are published in the Federal Register (the "Compliance Date"). Specifically, all initial registration statements and post-effective amendments that are annual updates to effective registration statements on Form N-4 that are filed after the Compliance Date would be required to comply with the amendments.

The CAI completely agrees that registrants should be permitted to begin filing RILA registration statements under the revised form as soon as possible after the final rules are adopted and to begin relying on Rule 498A once such registration is effective. This is consistent with Congress's intent in directing the Commission to prepare and finalize a new form for RILAs within 18 months of enactment of the RILA Act. To this end, we commend the Commission's creativity in proposing an Effective Date, a Delayed Effective Date, and a Compliance Date, which together serve necessarily to accommodate the disclosure, timing, and resource needs of all parties involved. The Effective Date will speedily facilitate new RILA filings and existing RILA conversions, which are beneficial to investors and insurers alike; the Delayed Effective Date will provide the Commission time to prepare the EDGAR system to accommodate transitioning RILA offerings onto the proposed framework; and the Compliance Date will allow sufficient time for all insurers to prepare for compliance with the amendments, which, for many insurers, will require significant in-house resources and budgeting.

Notably, these dates, taken together, provide insurers the flexibility needed to complete a registration form conversion of this magnitude. While we think this is a necessary and very helpful approach, these staggered dates give rise to various practical and legal questions. To this end, the Commission should ensure that the adopting release and/or final rules reflect the following important revisions and clarifications:

- For the period between the Effective Date and Delayed Effective Date, for RILAs registered on Form N-4, please confirm that the amended rules operationalizing several aspects of the new framework (*e.g.*, Rules 415, 457, 485, and 497) would apply immediately to any RILA registered on Form N-4, despite the Delayed Effective Date, so that the following operations are addressed:

[12] *See* Proposing Release, p. 214.

- Payment of registration fees will be done in arrears (with "netting" of purchases and redemptions) using the Rule 456 and Form 24F-2 framework, *i.e.*, registrants will not pre-pay registration fees at the time of the initial filing;

- Filings of post-effective amendments and supplements will be under Rule 485 and Rule 497, respectively; and

- Three-year refreshes under Rule 415 will not apply.

Also, more generally, we are hopeful for the SEC staff's flexibility in allowing registrants who have pending Form S-1 or S-3 registration statements at the time of the Effective Date to transition to the new Form N-4 and instead go effective on the new form, after, of course, assuring their full compliance with the finalized new Form N-4.

- For the period between the Delayed Effective Date and Compliance Date, for RILAs that remain registered on Forms S-1 or S-3, please confirm, *if accurate*, that the amended rules operationalizing several aspects of the new framework (*e.g.*, Rules 415, 457, 485, and 497) will not apply to any RILA not registered on Form N-4, despite the fact that as of the Delayed Effective Date such rules would have been amended to apply to RILAs, so that the following operations are addressed:

  - Payment of registration fees will continue to be paid in advance and on a gross basis (no netting), *i.e.*, the Rule 456 and Form 24F-2 framework would not be available;

  - Post-effective amendments and supplements will continue to be done as POS AMs and under Rule 424 filings, respectively; however, Rule 485 will be available in connection with the amendment of existing RILA registration statements (on Forms S-1 and S-3) to convert to Form N-4; and

  - Three-year refreshes under Rule 415 will continue to apply.

- For the period after the Compliance Date, please confirm that filing a new registration statement either (a) to pre-purchase more interests or (b) due to a required three-year refresh pursuant to Rule 415 will not trigger the need to convert to Form N-4, such that registrants are permitted to remain on Forms S-1 or S-3 until the otherwise applicable compliance deadline.

- With regard to the Compliance Date, for Form S-3 registrants, please provide an exception to the Compliance Date so that the filing of an annual report on Form 10-K after the Compliance Date does not count as a post-effective amendment that is an annual update. We recommend that Form S-3 registrants be subject to a special requirement that their existing RILA registration statements as of the Compliance Date be converted to Form N-4 no later than May 1, 2026. This would similarly situate Form S-3 and Form S-1 registrants. Without this change, Form S-3 registrants would be unfairly subject to an earlier compliance deadline than Form S-1 registrants. As a practical matter, without this change, Form S-3 registrants would need to convert their RILA registration statements before the end of 2025.

b. New Inline XBRL Requirements

While the CAI does not generally oppose extending Inline XBRL requirements to RILAs filed on Form N-4, the CAI believes that the proposed Inline XBRL requirements should be subject to a longer, 24 month compliance period (*i.e.*, an additional year to comply after the conversion deadline). There is precedent for the Commission extending the Inline XBRL compliance deadline, as was done in the variable product summary prospectus rulemaking.[13] Critically, some RILA issuers do not have variable products, and therefore will be new to Inline XBRL and will need the same compliance runway as variable product issuers genuinely needed under the variable product summary prospectus rulemaking.[14] We also believe that insurance companies generally, even those with variable products, remain relatively new to implementing Inline XBRL requirements and will need additional time to comply with new requirements. As such, the CAI believes that an extended compliance period for Inline XBRL is warranted.

c. Rule 485(b) Post-Effective Amendments for Standalone VAs

Under the Proposal, existing registration statements for standalone VA offerings will need to comply with the Proposal at the time of the next annual update following the Compliance Date. Further, the Proposal indicates that the necessary changes will require a Rule 485(a) post-effective amendment, with the understanding that the SEC staff may grant template relief under Rule 485(b)(1)(vii). We ask that the SEC staff be permitted under its delegated authority to provide broader Rule 485(b)(1)(vii) relief to allow a company, on a case-by-case basis, to forego filing a Rule 485(a) post-effective amendment entirely for its standalone VAs. Depending on a registrant's existing disclosures, the changes necessary to comply with the Proposal may be completely non-substantive in nature and not warrant SEC staff review.

B. FORM N-4 ITEMS AND INSTRUCTIONS

a. Form N-4 Facing Sheet

i. **Rule 12h-7.** The Commission has proposed a requirement on the facing sheet to "[c]heck each box that appropriately characterizes the Registrant," which includes a box indicating whether the "Registrant" is relying on Rule 12h-7 under the 1934 Act. We believe that the use of the term "Registrant" with respect to the Rule 12h-7 representation may create confusion without additional clarification. For example, in the case of a combination contract, there would be two "Registrants" under a Form N-4 registration statement, the variable separate account as an issuer of the variable portion of the combination contract and the insurer as issuer of the index-linked options. On its face, the Rule 12h-7 representation could be read to apply to either the variable separate account or the insurer or possibly both.

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[13] *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)].

[14] As noted above and discussed in more detail below, the CAI is requesting that the Commission permit closed-block registered MVA contracts to remain on Form S-1 or S-3, as applicable, at the option of the insurance company issuer. Should the SEC *require* closed-block MVAs to be registered on Form N-4, the CAI asks that the SEC extend the compliance period for the registration of all MVAs on Form N-4 from 12 months to 24 months, consistent with the extension requested in connection with the new Inline XBRL requirements. This will give MVA issuers, especially those who also have RILAs, the necessary time to budget and prepare for undertaking the conversion process for an additional class of contracts.

As the Commission and its staff are aware, based on well-established legal analysis and precedent, the registration of variable contracts without registered non-variable options has never been viewed by the variable insurance industry as triggering a requirement to file 1934 Act reports or a need to rely on Rule 12h-7 to avoid filing such reports, and neither the Commission nor its staff have ever undertaken any action to the contrary.

We recommend that the proposed Rule 12h-7 representation be revised to make clear that the box would apply only to an insurance company registrant (not a separate account registrant), and only in the insurance company's role as issuer of a RILA contract or registered index-linked options registered on Form N-4 (not in an insurance company's role as depositor of a registered separate account). As such, in no case would the Rule 12h-7 box be checked for a standalone VA registration statement on Form N-4.

ii. **Smaller Reporting Companies.** The proposed new check-the-box section should also include a box for smaller reporting companies, same as Form S-1 and Form S-3. A box for smaller reporting companies is necessary because there could be RILA registrants that are smaller reporting companies that qualify for scaled financial statement requirements under Article 8 of Regulation S-X.

b. General Instructions

i. **Flexible Terminology and Presentation.** We ask the SEC to reemphasize in the adopting release, as stated in General Instruction C.3.(d), that registrants generally are not required to use the defined terms in General Instruction A or other terms used in the form so long as the terminology used by the registrant clearly conveys the meaning of, or provides comparable information to, the terminology included in the form.[15] It is critical that registrants be permitted to use flexible terminology. With respect to existing contracts, mandating different prospectus terminology would be confusing for investors and burdensome for registrants. With respect to new contracts, prescribing terminology would be unduly restrictive on product development, unduly burdensome to insurers in terms of managing administrative platforms across RILA offerings, and can undermine efforts to continually improve plain English disclosures. Relatedly, we ask the SEC to reemphasize General Instruction C.1.(d), which allows the SEC staff to allow variances in the form's disclosure or presentation requirements in appropriate circumstances, *including* with respect to the few places in Form N-4 where terminology and presentation is generally prescribed.

We raise this comment because, during the variable product industry's conversion to the new summary prospectus framework, several registrants received SEC staff comments to use specific terms as part of their disclosures, even when specific terminology was not expressly prescribed by Form N-4 or Form N-6. Emphasizing General Instruction C.3.(d) should help to avoid such situations when registering RILAs on Form N-4. Moreover, also as part of the variable product industry's conversion to the new summary prospectus framework, some registrants were not allowed to make any variations in terminology, formatting, or other presentation with

[15] For example, when describing buffer rates and floor rates in proposed Form N-4, the form always presents them as negative values (*e.g.*, -20%). However, most RILA issuers present downside rates using positive numbers (*e.g.*, 20%). It is essential that RILA issuers be permitted to continue using positive numbers in the presentation of those rates, so that their disclosures are consistent with their contracts and/or they are not placed at a competitive disadvantage relative to other companies or products.

respect to certain disclosures such as the KIT or Fund Appendix. Understanding that those presentations are generally prescribed by Form N-4, depending on the facts and circumstances, aspects of the prescribed presentation may be irrelevant or otherwise incompatible with the product being described. Emphasizing General Instruction C.1.(d) will help to clarify that deviations from the prescriptive form requirements can be considered on a case-by-case basis.

ii. **Excessive Repetition.** The Commission proposes to delete the last sentence of General Instruction C.3.(a), which currently states that information required in the KIT or the Overview section need not be repeated elsewhere in the prospectus. We do not necessarily oppose that specific change, as there can be value in strategically locating certain disclosures in multiple places to help investors. For example, a risk highlighted in the KIT should also appear in the Principal Risks section.

However, no disclosure should be repeated simply for the sake of repetition. Excessive repetition adds to the length of the prospectus without any commensurate value to investors. Indeed, excessive repetition often obscures new information that investors should be focusing on. In our view, excessive repetition is not consistent with plain English principles. *In effect, we are concerned and discouraged that repetition and layered disclosure are being incorrectly equated, or that repetition is becoming an over-utilized crutch at the cost of well-designed layered disclosure.*

Registrants and the SEC staff should be working together to better utilize layered disclosure to *reduce* repetition. In recent years, we have observed excessive repetition become a growing problem in RILA disclosures. As a result of the SEC staff review and comment process, rather than being encouraged to use layered disclosure, RILA issuers have been required to excessively repeat prospectus disclosures related to, *e.g.*, interim values, market value adjustments, maximum potential loss, risks of withdrawals, limits on earnings, and guaranteed minimums and maximums, such that RILA prospectuses (which were already lengthy) have notably increased in length.[16] We do not believe that repetition has helped investors better understand RILAs. If anything, repetition has hindered investors' ability to understand RILAs by making their prospectuses less reader-friendly.

Related to excessive repetition, another problem in recent years has been requiring registrants to cram excessive information into disclosure sections that are intended to be short and concise. For instance, as a result of the SEC staff review and comment process, RILA cover pages have ballooned in length, often extending 2 to 3 pages. These cover pages are packed so densely with information about risks and other matters that the basic information that a cover page should convey is obscured. Investors do not benefit from this tidal wave of information. Certain sections of a prospectus, such as the cover page and the KIT in Form N-4, are supposed to be short and concise because there is value in brevity, even if it means not conveying the full picture until later in the

[16] For example, in each place where a RILA prospectus makes references to "withdrawal" in relation to interim value or market value adjustments, several registrants have been instructed to include a parenthetical or other disclosure listing every type of withdrawal (*e.g.*, partial withdrawals, full withdrawals, scheduled withdrawals, unscheduled withdrawals, required minimum distribution withdrawals, adviser fee withdrawals, guaranteed benefit withdrawals, etc.), such that the list of withdrawals appears numerous times throughout the prospectus, sometimes even on the same page. While a list of withdrawal types may be helpful if placed in the glossary and perhaps strategically in a few other sections, repeating the full list of withdrawal types throughout the prospectus is frustrating for both registrants and readers.

prospectus. Rather than sacrificing the benefits of those high-level disclosures, layered disclosure should be better utilized to strike the appropriate balance.

iii. A Specific Excessive Repetition Problem in the Proposal: Maximum Potential Loss. The SEC has proposed the *same* maximum potential loss disclosures for the cover page,[17] Overview,[18] KIT,[19] Fee Table,[20] Principal Risks section,[21] new Item 6(d),[22] and new Item 7(e).[23] In each case, the registrant would be instructed to disclose as a numerical percentage the maximum potential loss under an index-linked option due to (i) negative index performance at the end of a crediting period and/or (ii) a negative contract adjustment. This is not layered disclosure—this is repetitive disclosure (especially for a summary prospectus), and it is an approach to disclosure that the SEC should be working to eliminate, not codify.

We acknowledge that the risk of loss associated with RILAs is an important concept to convey. Unlike most other investments, RILAs provide a level of downside protection, and an investor should therefore understand the limits of that protection. But rather than requiring registrants to repeat the exact same numerical maximum loss disclosures, as if sheer repetition will help an investor better understand, amended Form N-4 should better utilize narrative and layered disclosure to promote a more effective and reader-friendly experience. In that regard, the SEC should consider the following:

- Without appropriate context, stating maximum potential loss as a percentage (especially in a prominent manner) is confusing for investors and unfairly portrays RILAs as high-risk investments. For that reason, numerical maximum potential loss disclosure should not be presented in isolation or in disclosure sections that lack appropriate context (such as the cover page or the KIT).

- Numerical maximum potential loss due to negative index performance at the end of a crediting period can be used as an effective tool in explaining how buffers, floors, and other downside protection features operate. For example, explaining that there is an 80% risk of loss under a -20% buffer can help an investor conceptualize how that buffer's downside protection operates. That said, depending on the downside protection level, the *actual* risk of maximum loss at the end of a crediting period may be remote. Going back to the same example, the likelihood that investors would actually lose 80% of their investment under a -20% buffer is so unlikely that it does not warrant prominent emphasis, let alone excessive repetition.

- While the risk of loss can be greater due to a negative contract adjustment, that risk should not be presented in such a way that it is divorced from reality. It is accurate that, because the end-of-term downside protection normally does not apply to contract adjustments, a loss could go beyond the applicable buffer,

[17] *See* Item 1(a)(6) and (7).

[18] *See* Instructions to Item 2(b)(2)(ii) and 2(d).

[19] *See* Instructions 2.(a) and 3.(a) to Item 3.

[20] *See* Instruction 11 to Item 4.

[21] *See* Item 5(a) and (b).

[22] *See* Instruction to Item 6(d)(1)(iii).

[23] *See* Instruction 1 to Item 7(e).

floor, etc. And, because the downside protection normally does not apply to contract adjustments, it is *theoretically* possible that an investor could lose most of their investment, if not their entire investment, *in extreme scenarios* (*i.e.*, an unprecedented complete market collapse). Nevertheless, telling investors 5+ times with bold disclosure that they could lose, *e.g.*, 100% of their investment does not serve to help those investors actually understand the risk of loss. Instead, it grossly overemphasizes the risk of maximum loss, which is often so sufficiently remote that in reality it verges on *practically impossible*. In doing so, ordinary investors could wrongly conclude that they *will* lose all of their money as a result of a contract adjustment, or that the risk of losing 100% of their investment is, in fact, highly likely or even likely. This is an unfortunate and inaccurate message to convey (repeatedly) to a potential RILA investor who is seeking the very thing a RILA offers—some upside exposure with some downside protection. It also unfairly places RILAs on an uneven playing field with other SEC-registered investments that are also exposed to a theoretical 100% risk of loss but do not have prospectuses that prominently repeat numerical maximum loss disclosure or include it at all.

- To the extent that the SEC requires numerical maximum loss disclosure, given that the maximum loss could be 100% in some remote cases as discussed above, the SEC should ensure that the form instructions do not necessarily require registrants to state or imply that a 100% loss "could be greater" due to surrender charges, tax consequences, etc. Any such requirement would imply that an investor could lose even more than the amount invested, which is impossible.

With these considerations in mind, we submit the following more helpful and reader-friendly approach to RILA risk of loss disclosure:

- *Cover Page (Item 1(a)) – Narrative Only, Not Numerical*. The cover page should be clear and concise. With respect to risk of loss, Item 1(a) should more simply require prominent narrative disclosure that (i) the protection from loss provided by an index-linked option is limited, (ii) that an investor could lose a significant amount of money by investing in an index-linked option, and (iii) that this risk of loss could be greater than the downside protection level if the investor chooses to withdraw money from the index-linked option prior to the end of the crediting period. The inclusion of more complicated concepts on the cover page, such as numerical maximum potential loss, will not help an investor better understand these risks. There isn't enough context for numerical risk of loss disclosure, and trying to cram that context into the cover page is not helpful to investors.

- *Overview (Item 2) – Narrative and Numerical.* In the Overview, we are not opposed to the inclusion of both narrative and numerical risk of loss disclosure, for both end of term and negative contract adjustments, as the generally free-writing nature of the Overview allows the registrant to provide appropriate context for the reader.

- *Key Information Table (Item 2) – Narrative Only, Not Numerical.* The KIT was designed to be a clear, concise, and comparable presentation. It should not include numerical maximum potential loss disclosure. Narrative

statements regarding the risk of loss would better preserve the intended, fundamental purpose of the KIT and would better inform investors that want a simple explanation. Furthermore, as proposed, the maximum potential loss disclosure in the KIT would be duplicative of the maximum potential loss disclosure from the Overview. Repeating the same disclosures in the Overview and KIT would undermine the SEC's rationale for reordering those sections (*i.e.*, that the Overview disclosures would provide "descriptions and examples to help investors understand these RILA features and provide a basis for better understanding the issues flagged by the KIT disclosures"[24]).

- *Fee Table (Item 4) – No Risk of Loss Line Items*. Maximum potential loss due to a negative contract adjustment should not be listed as a transaction charge, or as a charge anywhere else in the Fee Table. Simply put, interim value adjustments and market value adjustments are not fees or charges in any sense. They relate to valuation and market forces, and can even result in gain, which puts them directly at odds with actual fees and charges. Characterizing them as a fee or charge is inaccurate and far more confusing than informative. As noted earlier, presenting a 100% loss as a fee or charge could lead a reasonable investor to wrongly conclude that they will necessarily incur a complete loss if they perform the transactions that are available under their contract. The Fee Table should be used to provide information about fees and charges, not as yet another section to highlight investment risks.

- *Principal Risks (Item 5) – Narrative and Numerical.* We are not opposed to requiring registrants to address the risk of loss narratively and numerically in the Principal Risks section. This section of the statutory prospectus is intended for readers that want more detailed information about risks, and registrants have the ability in the Principal Risks section to provide the appropriate context that an investor may need to better understand those risks.

- *Other Sections (Items 6(d) and 7(e)) – No Repetition Required.* There is no reason why narrative or numerical maximum risk of loss disclosure should be repeated in subsequent sections of the prospectus, even under new Items 6(d) and 7(e). An investor reading the Item 6(d) and 7(e) disclosures are unlikely to have entirely skipped the Overview and Principal Risks sections, so repeating the same disclosure is unlikely to be helpful. In fact, it will probably frustrate the reader, as the reader is probably looking for information that has yet to be disclosed in the prospectus, *e.g.*, a list of available index-linked options. If anything, cross-references to the Overview and/or Principal Risks sections should suffice, rather than repeating the same disclosure for a third time (if not more). These sections should focus on describing the mechanics of the index-linked options and contract adjustments, not the investment risks.

Again, we believe that excessive repetition has been a negative development in recent years. Layered disclosure is a tool that should be better utilized and not

[24] *See* Proposing Release, p. 45.

conflated with repetition. We hope that the SEC's final amendments to Form N-4 will embrace layered disclosure more so than the Proposal, especially with respect to risk of loss disclosure.

iv. Definitions (General Instruction A)

- **Contract Adjustment.** The Commission should clarify the proposed definition of "Contract Adjustment" in two ways. First, the Commission should specify that the term only refers to (i) interim value adjustments that may be applied when withdrawals and other deductions are made from an index-linked option before the end of a crediting period; (ii) market value adjustments that may be applied to amounts withdrawn or otherwise deducted from a contract; and (iii) similar adjustments that may be imposed under a contract. As proposed, the term could be interpreted as encompassing other types of transactions that the Commission did not intend. For example, it could be interpreted as also referring to the change in investment base for an index-linked option that occurs upon withdrawal or other deduction. It could even be construed as referring to a surrender charge that is deducted from remaining contract value, or to a reset feature under a guaranteed living benefit. We assume that the Commission did not intend the meaning of "Contract Adjustment" to be so broad. Second, the Commission should also clarify that "Contract Adjustment" is only in reference to index-linked options (and registered MVA options, if included in Form N-4), not variable options or unregistered fixed options, consistent with the Commission's intent. The proposed reference to "from the Contract" makes the scope of the term unclear.

- **Index-Linked Option.** The Commission should clarify the definition of the proposed term "Index-Linked Option." The definition should specify that this is a RILA-specific term, so as not to be applicable to an index-linked option that may be offered under an unregistered fixed option, or to be construed as applying to MVAs (registered or unregistered) which measure changes in interest rates using an index.

- **Index.** We fully support the proposed definition of "Index" or "Indexes." This defined term is sufficiently descriptive, covers all RILAs that are in the market today, and is flexible enough to allow continued innovation and evolution in the indexes and other benchmarks that may be used in RILAs in the future.

v. Filing and Use of Form N-4 (General Instruction B). General Instruction B.1., as proposed, states that "Form N-4 is used by all separate accounts organized as UITs and offering Contracts with Variable Options and all Insurance Companies that offer Contracts with Variable Options and/or Index-Linked Options" to file registration statements. We recommend that this instruction be revised because it suggests that combination RILA/VA contracts do not have a UIT separate account for the variable options. The Commission should therefore revise the instruction as follows: "Form N-4 is used by (i) all separate accounts organized as UITs and offering Contracts with Variable Options, (ii) all Insurance Companies that offer Contracts with Index-Linked Options, *and (iii) all separate accounts organized as UITs and Insurance Companies that, respectively, offer Contracts with both Variable Options and Index-Linked Options*" to file registration statements.

vi. **Inline XBRL (General Instruction C.3.(h))**

- **Tagging Item 6(c)(1).** The Commission proposes to require VA issuers to tag in Inline XBRL disclosure provided in response to new Item 6(c)(1) relating to the risks of investing in the variable options. Item 6(c)(1) should not be tagged. Requiring this information to be tagged would not further the ability of investors and other data users to compare contracts. Item 6(c)(1) calls for generally standardized statements applicable to all VAs. As a result, the information provided in response to Item 6(c)(1) would not differ substantively on a contract-by-contract basis. Tagging standardized legends of this nature will not aid in a meaningful comparison of contracts, nor improve investor understanding.

- **Contracts No Longer For Sale.** In response to the SEC's Request for Comment No. 100, the SEC should continue to exclude discontinued contracts (*i.e.*, closed blocks) from the Inline XBRL requirements. The Inline XBRL format is designed for investors and their investment professionals (as well as data aggregators, financial analysts, and other data users) to efficiently analyze and compare information about available contracts. As was the case with the variable product summary prospectus rulemaking, there continues to be no compelling reason to require Inline XBRL in connection with discontinued RILA contracts.

c. **Front Cover Page (Item 1(a)).** The proposed cover page instructions would require disclosures that highlight certain risks associated with RILAs. For the most part, the SEC has proposed instructions that will result in short, concise, and sensible cover page disclosures.[25] However, for the reasons discussed under "A Specific Excessive Repetition Problem in the Proposal: Maximum Potential Loss," we oppose any requirement to include numerical disclosure regarding maximum potential loss on the cover page. As previously discussed, we recommend a layered disclosure approach with respect to maximum risk of loss disclosure, which will promote readability and investor understanding and will reduce undue repetition.

d. **Back Cover Page (Item 1(b)).** We suggest that the Commission amend the Item 1(b)(3) legend on the back cover page of the prospectus to also refer to the availability on the Commission's website of reports and other information about the insurance company, as applicable, given that some RILA issuers file periodic and current reports under the 1934 Act.

e. **Overview of the Contract (Item 2).** Except as discussed below, we believe that the proposed amendments to Item 2 are generally appropriate (including requirements applicable to RILAs and VAs), and we believe that the proposed instructions for RILAs generally strike the right balance by providing investors with the proper level of summary disclosure, with additional information appearing later in the prospectus.

i. **Switch in Ordering of Overview and KIT.** We do not oppose the change to the order of the Overview and KIT for either RILA or VA offerings. Providing first a basic and

[25] In response to the SEC's Requests for Comment Nos. 11 to 13, we do not believe that additional cover page legends would be effective in helping investors make informed decisions, which should never be based solely on the cover page. The Overview, KIT, and other sections of the prospectus are better suited for providing additional information. Furthermore, we discourage the SEC from adding examples and illustrations to the cover page, which would lack adequate context and are ineffective communication tools for cover page disclosures that are supposed to be short and succinct.

structured narrative discussion may allow investors to better contextualize and understand the high-level information presented in the KIT.

ii. **Explanations and Examples (Excessive Repetition).** While we do not disagree with the SEC's rationale for changing the order of the Overview and KIT, we submit that many of the explanations and examples, particularly those describing the crediting and protection features associated with the index-linked options, if required in both the Overview and the KIT as proposed, are redundant and undermine the SEC's rationale for reordering those sections.[26] Although investors may not read the entire prospectus in order from cover to cover, and some measure of repeating disclosure woven throughout the prospectus may be helpful to investors, the Overview and KIT together constitute only a handful of pages and should complement, rather than repeat, one another.

In our view, the Overview best lends itself to presenting a high-level summary of the "life cycle" of a crediting period, providing brief explanations and examples of the crediting and protection methods available, and identifying the important features that will be further detailed later in the prospectus; while the KIT's tabular format, targeted disclosure requirements, and cross-references to where further information can be found is best suited to flagging important considerations for investors to investigate further before making investment decisions and promoting comparability across products. The CAI believes that repeating the same explanations and examples in the KIT that were provided in the preceding pages of the Overview will make it more difficult for investors to identify the information that is being flagged in the KIT.

With these considerations in mind, the Commission should reduce or eliminate the proposed repetition of explanations and examples across the Overview and KIT.

iii. **Maximum Risk of Loss.** As discussed and qualified under "A Specific Excessive Repetition Problem in the Proposal: Maximum Potential Loss" above, the CAI is not opposed to the inclusion of both narrative and numerical maximum potential loss disclosure in the Overview because appropriate context can be provided as part of that section.

iv. **Contract Adjustments**

- **Change to Itemization.** We note that the proposed disclosure requirements regarding contract adjustments (Item 2(d)) have been identified separately from the disclosure requirements regarding other elements of the index-linked options (Item 2(b)(2)). In fact, the proposed disclosure requirements regarding contract adjustments follow the disclosure requirements of the contract's primary features (Item 2(c)). Although the instructions do not explicitly require that the sub-items of the Overview be presented in any prescribed order, the CAI suggests for the avoidance of doubt that the sub-items be re-ordered to make it clear that the discussion of contract adjustments should generally accompany the discussion of the index-linked options, *e.g.*, by moving proposed Item 2(d) and the instruction thereto so that it is included as a subsection of proposed Item 2(b)(2).

- **Suggestion of Losses Greater than 100%.** The proposed instructions related to maximum loss due to a contract adjustment would require a statement that loss

[26] *See* Proposing Release, p. 45.

"could be greater" due to surrender charges and tax consequences. As previously noted, the SEC should make clear that disclosure in response to that form requirement could be modified to avoid any implication that the risk of loss is greater than 100%.

v. **Maturity and Default Option.** As noted, the Overview lends itself well to presenting a summary of the "life cycle" of a crediting period. Indeed, the Commission's proposed disclosure requirements regarding the index-linked options cover most of the key aspects that investors should be aware of to understand the cyclical nature of the index-linked options. In the interest of rounding out the discussion in the Overview, the CAI recommends that disclosure regarding the reallocation of contract value at the end of the crediting period and the default reallocation in the absence of investor instructions be required in the Overview rather than the KIT. This disclosure would be more helpful to investors by providing additional context in the framework of the Overview.

f. **Key Information Table (Item 3).** Aside from the numerical risk of loss examples and explanations as discussed earlier in this letter and below, we believe that the SEC has generally struck the correct balance in the KIT. The SEC's proposal for the KIT largely follows the presentation that RILA issuers have used in recent years for combination RILA/VA offerings. That presentation has worked well, and we believe it will work equally well for combination and standalone RILAs registered on Form N-4. Except as noted below or elsewhere in this letter, we also do not oppose the more general proposed changes to the KIT that would be applicable to both RILAs and VAs (*e.g.*, expanding the Restrictions row to also cover standard benefits, or referencing fees/penalties that may apply upon an exchange).

i. **Question and Answer (Q&A) Format.** The Commission proposes that the KIT be reformatted to a Q&A format so that the various line items of the KIT would be rephrased as questions and the corresponding responses would begin with a bold "yes" or "no" answer, if applicable, followed by the prescribed information. The CAI does not oppose this change. The Q&A format may be helpful and more accessible to some investors, although we note that there may also be some disadvantages to the proposed Q&A format as well. For example, the Q&A format could result in a somewhat cluttered and clunky presentation, which may run contrary to the original goal of conciseness and simplicity in the KIT. We suggest that the SEC weigh such considerations in deciding whether to adopt the Q&A format.

ii. **No Other Significant Changes to KIT Formatting and Presentation Requirements.** In response to the SEC's Requests for Comment Nos. 59 to 69, we believe any additional significant changes to the formatting and presentation of the KIT would be unwarranted and counterproductive.[27] The complexity and level of detail associated with many of the possibilities discussed in those Requests for Comment would be inconsistent with the spirit and purpose of the KIT as a short, succinct, and comparable disclosure section and inconsistent with an effective layered disclosure regime. They

[27] For example, among other things, the SEC should not change the order of the rows, add new rows, or create rows specific to RILAs. The SEC should not mandate numerical examples, illustrations, or performance histories in the KIT, including anything related to historical index-linked option performance, historical index performance, historical contract adjustments, operation of the contract in different market scenarios, historical data about the application of the bounded return structures, historical effects of loss- or gain-limiting features, the historical dollar value of gains and losses credited, etc. Nor should the SEC mandate a table comparing losses and gains under a RILA versus a VA, two distinctly different investments. Also, the SEC should continue to allow companies to cross-reference relevant sections of the prospectus either as part of the applicable information or in a third column.

would also fail to strike the appropriate balance by overwhelming investors with information, as the KIT should be used to highlight only the most salient facts. In the VA context, we firmly believe that the simplicity and comparability of the KIT has been a valuable tool to investors. It is the only largely standardized disclosure in the prospectus that covers the most important points about the entire contract, and it does so in only a few pages. Without question, the KIT in its current form significantly facilitates investor decision-making. The SEC should not turn the KIT, which is a critical, innovative, and successful component of the overall *layered* disclosure regime, into an information dump or completely upend the current format and presentation of the KIT.

iii. Fees and Expenses

Maximum Potential Loss Due to Contract Adjustment. The "Are There Charges for Early Withdrawals?" row of the KIT would require numerical disclosure of the maximum potential loss that may be incurred due to a negative contract adjustment, as well as an example identifying the maximum negative adjustment that could be applied to a $100,000 investment. As previously discussed under "A Specific Excessive Repetition Problem in the Proposal: Maximum Potential Loss" and "Explanations and Examples (Excessive Repetition)" earlier in this letter, the CAI generally disagrees with the inclusion of numerical risk of loss disclosure in the KIT, as well as repetitive explanations and examples between the Overview and the KIT. We believe that numerical risk of loss disclosure in the KIT will undermine the originally intended purpose of the KIT as a short, succinct, and comparable disclosure item.[28]

- **Upside Limits as Implicit Ongoing Fees.** The KIT would require a narrative legend stating that there is an "implicit ongoing fee" on index-linked options by the insurance company limiting the amount an investor can earn, that imposing this limit helps the insurance company make a profit, and that in return for accepting this limit on gains the investor will receive some protection from losses.[29] For a number of reasons, the CAI strongly disagrees with characterizing the upside crediting features of index-linked options as involving "implicit ongoing fees" and a distinct source of profit.

  First, an "ongoing fee" is charged consistently, notwithstanding investment performance. In addition, depending on index performance, an investor may never even realize a limited return on his or her investment in an index-linked option. For example, for index-linked options with caps, if index returns are positive and less than or equal to the cap rate, there is no limitation on gain. There are also circumstances where the investor's gain could be higher than the index return. This could happen, for example, (a) under a dual direction design when negative index

[28] If the SEC were to retain the numerical maximum potential loss disclosure in the KIT, because the theoretical maximum potential loss due to a negative contract adjustment under many RILA designs will be 100%, the SEC should not require an additional example based on a $100,000 investment. An ordinary investor will not be further helped by an additional example based on a $100,000 investment (or any other example translating a 100% loss into dollars). An ordinary investor would understand what a 100% loss means without an example. Moreover, the Commission proposed that the above-referenced example be followed by a statement that the loss "will be greater" if a surrender charge, taxes, and tax penalties are incurred. Again, the SEC should make clear that disclosure in response to that form requirement could be modified to avoid any suggestion that the risk of loss is greater than 100%.

[29] *See* Instructions 2.(c)(i)(G) and 2.(c)(iii) to Item 3.

performance is within a buffer, (b) the application of positive interest under a trigger rate design when index performance is lower than the trigger rate, or (c) upon the application of a participation rate greater than 100%. In light of these facts, the potential limit on earnings is better characterized as a "potential investment opportunity cost" rather than an "implicit ongoing fee." Registrants should be given the ability to modify this aspect of the legend as appropriate based on their specific RILA designs.

Second, even in the circumstances where an upside limit does in fact limit the amount of gains, use of "fee" terminology would be confusing if not misleading insofar it implies that the insurance company itself retains the difference between the actual gain in the index and the amount credited under the contract. However, that is simply not the case because the insurance company does not invest in the index or securities comprising the index and therefore it does not "pocket" the additional gain associated with the index. Rather it employs options strategies that are designed to provide returns that support the combined upside and downside features associated with each crediting strategy. Therefore, it would be inaccurate to suggest that the upside limit on gains in and of itself helps the insurance company make a profit. For this reason, the CAI does not believe that the legend should make reference to the insurance company's intent to make a profit in connection with limits on gains.

More generally, the proposed instruction, by using "implicit fee" terminology and referencing profits, detracts from a clear and concise presentation in the KIT of actual fees and charges.

For these reasons, the CAI recommends that Instruction 2.(c)(i)(G) to Item 3 be reworded as follows: "For Contracts that offer Index-Linked Options and impose ongoing fees and expenses on the Index-Linked Options, . . . precede the table with a prominent statement explaining that: (1) there is a *potential investment opportunity cost* on Index-Linked Options by the Insurance Company limiting, through the use of a cap, participation rate, or some other rate or measure, the amount an investor can earn on an Index-Linked Option; and (2) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses." The analogous instruction under Instruction 2.(c)(iii) should also be revised accordingly. Again, registrants should also be given the ability to modify this legend as appropriate based on their specific RILA designs.

- **Annual Cost Example.** The CAI notes that the prescribed assumptions under the Lowest and Highest Annual Cost Table assume that the entire contract value will be invested in variable options only.[30] Notwithstanding this assumption, the legend preceding the Lowest and Highest Annual Cost Table includes a reference to negative contract adjustments. To resolve this apparent discrepancy and to avoid confusion, the CAI recommends removing the reference to negative contract adjustments in the legend preceding the table and instead include a clear statement, similar to the statement included in the legend preceding the Example in Item 4, that: "This estimate assumes all Contract value is allocated to the Variable Options. Your costs could differ from the estimate if you invest in Index-Linked Options or Fixed Options."

[30] *See* Instruction 2.(c)(ii)(B) to Item 3 ("and Portfolio Company fees and expenses").

- **Omission of Min/Max Fee Table and Annual Cost Table.** The instructions to the "Are There Ongoing Fees and Expenses?" row of the KIT seem to contemplate that (i) contracts that offer index-linked options and impose ongoing fees and expenses will include *both* the Minimum and Maximum Annual Fee Table and the Lowest and Highest Annual Cost Table, and (ii) contracts that offer index-linked options and do not impose ongoing fees and expenses will omit both tables. As previously noted, the Lowest and Highest Annual Cost Table appears to rely on the assumption that the entire contract value is allocated to variable options. The CAI therefore suggests clarifying in the instructions that for contracts that offer index-linked options and impose ongoing fees and expenses (*e.g.*, optional benefit charges) but do not offer variable options, the Minimum and Maximum Annual Fee Table should be included and the Lowest and Highest Annual Cost Table should be omitted.

iv. Risks

- **Maturity and Default Option.** As proposed, the KIT would require registrants to include under the "Risks" section a row entitled "Is this a short-term investment?" Instruction 3(b) to the KIT instructs RILA issuers to provide in this row a statement that contract value will be reallocated at the end of the crediting period according to the investor's instructions, and to disclose the default reallocations in the absence of such instructions. This disclosure is unrelated to the risks of short-term investing. This row of the KIT should maintain focus on liquidity risks. Brief maturity and default option disclosure (that is not merely repetitive of the Overview) is better suited to the "Restrictions – Investments" row of the KIT, which is where RILA issuers would discuss restrictions on transfers.

- **Examples and Explanations (Excessive Repetition).** As already discussed under "Overview of the Contract – Explanations and Examples (Excessive Repetition)" above, the Overview and the KIT should complement, rather than repeat, one another. In the row entitled "What are the Risks Associated with the Investment Options?" Instruction 3(c) would instruct insurance companies to provide additional information highlighting how the insurance company limits the investor's participation in gains and losses of the index. This information would be accompanied by examples for each type of upside and downside feature under the contract. These examples echo the examples that would already be required in the immediately preceding Overview section.[31] The proposed examples in the KIT are therefore unnecessarily repetitive of examples that would be included in the Overview.

- **Financial Strength and Claims-Paying Ability.** As proposed, the KIT would require registrants to also include under the "Risks" heading a row entitled "Is There Any Chance the Insurance Company Won't Pay Amounts Due to Me Under the Contract?" which is intended to alert investors that any obligations, guarantees, or benefits under the contract will be subject to the claims-paying ability of the insurance company. The CAI believes that the wording of this line item will cause ordinary investors to misinterpret the intent and purpose of these disclosures and falsely inflate the risks related to insurer insolvency, which could result in undue

[31] *See* Item 2(b)(2)(iii) and (iv).

concerns that the insurance company will not pay amounts due under the contract, particularly when the required response is a bold "yes." Indeed, in the history of SEC-registered insurance product offerings, there are almost no instances of an insurer being unable to fulfill its contractual guarantees due to financial insolvency. Assuming that the SEC adopts a Q&A format, the title of this row should be revised to state "What are the risks related to the insurance company?" or another title that will avoid implication that there is a high credit or counterparty risk.

g. Fee Table (Item 4)

i. Maximum Potential Loss as a Transaction Charge. The legend to the Transaction Expenses table in Item 4 requires registrants to describe the fees and expenses contract owners will pay at the time they "buy the Contract, surrender or make withdrawals from an Investment Option or from the Contract, or transfer Contract value between investment options." In this table, the Commission proposes expanding the required tabular disclosures to include the maximum negative contract adjustment, expressed as a percentage of contract value at the start of the crediting period or the amount withdrawn, as applicable.

As previously discussed earlier under "A Specific Excessive Repetition Problem in the Proposal: Maximum Potential Loss," the CAI's position is that presenting maximum potential loss as a charge is misplaced, misleading, and over-simplistic, and we oppose any requirement to include a maximum negative contract adjustment percentage as a line item in the Fee Table. The CAI recognizes that contract adjustments typically used by RILA issuers can result in loss to investors. However, the maximum potential loss is ultimately risk disclosure, and is not a transaction expense or fee that investors will pay each time a withdrawal or other transaction is made. Including the maximum potential loss percentage in the Transaction Expenses table inappropriately mischaracterizes the contract adjustment as an explicit fee or charge, completely ignores the fact that contract adjustments can result in gain, and grossly mischaracterizes the nature of the risk of loss.

ii. Example. The CAI supports the proposed narrative explanation preceding the Example in the Fee Table. The narrative has been appropriately modified to clearly indicate that the Example is only intended to demonstrate the cost of investing in the variable options offered under a contract, and to help investors compare the costs of investing in other contracts that offer variable options. Furthermore, the Commission has included an appropriate legend alerting investors to the fact that costs may differ if they invest in any index-linked options or fixed options offered under a contract.

h. Reliance on Rule 12h-7 (Item 6(a)). The proposed Instruction to new Item 6(a) states: "If applicable, indicate that the Insurance Company is relying on the exemption provided by Rule 12h-7 under the Securities Exchange Act (17 CFR 240.12h-7)." For reasons previously noted, the CAI recommends that the Commission revise the proposed Instruction to allow insurers to add clarifying disclosure that identifies generally the types of securities that triggers an insurer's reliance on Rule 12h-7, if applicable. For example, such clarifying disclosure could include a general statement that an insurer relies on Rule 12h-7 with respect to registered standalone RILA contracts, registered index-linked options, or other registered non-variable insurance contracts the insurer issues.

i. **Description of Index-Linked Investment Options (Item 6(d)).** Except as discussed below and elsewhere in this letter, we believe that the disclosure items and instructions under proposed new Item 6(d) are helpful and appropriate. They would generally provide investors with the information they need to understand how the index-linked options operate, while also providing enough flexibility in the instructions to describe RILAs in the market today and to allow for future innovation.

   i. **Index Performance Bar Chart.** We do not oppose the proposed bar chart that would include the annual return for each index for the last 10 calendar years (or for the life of the index, if less than 10 years), with a standardized 5% cap and -10% buffer overlay. We believe this is a helpful disclosure that will provide information about historical index performance, while also providing another tool to help investors understand bounded return structures. Understanding that insurance companies that do not use caps or buffers would be allowed to use a comparable bounded return structure offered under the contract, we ask that the SEC staff be authorized to consider requests on a case-by-case basis to use a different overlay than would be generally prescribed. For example, if a company only offers -20% buffers, it should be permitted to use a -20% rather than -10% buffer overlay. We also ask that the SEC clarify that additional examples, based on assumed rates of return, be permitted in addition to the required examples.

   ii. **Filing of Upside Feature Rates.** The SEC is proposing to require the insurance company to disclose, for each index-linked option, current limits on index losses and gains. As proposed, insurance companies would update current limits on gains using prospectus supplements filed pursuant to Rule 497 under the 1933 Act. The CAI firmly opposes this requirement, as it is inconsistent with the longstanding disclosure framework for RILAs that has worked for many years and continues to work today. See "Filing Current Cap, Participation, and Other Upside Feature Rates" later in this letter for our comments.

   iii. **Costs to Support Index-Linked Options.** In its Requests for Comment Nos. 48 to 55, the SEC inquired what other disclosures it should require about the economic tradeoffs associated with RILAs. In that regard, the SEC cites disclosure practices for structured notes—where issuers disclose the difference between the issuer's original valuation and the investor's purchase price—and asks whether insurance companies should be subject to similar requirements. We strongly oppose any changes to the Proposal that would require disclosures contemplated by Requests for Comment Nos. 48 to 55. See "Insurance Company Costs to Support Index-Linked Options" later in this letter for our comments.

j. **Fixed Options (Item 6(e) and Item 17(c)).** The SEC is proposing specific disclosure requirements for unregistered fixed options. We do not have comments on the specific proposed disclosures, but as discussed further below, we oppose these proposed disclosure instructions insofar as they would dictate *required* disclosures relating to these options, because we submit that requiring such specific disclosures for options that are not securities would be outside of the SEC's legal authority. We instead believe that complying with these specific requirements should be optional. See "Unregistered Fixed Option Disclosure Requirements" later in this letter for our comments.

k. **Charges and Deductions (Item 7)**

i. **Name of Item.** The CAI recommends that amended Item 7, "Charges," be renamed "Charges and Adjustments." Naming this section "Charges and Adjustments" would more accurately describe the proposed required disclosures under amended Item 7, which would include contract adjustments, and would help to avoid mischaracterizing contract adjustments as "charges." Relatedly, the CAI recommends that Instruction 6 to Item 7 be revised to remove the word "other" from the first line, so that the instruction reads: "Describe the relationship between the Contract Adjustment and any charges or fees applied under the Contract, including, for example, the sequence in which charges and adjustments are applied." As written, Instruction 6 implies that contract adjustments are a "charge" or "fee," but it would be incorrect to characterize them as such.

ii. **Detailed Examples in the SAI.** Instruction 4 provides that the manner in which the contract adjustment is determined should be explained in "simple terms," while more detailed disclosure on the method of calculating the contract adjustment, including examples, should be placed in the SAI in response to Item 22. Registrants are instructed to provide a cross-reference in Item 7(e) to the SAI so that investors may refer to the SAI for more in-depth information. The CAI agrees that detailed disclosure on the method of calculating the contract adjustment should appear in the SAI, and that the SEC's proposal for Item 22 is an effective use of layered disclosure.

l. Investment Options Available Under the Contract (Item 17)

i. **Creation of Index-Linked Option Table.** The CAI supports the expansion of Item 17 to include an Index-Linked Options Table, as well as the table's general design. The proposed Index-Linked Options Table will aggregate all index-linked options currently available under the contract in one location to facilitate investor understanding and comparison of investment options and contracts.

ii. **Contract Adjustments.** The first sentence of the second paragraph preceding the Index-Linked Options Table should be revised to state the following: "If amounts are withdrawn *or deducted* from an Index-Linked Option before the end of its Crediting Period, we may apply a Contract Adjustment." Adding the phrase "or deducted" to the legend would more accurately reflect that deductions other than withdrawals may result in a contract adjustment.

iii. **More Flexible Presentation for the Fund Appendix.** The instructions in Item 17(a) should permit VA issuers to organize the Fund Appendix table by allowing additional rows that more visually separate and group underlying funds belonging to the same fund complex, provided that the presentation does not obscure or impede understanding of the information that is required to be included, or substantially otherwise alter the required format of the table. For example, registrants should be permitted to use the following presentation for the Fund Appendix:

Type / Investment Objective	Portfolio Company and Adviser / Subadviser	Current Expenses	Average Annual Total Returns (as of Dec. 31,)		
			1 Year	5 Year	10 Year
Fund Trust ABC Investment Adviser: X					
U.S. Equity	ABC Fund 1 *Subadviser:*	%	%	%	%
	ABC Fund 2	%	%	%	%
International Equity	ABC Fund 3 *Subadviser:*	%	%	%	%
	ABC Fund 4	%	%	%	%
Allocation	ABC Fund 5 *Subadviser:*	%	%	%	%
Fund Trust DEF Investment Adviser: Y					
U.S. Equity	DEF Fund 1 *Subadviser:*	%	%	%	%

The CAI believes that this presentation would improve the organization and readability of the Fund Appendix, while also maintaining standardization and comparability.

h. Filing Type for Incorporation by Reference of Financial Statements. The CAI recommends that the Commission allow insurance companies to file their required financial statements using N-VPFS or a substantially similar new EDGAR submission type that may be incorporated by reference into the SAI, as it is not clear that N-VPFS will be an available filing type under an insurance company's RILA-dedicated CIK. The availability of N-VPFS or a similar EDGAR submission type would provide for streamlined administrative processes in the preparation and filing of registration statements on Form N-4, and would be consistent with the manner in which registered separate accounts are permitted to incorporate financial statements of the insurance company and the separate account into the SAI for VAs and VLs.

i. New Item 31A. The Commission has proposed that RILA issuers provide census-type information regarding RILA contract sales in Part C under new Item 31A. The Proposing Release states that this information is "designed to assist the Commission and staff" and would "permit the Commission to identify trends occurring in this market segment over time and assist with allocating the Commission's resources in administering the form."[32] The CAI is concerned that public dissemination of this information, which has customarily been treated as private and confidential, would result in use by competitors in ways the Commission does not intend. The CAI also disagrees with the Commission's conjecture that this information "may benefit the public" by providing supplemental information about the marketplace for RILAs,[33] as ordinary investors do not use Part C to make investment decisions and the census-type information isn't relevant to those decisions. RILA issuers would provide this census-type information to the SEC upon individual request, but we see little value in providing it to the SEC on an annual basis in a public filing.

[32] *See* Proposing Release, p. 127.

[33] *See* Proposing Release, p. 128.

C. FILING CURRENT CAP, PARTICIPATION, AND OTHER UPSIDE FEATURE RATES

Proposed new Item 6(d) would require that companies include the guaranteed and current limits on gains for each index-linked option for the life of the RILA contract. The CAI has several strong objections to these specific requirements and therefore hopes that the Commission will reconsider them, in whole or in part, in the final rules.

Updating current rates through a 497 filing process (the proposed "497 RILA rate-setting regime") is not necessary given the well-established rate-setting and communication process that has been working for more than a decade.

RILA issuers routinely change current rates for new crediting periods in response to market conditions. This helps them manage their risks and provide competitive upside exposure to investors on an ongoing basis. Some insurers change these rates daily, while most change them weekly or monthly. Minimum upside rates, *i.e.*, the minimum potential upside exposure an insurer will declare, are generally included in the prospectus. Current rates are declared on an ongoing basis but typically at least 5 days ahead of a crediting period start date (most insurers provide 10 days or more advance notice) and posted on a dedicated webpage. Insurers also disseminate current rates through their distribution partners and customer service centers. In-force contract owners are reminded in writing ahead of maturing crediting periods to provide any new allocation instructions and where to obtain the applicable upside rates.[34] Notably, no CAI member has identified any fundamental issues with this process or any pattern of customer complaints or confusion regarding applicable upside rates.

The Proposal would require RILA issuers to include the current rate in the prospectus on the day it goes effective and subsequently update such rates through the proposed 497 RILA rate-setting regime.[35] This will be a significant change (and added expense) for RILA issuers, particularly companies that change current upside rates frequently. Indeed, one member estimated that if they change each upside rate at the start of each crediting period for each share class of each RILA contract they offer (which is not at all a far-fetched proposition), it would need to file 432 supplements each year, covering 25,680 rates. This is an overwhelming number of 497 filings to be made by the insurance company and sifted through by investors on EDGAR. Accordingly, we strongly suggest that the benefits of changing what is now a well-established, successful industry practice are dubious, the burdens are daunting, and the risk of investor confusion is high.

Relative to investors in other comparable products, the current upside rates are not as important to RILA investors. Such other products (*e.g.*, structured notes) are purchased solely for their bounded

[34] There are a few insurers that announce rates on the day the crediting period begins. In these cases, contract owners are permitted to opt out (or "bail out") of the crediting period without penalty within a certain number of days of the start of a new crediting period.

[35] While the Proposal does not suggest that changes to RILA upside rates would be treated akin to certain 497 changes made to variable products under the aforementioned variable product rate sheeting guidance and framework, the CAI would be *strongly* opposed to extending the conditions of that guidance to any 497 RILA "upside rate" filings that are part of the final rules. Variable product rate sheets are tied to guaranteed benefit features, and the current rates that are displayed on such rate sheets are applicable for the life of any contract issued during the period in which such rate sheet is in effect. While a few insurers change these guaranteed benefit rates fairly frequently, most do not. A summary of historic rates is required in the prospectus. Conversely, the RILA upside rates that insurers declare and communicate on an ongoing basis do not apply for the life of the RILA contract but only for the duration of each index-linked option crediting period. Each crediting period, which for some companies start every day, could result in a new set of rates. A similar historic summary of RILA rates, given the frequency of changes and number of rates changed, would be wholly unmanageable in a prospectus. There are also certain timing requirements associated with variable product rate sheets that do not easily lend themselves to RILAs.

return structure over a single crediting period. RILA investors, on the other hand, purchase a RILA for a variety of reasons, including retirement income guarantees, death benefits, tax-deferral, and more, *in addition* to their bounded return structures. Moreover, given the especially long-term nature of these insurance contracts, the specific upside rate for any single crediting period (which is one crediting period among numerous periods over many years, which could be simultaneous and consecutive periods), is not as important to a RILA investor's investment decision as with similar bounded return structured products that offer a single crediting term and *no other* features.

Should the Commission disagree with the CAI on these points, rather than adopting the 497 RILA rate-setting regime, the CAI urges the Commission to permit RILA issuers to include the current upside rates in the prospectus by expressly incorporating by reference the website page on which the current upside rates are to be posted. We note that the Proposal would already require a website address with the current upside rates, as reflected in the index-linked option appendix (Item 17(b)). We simply ask, rather than having to also file numerous prospectus supplements with the SEC under Rule 497 and post those prospectus supplements online pursuant to Rule 498A, that RILA issuers be allowed to incorporate by reference the webpage that would already include that same information. This would be far less burdensome for insurance companies, would be far less confusing for investors, and would have the same legal significance as the proposed Rule 497 filings with respect to disclosure liability.

We believe this approach would fully address any concern on the SEC's part regarding the materiality of current upside rates and the application of prospectus liability to that information (*e.g.*, Section 12 and Rule 10b-5). By expressly incorporating by reference the webpage with the current upside rates, the information on that webpage would be legally part of the prospectus, and prospectus disclosure liability would attach. Furthermore, under this approach, investors would receive the exact same information that the SEC envisions under the Proposal.[36] Also, this approach would avoid the extraordinary costs and burdens that insurers would incur if they were required to undertake the daily, weekly, and/or monthly Rule 497 filings, and it would avoid situations where investors are sifting through an overwhelming number of Rule 497 filings on EDGAR.

We understand that this approach would require an express permissive instruction in Part A of Form N-4,[37] as information generally cannot be incorporated by reference into a prospectus absent a rule or form instruction otherwise. However, we point out that this approach would otherwise be entirely consistent with the SEC's views on the treatment of websites that are identified and/or incorporated by reference into a registration statement. Of particular note, the SEC's 2000 electronic delivery guidance clearly confirms the well-established principle that registrants are responsible for the content of websites identified in their registration statements, and that information incorporated by reference is part of the registration statement and subject to disclosure liability.[38]

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[36] Under the Proposal, investors who receive a summary prospectus would be directed to that website for the current upside rates; they would not receive the supplements filed with the SEC unless they request them or otherwise access them on the Rule 498A landing page.

[37] The instruction could be narrowly tailored to allow only for the incorporation by reference of the applicable website, not other information required to appear in the prospectus.

[38] Use of Electronic Media, Release Nos. 33-7856, 34-42728, IC-24426. (Apr. 28, 2000). In relevant part:

> When an issuer includes a hyperlink within a document required to be filed or delivered under the federal securities laws, we believe it is appropriate for the issuer to assume responsibility for the hyperlinked information as if it were part of the document. . . . Additionally, because written offers must be made exclusively through a Section 10 prospectus, when an issuer includes a hyperlink to an external web site or document within a Section 10 prospectus, the issuer expresses its intent to have the hyperlinked information treated as part of this exclusive means of offering its securities. . . . Consequently, as with an embedded hyperlink, an issuer that includes a URL to a web site in a Section

We believe this is an elegant solution that fully serves investor needs and protections, while also mitigating RILA issuer burdens. Again, we note that the Proposal would *already* require a website address with the current upside rates to appear in the prospectus and summary prospectuses. RILA issuers would simply take that disclosure *one* step further by expressly stating that the website is incorporated by reference, which would be pursuant to an explicit Form N-4 instruction. Additionally, we would not be opposed to including this disclosure (and incorporation by reference) earlier in the prospectus, *e.g.,* in the Overview section, and then repeating it in the lead-in to the index-linked option appendix, as proposed.

Requiring disclosure of the "current" upside rates in the RILA statutory prospectus—with or without the accompanying proposed 497 RILA rate-setting regime (or our suggested incorporation by reference alternative) —at the time such prospectus goes effective would be confusing to investors.[39]

Including information in a statutory prospectus that is assured to become stale in the near-term is confusing and ill-advised. *Notably*, even under the longstanding variable product rate sheet guidance, current rates are not included in the prospectus. The CAI seriously questions the logic of including the current upside rate in the main body of the statutory prospectus.

Should the Commission proceed with requiring a 497 RILA rate-setting regime, such regime should permit other changes to the index-linked options.

Presently, although index-linked options include multiple component parts, including an index, crediting period, upside crediting feature and rate, downside protection feature and rate, and associated fees (as applicable), the only moving part is the upside rate. Should the Commission opt to implement a 497 RILA rate-setting regime, the CAI believes that such a process should extend to all the components of an index-linked option. RILAs are sensitive to market and interest rate volatility, which impact the upside exposure a RILA issuer can provide at the start of each crediting period. By allowing RILA issuers the flexibility to readily change other index-linked option components, they would potentially be able to better manage risks and provide investors with greater upside potential. The CAI believes that with the appropriate foundation and parameters, insurers should be permitted to mix and match index-linked option component parts, and/or remove

> 10 prospectus or other document required to be filed or delivered under the federal securities laws is responsible for information on the site that is accessible through the resulting hyperlink. . . . Additionally, the Division of Corporation Finance has previously indicated that the inclusion of the URL for an issuer's web site in a registration statement, along with the statement "[O]ur SEC filings are also available to the public from our web site," will not, by itself, include or incorporate by reference the information on the site into the registration statement (unless the issuer otherwise acts to incorporate the information by reference). . . . . We also note that simply embedding a hyperlink within a document does not satisfy the line item disclosure requirement for the incorporation of certain information by reference as provided under the Commission's rules and forms. In order for a document to be incorporated by reference in a filed document, an issuer must include a statement to that effect in the document listing the incorporated documents.

[39] If the Commission proceeds with the proposed 497 RILA rate-setting regime, the CAI urges the Commission not to fold this proposed regime into the current variable product rate sheeting regime, *e.g.*, given the number and frequency of such RILA rate changes, presenting historic upside rates in an appendix to the prospectus would be wholly unworkable. One member estimates that if it had been required to include historic upside rates to date, in connection with its years-long RILA offering, that history would have added fifty pages to the prospectus. In addition, the advance timing of filing supplements in connection with variable product guaranteed benefit rate and fee changes under that regime does not lend itself to RILA upside rate changes. Such RILA changes could be daily, which would mean that there would be multiple "rate sheet supplements," with varying applicable dates, in circulation on any given day. The level of confusion this would create at the investor, distributor and insurer level should not be underestimated.

or re-add an existing index-linked option, from crediting period to period, absent the post-effective amendment process. This would be in the best interests of both investors and RILA issuers.

D. RATE SHEETING ON FORM N-4

The Commission should extend the applicability of ADI 2018-05 to RILAs. The Proposal does not address the rate sheeting process that is captured under ADI 2018-05, which is the SEC staff's standing Form N-4 variable product rate sheeting guidance. Optimally, the final rulemaking would necessarily extend the same guidance to RILAs registered on Form N-4. This is particularly important, given the increasing prevalence of guaranteed benefits in connection with RILA offerings, and there is no apparent reason why the guaranteed benefits available under a variable product versus a RILA should be treated differently in this regard.

E. GUARANTEED RATE LIMITS FOR FUTURE INDEX-LINKED OPTIONS

In Item 6(d)(2)(i)(B) and (ii)(B), the Commission is proposing that insurance companies disclose, for each index-linked option, minimum limits on index losses and gains that are guaranteed *for the life of the contract*. The CAI agrees with the Commission that it is important for investors to understand the long-term nature of the contract. The CAI is confused, however, and concerned as to the intended applicability *and scope* of the disclosure the Commission is proposing.

Specifically, in reading the proposed Item requirements with regard to minimum limits on losses, we hope the SEC intends that registrants would disclose only any contractually guaranteed minimums with respect to the index-linked options that they are *currently* offering, and that the Item requirements are not intended to restrict options that may be offered in the future or the rates that may be set for those options. If that is the SEC's limited intent, we would not be opposed to the proposed Item requirements, although we do believe that any reference to the "life of the contract" should be deleted for avoidance of doubt. It is difficult to conceive how any minimum guaranteed rate could apply to an index-linked option *for the life of the contract*, when an index-linked option is not typically guaranteed to be available even from crediting period to crediting period, never mind for the life of the contract.

We are concerned, however, that the Commission's intention could be to require insurers to establish and disclose guaranteed minimums for each upside crediting type (*e.g.*, caps and participation rates) and downside protection type (*e.g.*, buffers and floors) for ***any*** index-linked option, respectively, that will ***ever*** be offered in the future. If this in fact is the SEC's intent, then we have the following very serious concerns and objections:

As a starting point, it is axiomatic that RILA contracts do not guarantee minimum limits on index losses and gains for index-linked options that may be offered in the future. Our concern is that the proposed Item requirements either would mandate such contractual guarantees or dictate them extra-contractually through required disclosures. In that regard, we hasten to point out that the SEC's role under the 1933 Act is to regulate disclosure, not to dictate product design and/or feature functionality. Effectively forcing insurance companies to contractually or extra-contractually set product guarantees would constitute an unwarranted and unjustifiable regulation of the business of insurance, and that would be entirely outside of the SEC's jurisdiction and the staff's delegated authority.[40]

[40] We would also point out that extra-contractual guarantees effected through required disclosures generally raise sensitive questions and concerns under state insurance laws. Such disclosures would be inconsistent with standard required insurance contract language that the provisions set forth in the policy form constitute the entire contract. Any extra-contractual guarantees included in a prospectus could also raise issues under state "anti-rebate/anti-inducement" laws in

Although the CAI objects to such proposed disclosure for the reasons noted above, as a practical matter, our members are not as concerned about disclosing guaranteed minimum limits on gains for each upside crediting feature for the life of the RILA contract, as those limits can be navigated *without* limiting future investment opportunities for customers. However, we are deeply concerned that the proposed requirement to disclose a guaranteed minimum limit on *index losses for the life of the contract for each downside protection type* would unreasonably constrain insurance companies from offering (i) innovative new index-linked options in the future, (ii) competitive upside rates; and/or (iii) even certain classes of index-linked options altogether.

With respect to innovation, it is difficult to overstate the chilling effect such forced guarantees could have on ongoing ideation and future designs. For example, increasingly of late, some insurers are deliberating offering a crediting strategy that would provide for full participation in any downside performance but also would provide an upside rate that would equal some enhanced multiplier of any positive index performance. Any insurer that has "guaranteed" a set negative participation rate due to the proposed Item requirement, *e.g.*, -50%, would arguably not be able to offer this crediting strategy to in-force contract owners who received such disclosure. By virtue of the Commission's de-facto attempt to regulate insurance, in situations like this, companies might not be able to offer certain innovative and new crediting strategies to contract owners (even though there is no contractual term or state law that would prevent it).

Such "guarantees" could not only inadvertently severely limit future investor choices, but they could also limit future upside rates. As the Commission observed, there is an inextricable relationship between the limits on potential gains and the protection from potential losses. Insurance companies set the limits on potential gains with reference to the corresponding limits on losses. In this regard, if an insurance company guarantees that it will never offer a buffer lower than -5%, and future market conditions do not support a meaningful associated upside rate with a -5% buffer, the insurer would either have to offer an insignificant upside rate, or alternatively, consistent with the Commission's proposed disclosure, offer no buffer index-linked options at all. This makes no sense.

Without question, the CAI appreciates that RILA contracts are long-term investments and investors should have some expectation of their investment options over the life of their contracts. The CAI respectfully submits, however, that guaranteed lifetime minimum limits on index losses for each downside protection type should not be prescribed. The Commission, as a regulator of disclosure, *must* permit adequate flexibility in order to allow RILA design innovation and preserve a contract owner's long-term access to competitive upside rates and a variety of investment options. The CAI believes that there are numerous means of achieving this end through disclosure, rather than a requirement to guarantee minimum limits on index losses for the life of the contract. For example, such means could include, *through disclosure at the election of the registrant, not the SEC*:

- Guaranteeing that a single specific index-linked option will always be made available for the life of the contract (subject to the right of index substitution). This would put an investor on notice that future investments may be limited to the downside protection level of the single named index-linked option.

- Guaranteeing that a particular level of protection will always be made available for a single downside protection type (although lesser levels of protection may also be

most states that generally prohibit insurers from providing additional benefits or payments not included in the contract form (which itself is generally subject to state approval). In addition, any extra-contractual guarantees on long-term contracts like RILAs, which insurers cannot unilaterally terminate, could raise questions about whether the additional "obligations" on those contracts dictate additional or differing reserving for those "obligations."

available). This would put an investor on notice that an index-linked option with, *e.g.*, a 10% buffer, will always be available, but there may be higher and/or lower downside protection options and/or no other options available for investment.

- Guaranteeing that, in the event certain or all index-linked options are no longer offered, a contract owner may surrender the contract at cash value without surrender charges or other penalty.

All of these possibilities provide an investor protection, while preserving RILA issuer flexibility to innovate, maximize upside rates and manage long-term risk. Accordingly, the CAI recommends that insurance companies instead be required to prominently disclose *any* guarantees related to the availability and scope of downside protection for the life of the contract and any risks associated with the limited nature of such guarantees.

F. FINANCIAL STATEMENT AND ACCOUNTING MATTERS

a. Use of SAP financial statements for RILA offerings is appropriate because it will provide investors with sufficient and better-tailored information to assess the company's solvency.

The CAI fully endorses the proposed extension to RILA issuers of the relief currently provided in Form N-4 to include audited financial statements prepared in accordance with SAP in lieu of financial statements prepared in accordance with GAAP. Inclusion of SAP financial statements in Form N-4 when the form is used to register RILA contracts or index-linked options in combination RILA/VA contracts is appropriate, will provide investors with sufficient material information to make informed investment decisions about RILA contracts/options, and will be consistent with investor protection.[41]

SAP financial statements are required to be produced by all state-regulated life insurance companies, and are prepared for use by state insurance regulators as part of a comprehensive regulatory program that focuses on the insurance company's solvency, with the objective of ensuring that the company can pay contract owner liabilities when they come due. SAP financial statements contain detailed information about the company's assets and liabilities as well as its regulatory capital and surplus, which serve as financial cushions for paying contract owner claims. SAP financial statements enable state regulators to determine the insurance company's ability to meet contract owner obligations based on the availability of readily marketable securities when the obligations are due.

SAP financial statements provide more meaningful information to purchasers of regulated insurance products than GAAP financial statements. That is because they are better suited than GAAP financial statements for assessing the insurance company's ability to pay its contractual obligations. That assessment is the principal, if not the only, reason an insurance company's financial statements should be relevant and material to RILA investors. This is reflected in the fact that the only company-related risk expressly required to be disclosed by Forms N-4 and N-6 is the risk that the company's payment obligations are subject to its financial strength and claims-paying ability. In contrast, GAAP financial statements assist investors in understanding a company's going concern

[41] The Commission has solicited comments on whether to amend Form N-4 to facilitate registering MVA contracts on the form. As discussed elsewhere herein, we completely support extending Form N-4 in that regard. Our comments here relating to financial statements apply equally to MVA contracts. The points made here also apply with equal force to other SEC-registered non-variable contracts—specifically, RILUs and CDAs. For that reason, as we discuss below, we urge the SEC to allow issuers of these other state-regulated insurance products that register their products on Form S-1 to follow the Form N-4 financial statement instructions in lieu of the generally applicable requirements of Regulation S-X.

value by focusing on its operating results from period to period. Investors in RILA contracts do not need information about the insurance company's going concern value due to the absence of a secondary market in the contracts. SAP financial statements emphasize the balance sheet, which is more relevant than the income statement to assessing the company's ability to fulfill its contractual obligations. SAP financial statements also have the concept of admitted assets, which limits the balance sheet to those assets that are easily converted to cash and may be available to pay contract owner obligations. Admitted assets place limits on insurance company investments, particularly in riskier asset classes, and do not recognize intangible or other illiquid assets, such as goodwill, property plant and equipment and deferred tax assets. This contrasts with GAAP where GAAP balance sheets include intangible assets such as goodwill. Also, in contrast to GAAP financial statements, which are generally prepared on a consolidated basis, SAP financial statements report only assets of the issuing insurance company, which are the assets available to pay contract owner obligations.

For the reasons set forth above, SAP financial statements will provide RILA investors with sufficient and appropriate information to assess the company's solvency and its ability to fulfill its contractual obligations. GAAP financial statements, on the other hand, do not provide additional informative value to investors that justify the significant costs and administrative burdens associated with preparing and auditing an additional set of financial statements solely to include in a registration statement for a state-regulated insurance product. Therefore, extending the current Form N-4 instructions that provide relief to include SAP financial statements to RILA issuers will be consistent with investor protection.

b. Relief to include use SAP financial statements for RILA contracts registered on Form N-4 will promote market competition, enhance investor choice, and will facilitate comparability across the broad insurance marketplace.

Many insurance companies view the very substantial costs and burdens of preparing GAAP financial statements as a major impediment to participating in the RILA market. By removing this impediment, the Proposal will lead to more participation and will promote market competition.

As noted in the Proposing Release, since 2018 the Commission, acting through delegated authority to the staff, has granted permission to a number of RILA issuers to use SAP financial statements in registration statements on Form S-1 for RILA contracts pursuant to Rule 3-13. This has greatly contributed to the number and variety of RILA products currently available in the market. Most insurance companies now issuing RILAs have obtained permission to use SAP financial statements in their SEC registration statements. When requesting this permission, the companies provided information about the substantial costs and administrative burdens of preparing full GAAP financial statements at the insurance company level. Extending the relief provided by Form N-4 to issuers of RILA contracts will enable more insurance companies to enter the RILA market, which will increase market competition and the choices available to investors among products for retirement and other long-term purposes.

SAP financial statements are universally used and relied upon by consumers purchasing insurance products, whether or not those products are registered with the SEC. There is nothing about the features, benefits and risks associated with RILAs (or for that matter other SEC-registered insurance products) that would call for different financial statements than the SAP financial statements that purchasers of insurance and annuity products in the United States generally look to and rely upon. Indeed, insofar as consumers are considering a variety of different accumulation or protection products offered by insurance companies, it could be confusing for investors to be provided GAAP financial statements in connection with their specific consideration of whether to purchase a RILA.

This is because when consumers are considering the purchase of other non-SEC registered life insurance and annuity products, they would look to the insurance company's SAP financial statements to evaluate the company's financial strength and claims-paying ability. We therefore commend the SEC for proposing that SAP financial statements can be used in Form N-4 for RILAs insofar as such use will help avoid any such unnecessary confusion. More generally, because all insurers are required to produce SAP financial statements and most do not otherwise produce GAAP financial statements, providing SAP financial statements in connection with RILA offerings will also facilitate comparability in the broader insurance marketplace.

c. Extending relief provided by Form N-4 from requirements to prepare interim financial statements to companies that issue RILA contracts is appropriate.

Form N-4 currently provides that, notwithstanding Rule 3-12 of Regulation S-X, the financial statements of the sponsoring insurance company need not be more current than as of the end of the most recent fiscal year, and permits use of third quarter interim financial statements for 90 days subsequent to the end of the fiscal year unless audited financial statements for the fiscal year are available. These exceptions do not apply if (a) the company's financial statements have never been included in an effective registration statement for a separate account that offers a variable insurance product; (b) the company's balance sheet at the end of either of the two most recent fiscal years shows a combined capital and surplus less than $2.5 million; or (c) the company's balance sheet would show a combined capital and surplus of less than $2.5 million at the end of a fiscal quarter within 135 days of the expected effectiveness date. The CAI strongly endorses the Proposal to extend this relief to issuers of RILA contracts. The CAI recommends that, consistent with applying this extension to RILA contract offerings, the language of instruction 3 to Item 26 be modified so that exception (a) above only applies if a company has not included financial statements in either an effective registration statement for a variable insurance product separate account or for a RILA.

Relief from requirements to prepare interim financial statements was among several changes to the financial statements required by Regulation S-X that appeared in the 1984 proposing release for Form N-4. The release explained that contract owners "may not want or need disclosure about the investment performance of the insurance company, and instead may be interested *only* in the insurance company's solvency" and that the proposed changes ensured disclosure of pertinent information about the sponsoring insurance company while reducing the disclosure burden on the company.[42] Investors in RILA contracts, like investors in VAs, are more interested in the insurance company's solvency and ability to pay its contractual obligations when due than on its operating results from period to period. Consequently, relief from requirements to prepare interim financial statements on a quarterly basis is appropriate for this class of contracts. Furthermore, the relief will enable insurance company registrants to launch new products and enhance existing products without the additional costs of preparing interim financial statements at times other than the very limited April to May period when they are required to update their financial statements.

d. Existing Commission Rule 3-13 Letters

Since 2018, the Commission, acting through delegated authority to the staff, has issued numerous letters granting permission, pursuant Rule 3-13, to file audited SAP financial statements in place of audited GAAP financial statements in registration statements for RILA contracts on Form S-1. As

[42] *See* Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Release Nos. 33-6502 and IC-13689 (Dec. 23, 1983) [49 FR 614 (Jan. 5, 1984)].

noted in the Proposing Release,[43] these letters have been issued in the circumstances permitted by Form N-4.

As originally adopted in Form N-4, relief permitting use of SAP financial statements was available to insurance companies that otherwise would prepare GAAP financial statements solely for inclusion in a separate account registration statement.[44] The adopting release explained that "use of statutory financial statements is being permitted solely to relieve the disclosure burden on this group of registrants and their sponsoring insurance companies."[45] The 2002 adopting release for Form N-6 added an additional condition that an insurance company must prepare GAAP financial statements if it prepares GAAP financial information for use by a parent company in consolidated financial statements filed with the SEC in a 1934 Act report or a registration statement.[46] The proposing release for Form N-6 explained this condition by stating that the insurance company would be required to prepare full GAAP financial statements if it prepared either partial GAAP financial statements or a GAAP reporting package for use by the parent company in its consolidated financial statements.[47]

The insurance companies that have obtained permission from the Commission pursuant to Rule 3-13 to file SAP financial statements in registration statements for RILA contracts on Form S-1 have met the conditions contained in Form N-4. They each have represented that in the absence of the requested relief they would prepare GAAP financial statements solely for use in registration statements for insurance contracts on Forms N-4, N-6 or S-1. Those insurance companies that are subsidiaries of a company that prepares consolidated GAAP financial statements also have represented that they did not prepare either partial GAAP financial statements or a GAAP reporting package for use by their parent company in the parent company's consolidated financial statements. Furthermore, each insurance company has provided information to the SEC staff about the very substantial costs and administrative burdens associated with preparing information for full GAAP financial statements that is not included in its SAP financial statements or is not otherwise prepared for any GAAP financial statements for a parent.

Therefore, because the permission to use SAP financial statements granted by the Rule 3-13 letters has been based on these representations and cost and burden information, the Rule 3-13 letters have been consistent with the requirements of the Form N-4 instructions. Against this backdrop, the CAI does not object to the SEC's plan to rescind those Rule 3-13 letters or portions thereof that grant permission to use SAP financial statements in Form S-1 registration statements for RILAs or RILA options in combination RILA/VA contracts.[48]

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[43] *See* Proposing Release at pp. 181-182.

[44] *See* Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Release Nos. 33-6588 and IC-14575 (June 14, 1985) [50 FR 26145 (June 25, 1985)].

[45] *Id.* at fn. 9.

[46] *See* Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Release Nos. 33-8088 and IC-25522 (Apr. 12, 2002) at p. 14 [67 FR 19847 (Apr. 23, 2002) at 19855-56].

[47] *See* Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Release Nos. 33-7514 and IC-23066 **(**Mar. 13, 1998**)** at p. 17 [63 FR 13988 (Mar. 23, 1998) at 13997].

[48] The Proposal notes that some of the Rule 3-13 letters provide permission to include SAP financial statements in Form S-1 registration statements for MVAs and CDAs and that, to the extent the permission provided in the letters includes those products, the letters will not be withdrawn or rescinded. We agree that it would not be necessary or appropriate to rescind or withdraw the permissions granted with respect to those products. ***However***, we are compelled to note that the SEC staff has been unwilling to grant permission to include SAP financial statements for other non-variable products, particularly RILUs. There is no reason not to grant permission for RILUs or other non-variable life insurance or annuity

G. UNREGISTERED FIXED OPTION DISCLOSURE REQUIREMENTS

The Commission is proposing a new prescriptive disclosure framework for any unregistered fixed options or accounts offered in connection with a RILA or VA contract. That disclosure framework includes a new Item 6(e) as well as requiring specified information about such options in the Investment Options Appendix required by Item 17. The SEC's Request for Comment No. 47 in the Proposing Release questions whether the Commission should require discussion of fixed options currently offered under a VA or RILA contract, and Request for Comment No. 58 questions whether the Commission should include the proposed disclosure in the Investment Options Appendix relating to fixed options currently available under the contract and whether any changes should be made to the specific disclosure requirements.

The CAI is very concerned that *requiring* specified prospectus disclosures for unregistered fixed options represents a substantial and unwarranted departure from the Commission's and the SEC staff's decades-long respect for the fundamental fact that unregistered fixed options rely on the exemption set forth in Section 3(a)(8) of the 1933 Act and therefore are not registered with the SEC. Both long-standing judicial precedent and Commission guidance have consistently recognized that Section 3(a)(8) is an exclusion from all provisions of the 1933 Act and all other securities laws the SEC is authorized to administer, not just the 1933 Act's registration provisions. Statements made in VA prospectuses for many years about unregistered fixed options expressly acknowledged and recognized that fundamental distinction. Specifically, for many years VA prospectuses typically stated that any such options were not registered as securities in reliance on the Section 3(a)(8) exemption and therefore the SEC staff had not reviewed any prospectus disclosures about those options.

CAI members appreciate the fact that any statements made in an SEC prospectus about unregistered fixed options are subject to the 1933 Act's provisions respecting liability for the accuracy and completeness of statements made in a prospectus. However, that does not mean that disclosures about such options should be required by the Commission. Most issuers have chosen to provide information about such options in the prospectus, and have had good and practical reasons for doing so. Nonetheless, a VA or RILA issuer should have the ability to decide whether to provide information about fixed options in the prospectus or instead in a separate document used with the prospectus and/or in marketing material or on its website.

Similarly, if a VA or RILA issuer does choose to provide information about unregistered fixed options in its prospectus, because those options are relying on the Section 3(a)(8) exemption, the specific format and content of such information should not be required and prescribed by the SEC. *We seriously question whether the Commission has authority pursuant to Section 10(a) of the 1933 Act to prescribe the specific content, format, and location of any prospectus disclosures about unregistered fixed options.* Rather, the insurance company should have the flexibility to determine the location, format, and specific content of such disclosures so long as the disclosures are accurate in all material respects and do not obscure or impede the disclosures about the security being registered.

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products. The same policy arguments and representations that have been made for MVAs and CDAs can also be made for RILUs. To the extent companies have obtained, or will seek to obtain, permission for MVAs or CDAs, such permissions become hollow and of no practical effect insofar as companies also want to offer RILUs but cannot obtain similar permissions for RILUs. Therefore, we urge that the Commission and the SEC staff not to draw arbitrary lines with respect to the particular types of non-variable life insurance or annuity products for which Rule 3-13 permission can be sought and obtained, and to administer the Rule 3-13 process in a fair and equitable manner with respect to all non-variable life insurance and annuity products.

The CAI therefore recommends that the SEC make the specific prescribed disclosures called for by Items 6(e) and 17(c) optional and state in the adopting release that issuers can instead make disclosures about unregistered fixed options or accounts in any location and manner that does not obscure the disclosures about the registered options.

We do have particular concerns about one specific requirement relating to the required fixed option disclosures being proposed. The proposed instruction to Item 6(e)(2) states that the minimum guaranteed rates would be required to be stated as numeric rates rather than referring to any minimum permitted under state law. However, insurers can change these minimum rates both for newly issued contracts and, if permitted by the applicable policy form, also for outstanding contracts. Indeed, for newly-issued contracts, the minimum guaranteed rate must be modified if necessary in order to comply with the formula set forth in state standard nonforfeiture law requirements applicable at the time a contract is issued. Such rates can in fact change, sometimes frequently, due to changes in prevailing interest rates. Moreover, such minimum rates are not necessarily uniform across all jurisdictions insofar as the rates are indeed determined by the standard nonforfeiture laws of each state in which the contract is offered.

Therefore, given that fixed options are not securities because they fall within the Section 3(a)(8) exclusion from SEC regulation enacted by Congress for insurance, and because of the considerations just noted, the CAI believes that insurers should be able to state, if applicable, that the minimum guaranteed rate is a rate required in order to comply with standard nonforfeiture law in the state in which the contract is issued, and should not be required to state numeric rates. The prospectus can refer investors to the policy form, a website, or other material for the specific minimum guaranteed rate applicable at the time the contract is issued.

H. PAYMENT OF REGISTRATION FEES ON FORM 24F-2

As proposed, insurer issuers of RILAs would be deemed to have registered an indeterminate amount of securities for purposes of Sections 5 and 6 of the 1933 Act upon effectiveness of a RILA Form N-4 registration statement and would pay registration fees for RILAs annually in arrears within 90 days following a company's fiscal year-end on amended Form 24F-2. In paying registration fees on amended Form 24F-2, RILA issuers would follow the same registration fee payment approach as insurers that register VAs on current Form N-4 and be able to net purchases made during the year against redemptions in paying registration fees on a net basis. As the Commission noted in the Proposing Release, the new registration fee payment approach would eliminate the possibility of RILA issuers inadvertently overselling securities, and the payment of registration fees on an annual net basis should lead to a reduction in overall filing fees relating to RILAs. The CAI commends the Commission and its staff for proposing a streamlined registration fee payment approach for RILAs that is substantially identical to that used for VAs, and if adopted, would provide comparable benefits for RILA issuers.

To facilitate the transition to calculating registration fees on an annual net basis and filing Form 24F-2, the Commission proposed instruction C.5 to amended Form 24F-2, which would allow RILA issuers to exclude the sale price of securities previously registered on Form S-1 and Form S-3 registration statements that remain unsold at the time the registration statement is converted to Form N-4. The Commission proposed instruction C.5 in part to avoid subjecting RILA issuers to the double payment of registration fees as a result of the transition to Form N-4. The Commission also proposed amending instructions to Form 24F-2 to allow RILA issuers to take credit for non-claimed prior redemptions that occur on or after the date RILA issuers become eligible to use amended

Form N-4, the date final amendments are published in the Federal Register if adopted by the Commission.

With respect to combination RILA/VA contracts, the Proposing Release provides that insurers need to make two separate Form 24F-2 filings, one for the variable separate account and the other for the insurer as issuer of the index-linked option(s). Proposed Item 2 to amended Form 24F-2 provides flexibility for RILA issuers to file a single Form 24F-2 for all of an issuer's standalone RILA contracts and index-linked options or to file separate Form 24F-2s for different RILA contracts and index-linked options.

With respect to amended Form 24F-2, the CAI recommends the following:

a. **Redemption Credit Line for Unsold Securities Registered on Form S-1 or S-3 to Form 24F-2.** Proposed instruction C.5 to amended Form 24F-2 would allow RILA issuers to exclude securities previously registered on a Form S-1 or Form S-3 registration statement from the registration fee payment calculation in the first Form 24F-2 filed following the conversion to Form N-4. Although proposed instruction C.5 would allow RILA issuers to avoid the double payment of registration fees as a result of transitioning to Form N-4, amended Form 24F-2 does not provide a line item that addresses registered unsold securities nor a mechanism for excluding those securities from the calculation of registration fee payments in Form 24F-2s that would be filed after a RILA issuer's first Form 24F-2. In some cases, the amount of unsold securities could be substantial, in particular where the Form 24F-2 covers multiple standalone RILA contracts and/or index-linked options registered on different Form N-4 registration statements. Therefore, to provide greater transparency in the calculation of registration fees and to ensure RILA issuers receive credit for the amount of registration fees previously paid for unsold securities registered on Form S-1 and Form S-3 registrations statements, the CAI recommends that a separate line item be added to Form 24F-2 to treat such unsold securities as redemption credits.

b. **Expand Scope of Proposed Instruction C.4. "Special Rule for Index-Linked Annuities."** Proposed instruction C.4 to amended Form 24F-2 provides that in the case of a rollover from an expiring annuity contract or investment option to a new crediting period, the aggregate sales price of the securities sold shall "include the value of any expiring annuity contract or investment option that is rolled over to the new crediting period." That same value would also be treated as a redemption under amended Form 24F-2, which would result in a "net-zero calculation" and therefore no registration fees would be payable as a result of the rollover.

   The CAI believes that proposed instruction C.4 will provide useful guidance to RILA issuers for determining whether registration fees are payable for rollover transactions and that the Commission has struck an appropriate balance in treating a single rollover from an expiring crediting period to a new crediting period as a simultaneous purchase and redemption of equal amounts. In that regard, the CAI recommends that the Commission and its staff expand the guidance in proposed instruction C.4 to also cover transfers from index-linked options to variable separate account subaccounts and transfers from variable separate account subaccounts to index-linked options for combination contracts.

   From a registration fee payment perspective such transfers are substantially similar to rollovers of crediting periods in that simultaneous purchases and redemptions of equal amounts occur and should be afforded treatment comparable to rollovers from crediting periods. In the CAI's view, such guidance would be particularly helpful to insurers who would be required to include such

transfers in calculating registration fees payable on multiple Form 24F-2s under the framework proposed by the Commission.

c. **Payment of Registration Fees on a Net Basis Across all RILA Offerings.** The Commission should clarify how RILA issuers with multiple RILA offerings will account for registration fees using Form 24F-2. We believe it should generally work the same way as VAs, where a separate account may pay registration fees using a single Form 24F-2 filing on a net basis across all of its product offerings. In that sense, the SEC should confirm that a RILA issuer would be permitted to file a single Form 24F-2 annually to pay registration fees for all of its ongoing RILA offerings, and pay registration fees on a net basis across all such offerings, rather than making multiple 24F-2 filings and paying registration fees on a RILA offering-by-offering basis. We submit that in a framework involving the registration of an indefinite number of securities, where registration fees are calculated on a net sales basis, paying registration fees in the aggregate across all RILA offerings is the simplest, least burdensome, and mathematically logical approach to registration fees. Furthermore, it would allow companies to more effectively use their unsold interests registered on Form S-1 or S-3, because those interests would be fungible between RILA offerings. Otherwise, for companies with closed blocks, it may become impossible for them to actually use their unsold interests from Form S-1 or S-3, as they may be in perpetual net sales (without using those interests).

I. REGISTRATION OF MVAs ON FORM N-4

The CAI completely supports the inclusion of comparable amendments to those proposed for RILAs that would allow insurance companies to register the offering of registered MVAs (*i.e.*, fixed accounts with an unlimited market value adjustment upon withdrawal prior to term maturity) on Form N-4. Registered MVAs generally are a significantly simpler product than RILAs and present a subset of identical risks to investors as RILAs. We believe that investors would be well served by a comparable disclosure regime that provides clear, relevant, and layered disclosure, and that achieving that end would require minimal changes to the Proposal.

We agree with the Commission that "RILAs and registered MVAs differ only with respect to the manner in which interest is calculated and credited,"[49] and that because of this, "many of the disclosures [the Commission is] proposing for RILAs on Form N-4 would also be appropriate for registered MVAs."[50] Specifically, existing disclosure for registered MVAs filed on Form S-1 or Form S-3 generally focuses on the operation of contract adjustments (including MVAs applicable to index-linked strategy options) and the risks associated with such contract adjustments and the issuer's financial strength. As such, the CAI is generally in agreement with the proposed changes to Form N-4 delineated in the Proposal that the Commission believes would be necessary to accommodate the offering of registered MVAs.[51] Only some minor modifications to required disclosures would be necessary to reflect that the risk of loss only applies if the investor engages in specified transactions (*e.g.*, withdrawals, transfers, etc.) prior to the end of a crediting period.

Moreover, registered MVAs may be offered in combination products with registered VAs and/or RILAs that are (or will be) registered on Form N-4. Given that such products will have one prospectus, continuing to require that such products be registered on both Form N-4 (for the VA or

[49] We do note that there is one significant difference, which is that the investor cannot suffer a loss if they do not take a premature withdrawal.

[50] Proposing Release at p. 208.

[51] Proposing Release at pp. 208-209.

RILA component) and Form S-1 or S-3 (for the registered MVA component) would be inefficient and of no benefit to investors, the industry, or the Commission.

Although the CAI generally has no objection to requiring insurance companies to initially register registered MVAs on Form N-4 and to require post-effective amendments for currently sold products registered on Form S-1 or Form S-3 to transition to Form N-4, the Commission should make such a transition optional for contracts that are no longer offered or sold to new investors (*i.e.*, closed blocks).[52] We note that this approach is consistent with the Commission's past treatment of closed blocks of business when adopting new or revised forms.[53]

J. REGISTRATION OF RILUs ON FORM N-6 (AND CONFORMING CHANGES FOR VL)

In addition to our recommendation for registered MVA offerings to be registered on Form N-4, we urge the Commission to make conforming changes to Form N-6 to allow for the registration of RILUs on that form (and to make conforming rule amendments related to the registration of RILUs on Form N-6, *e.g.*, Form 24F-2). RILUs are an emerging product now offered by several life insurance companies. RILUs offer the same type of investment options as those included in RILAs. We anticipate that the RILU market will experience growth similar to the growth of the RILA market over the last several years.

As later discussed under "Product Offerings Registered on Form S-1 and Form S-3," investors are better served by similar disclosure requirements for similar registered products. The Commission has long recognized this principle, most recently amending Form N-4 and Form N-6 in tandem to create the layered disclosure summary prospectus approach. Just as investors will benefit from RILA disclosures that largely mirror those of VAs, investors in RILUs will benefit from disclosures that largely mirror those of VLs. To continue to require RILUs to register on Form S-1 or Form S-3 would be inconsistent with the Commission's significant efforts over many years to develop common registration standards for insurance products.

All of the differences between the current registration requirements for VAs and RILAs[54] also apply to the registration requirements for VLs and RILUs. For example:

- Forms S-1 and S-3 do not include specific line-item requirements addressing disclosures about RILUs, including their index-linked options and life insurance features. Form N-6 is designed for VLs and has disclosure requirements tailored to life insurance.

- Forms S-1 and S-3 require issuers to disclose information about the offering itself, as well as extensive information about the registrant issuing the securities that may be less material

[52] As noted above, should the SEC *require* closed-block MVAs to be registered on Form N-4, the CAI asks that the SEC extend the compliance period for the registration of all MVAs on Form N-4 from 12 months to 24 months, consistent with the extension requested in connection with the new Inline XBRL requirements. This will give MVA issuers, especially those who also have RILAs, the necessary time to budget and prepare for undertaking the conversion process for an additional class of contract.

[53] *See, e.g.,* Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Release Nos. 33-8088 and IC-25522 (Apr. 12, 2002) [67 FR 19847 (Apr. 23, 2002)] (excepting "registration statements that are no longer used to offer variable life insurance policies to new purchasers" from the requirement to use the new Form N-6 for post-effective amendments that are annual updates to effective registration statements).

[54] *See* Proposing Release, pp. 14-19.

to a RILU investor than information about the contract's features. Form N-6 focuses on the specific contract features.

- Forms S-1 and S-3 generally require financial statements prepared in accordance with GAAP.[55] Form N-6 allows insurance companies to use SAP financial statements.

- Forms S-1 and S-3 do not use a layered disclosure approach, whereas Rule 498A together with Form N-6 implement a layered disclosure approach by permitting insurance companies to use summary prospectuses for VLs while making more-detailed information available online and upon request.

- An insurance company registering a RILU offering on Form S-1 must provide any Section 10(a)(3) annual update to the registration statement by filing a post-effective amendment which must be declared effective by the SEC. An insurance company can annually update its Form N-6 registration statement by filing an automatically and immediately effective post-effective amendment under Rule 485.

- Insurance companies registering an offering of RILU securities on Form S-1 or Form S-3 are required under the 1933 Act to pay registration fees at the time of filing a registration statement. Under Form N-6, an insurance company pays registration fees in arrears based on the net issuance of securities using Form 24F-2.

- Similar to VAs and RILAs, VLs and RILUs may be included together in combination products that currently must be registered on both Form N-6 and Form S-1or S-3. Amending Form N-6 would allow those products to be registered on a single registration form.

Overall, for the same reasons that Form N-4 would provide a better registration framework for RILAs, Form N-6 would provide a better registration framework for RILUs. As the Commission brings the requirements for the registration of RILAs in line with those of VAs, it should do the same for RILUs and VLs. Naturally, in order to amend Form N-6 to allow for the registration of RILUs, Form N-6 should also be amended to remain consistent with the amendments to Form N-4 for VAs. As the Commission has recognized in the past, it is sensible to keep Forms N-4 and Form N-6 consistent based on the Commission's findings with respect to investor understanding. While we understand that the RILA Act does not specifically require the SEC to amend Form N-6, there will never be a better time for the Commission to efficiently provide a tailored registration form for RILUs and to keep Forms N-4 and N-6 aligned, which was an important achievement under the variable product summary prospectus rulemaking.

K. RELIANCE ON RULE 12h-7

Most insurance companies now issuing RILA contracts have registered their contracts on Form S-1 and rely on the exemption provided by Rule 12h-7 from the periodic reporting requirements of the 1934 Act. However, due principally to the fact that there has not been a more appropriate tailored form for RILAs such as the Commission is now proposing, a number of companies have chosen to register their contracts on Form S-3.

These companies determined that due to their particular circumstances, it would be more efficient and provide a better investor experience to register their contracts on Form S-3 rather than on Form

[55] To the extent that RILUs are registered on Form S-1, the SEC staff should entertain requests pursuant to Rule 3-13 of Regulation S-X to permit use of SAP financial statements in that context, and should grant such requests in the same circumstances it has granted requests for RILAs, MVAs, and CDAs. *See also* fn. 48 above.

S-1 because (i) unlike an S-1 prospectus, due to the fact that Form S-3 incorporates by reference company-related information from periodic reports filed on Forms 10-K and 10-Q, an S-3 prospectus concentrates on disclosures about the features, benefits, and risks associated with the RILA contract that is not impeded by extensive and irrelevant company-related disclosures, and (ii) in some cases, as result of having a parent that files 1934 Act reports, the issuing insurance company could file abbreviated 1934 Act reports.[56] Against the backdrop of a completely ill-fitting Form S-1, this decision to utilize Form S-3 was a very reasonable decision.

Because these companies have not been relying on Rule 12h-7 and therefore have not been required to meet the various conditions of the rule, they may not have included provisions that would meet the condition set forth in paragraph (e) of Rule 12h-7 in policy forms filed in states that would permit such provisions, discussed below. However, unless these RILA issuers can rely on the Rule 12h-7, they will not be able to take full advantage of the Commission's proposed Form N-4 framework.

Therefore, so that the proposed Form N-4 framework can be utilized to the maximum advantage by all RILA issuers, the CAI urges the Commission to take an interpretative and/or non-enforcement position that will enable these S-3 issuers to rely on Rule 12h-7 for RILA contracts they previously issued and contracts they issue until the Compliance Date. For the reasons set forth below, the CAI believes what it is recommending would be in the public interest and consistent with investor protection, would further the Commission's overarching goals in adopting amendments to Form N-4 to facilitate the offering of RILA contracts, would be consistent with similarly-situated insurers at the time of the adoption of Rule 12h-7 and would be consistent with the public policies that supported the adoption of Rule 12h-7.

Background. As the Commission is aware, Rule 12h-7 provides an exemption from 1934 Act periodic reporting requirements for insurers whose reporting obligations arise solely from the registration of non-variable insurance contracts and interests, such as registered index-linked options and standalone RILA contracts, under the 1933 Act. In adopting Rule 12h-7, the Commission recognized that such periodic reporting (such as filing reports on Form 10-K and Form 10-Q) was not necessary for the protection of investors given, "first, the nature and extent of the activities of insurance company issuers, and their income and assets, and, in particular, the regulation of those activities and assets under state insurance law; and, second, the absence of trading interest in the securities."[57]

With regard to the second justification for the exemption – the lack of trading in the securities – paragraph (e) of Rule 12h-7 requires that "[t]he issuer takes steps reasonably designed to ensure that a trading market for the securities does not develop, including, except to the extent prohibited by the law of any State or by action of the insurance commissioner, bank commissioner, or any agency or officer performing like functions of any State, requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis." However, another provision of Rule 12h-7, paragraph (d), requires that the subject securities not be ". . . listed, traded, or quoted on an exchange, alternative trading system . . ., inter-dealer quotation system . . . , electronic communications network, or any other similar system, network, or publication for trading

[56] Due to their abbreviated nature such reports do not require preparation of some of the significant Regulation S-K disclosures about the issuer and its business and management called for by Form S-1. As the Commission now recognizes as reflected in the amendments to Form N-4 it has proposed, just as with VAs, those disclosures are not material to RILA investors.

[57] *See* Indexed Annuities and Certain Other Insurance Contracts, Release Nos. 33-8996 and 34-59221 (January 8, 2009) at p. 11 [74 FR 3138 (Jan. 16, 2009) at 3140].

or quoting . . . ." Therefore, while paragraph (e) requires that issuers take steps, except to the extent prohibited by law, to include certain provisions in their policy forms that would be reasonably designed to ensure that a trading market does not develop, paragraph (d) effectively prohibits the existence of such trading markets in order to claim the exemption.

When Rule 12h-7 was adopted, it was generally understood and accepted that contracts issued prior to the rule's adoption could not be unilaterally endorsed (*i.e.*, amended) to add a provision to their contracts of the sort specified in paragraph (e) of the rule without violating state law. Specifically, if the relevant policy form did not include the referenced rights, it would have been a violation of state common contract law to unilaterally endorse outstanding contracts to restrict assignments.[58] Instead, the sponsoring insurer would have had to seek state insurance department approval of the endorsement from all states in which the contracts were sold, and for those states that did approve the endorsement, the consent of each contract owner in the state in order to modify the contract to satisfy the anti-assignment condition.[59] Therefore, as had been discussed with senior SEC staff prior to and shortly after the adoption of Rule 12h-7, a number of companies issuing registered non-variable insurance products have been relying on Rule 12h-7 for legacy contacts that were issued prior to the adoption of Rule 12h-7 on the basis that such contracts complied with paragraph (e) of the rule due to the violation of state law exception.

Since RILA contracts were first offered over ten years ago, it has been CAI members' experience that RILA contracts, unlike traditional equity securities, are not susceptive to trading on secondary markets. In that regard, the CAI is not aware of a secondary trading market ever having materialized for RILAs, irrespective of whether the RILAs have been registered on Form S-1 with reliance on Rule 12h-7 or whether they have been registered on Form S-3. That is, there have been no secondary trading markets in RILAs notwithstanding that contracts registered on Form S-3 may not have included any right on the part of the sponsoring insurer to restrict or prohibit assignments. This fact is consistent with the Commission's second justification for adopting Rule 12h-7, the general absence of a trading interest in securities covered by the exemption.

Requested Interpretative/Non-Enforcement Position. The CAI requests that the Commission take an interpretative and/or non-enforcement position relating to Rule 12h-7 that would apply to RILA contracts registered on Form S-3 and issued prior to the Compliance Date.

Specifically, many RILA contracts registered on Form S-3 issued prior to the Compliance Date may include a contractual provision permitting assignment. In other words, the owners of such contracts have a contractual right to assign the contract without the insurance company's permission. Therefore, in order for issuers of these legacy contracts to be able to rely on Rule 12h-7, it would be necessary to conclude that it would be a violation of state law (both basic common law contract principles and state insurance law) to unilaterally amend those contracts to add a provision such as contemplated by rule 12h-7(e). As noted above, that conclusion was commonly made with respect to legacy contracts when Rule 12h-7 was adopted, and we submit it can reasonably be made in this context. However, given the significant amount of time that has elapsed since Rule 12h-7 was

[58] *See, e.g.,* comment letter submitted by the CAI on Indexed Annuities and Certain Other Insurance Contracts, File No. S7-14-08 (letter dated Sept. 10, 2008).

[59] Because the applicable endorsement would have provided no additional benefits to the owner, states were highly unlikely to approve the endorsement, in light of the general state insurance law policy to provide free assignability. In addition, even if a state insurance regulator approved the endorsement, basic contract law principles would require that each contract owner approve the endorsement before it would be enforceable, and it was inconceivable that all contract owners would consent given the lack of benefit to those contract owners.

adopted, CAI members recognize that reaching that conclusion now would occur under somewhat different circumstances.

For the reasons set forth above, under these particular circumstances, we believe that the Commission should announce an interpretative and/or non-enforcement position applicable to these legacy RILA contracts even though they do not include a provision contemplated by paragraph (e) of Rule 12h-7 where not otherwise prohibited by state law. To qualify under the proposed interpretative and/or non-enforcement position, an insurer would need to transition its contracts from registration on Form S-3 to amended Form N-4 and comply with all other conditions of Rule 12h-7 after transition to Form N-4. Under the interpretative and/or non-enforcement position, although insurers would not include a provision restricting assignments in their legacy RILA contracts, they would be required to comply with all other conditions of the Rule. That would include paragraph (d) of Rule 12h-7 which as noted above essentially precludes the existence of a secondary market in order to rely on the exemption. The CAI believes that paragraph (d) of Rule 12h-7 is clear, provides an objective standard, and in these limited circumstances more than adequately protects against the possibility of RILA contracts being traded in a secondary market.

The proposed non-enforcement position would relieve qualifying insurers from the burdens of 1934 Act reporting and treat those insurers similar to insurers that currently rely on Rule 12h-7 and transition their RILA contracts from registration on Form S-1 to Form N-4. The CAI submits that the above proposed interpretative/non-enforcement position, because it would be appropriately limited, would be in the public interest and consistent with investor protection, would further the Commission's overarching goals in adopting amendments to Form N-4 to facilitate the offering of RILA contracts on that form, and would be fully consistent with the public policies that supported the adoption of Rule 12h-7.

L. PRODUCT OFFERINGS REGISTERED ON FORM S-1 AND FORM S-3

The CAI recognizes that the RILA Act did not direct the SEC to adopt tailored registration forms for all non-variable annuity and life insurance products as part of this expedited rulemaking. Although we are advocating that the SEC amend Form N-4 and Form N-6 to permit registration of MVA and RILU offerings on those forms, respectively, we recognize that some non-variable annuity and life insurance product offerings will necessarily continue to be registered on Form S-1 or Form S-3 until similar reforms can be instituted. However, to mitigate the significant harms that inconsistent regulation would impose upon investors, insurance companies, and the SEC, it is important for the SEC to take meaningful steps toward a more fundamentally consistent disclosure framework for *all* registered offerings of non-variable annuity and life insurance products. To that end, we urge the SEC to take the following actions:

(1) With respect to non-variable annuity and life insurance product offerings registered on Form S-1, the SEC should announce a non-enforcement policy that would permit the registrant to (i) omit from the Form S-1 prospectus company-related disclosures that are not required by Form N-4; (ii) use SAP financial statements in the Form S-1 prospectus if consistent with the limitations of Form N-4; and (iii) include interim financial statements in the Form S-1 prospectus only in the limited circumstances required by Form N-4.

(2) With respect to reports filed under the 1934 Act, as part of any other ongoing or future rulemaking that would impose *new* company-related disclosure or financial statement requirements, the SEC should give close consideration to whether those requirements should apply to insurance company issuers whose reporting obligations arise solely from the registration of non-variable annuity or life insurance product offerings under the 1933

Act, and do so in a manner consistent with the fundamental principles underlying the RILA registration form.[60]

Before explaining the reasons for this comment in more detail, we wish to emphasize two points so that these requested actions are not construed as conflicting with our other comments. First, we reiterate our enthusiastic support for the proposed framework for RILAs. Our concern about inconsistent regulation should not be interpreted as opposition to registering RILAs on Form N-4 as proposed. Second, we reiterate our comments that the SEC should adopt as part of this rulemaking tailored registration forms for MVAs (by amending Form N-4) and RILUs (by amending Form N-6). We believe that would be a straightforward and natural extension of the proposed framework for RILAs. Furthermore, the adoption of tailored registration forms for RILAs, MVAs, and RILUs would achieve consistency for the vast majority of non-variable annuity and life insurance product offerings, substantially reducing our concerns about the harms of inconsistent regulation as discussed in this section.

In addition, given the practical barriers at hand, we are sensitive to the fact that the SEC was not directed to adopt tailored disclosure requirements for all non-variable annuity and life insurance products as part of this expedited rulemaking. As previously noted, we recognize that Form S-1 and Form S-3 will be the applicable SEC registration forms for some non-variable annuity and life product offerings, such as CDAs, as well as potentially MVAs or RILUs should the SEC decline to amend Form N-4 or Form N-6 to include those product types. As such, the creation of a "perfect" regulatory scheme does not seem attainable within this rulemaking.

However, the SEC should not use the practical challenges associated with this rulemaking to rationalize a glaring flaw that will exist in the overall regulatory scheme without additional action: the SEC's company-related disclosure and financial statement requirements would differ by product type, even though there is no logical basis for those requirements to differ. Regardless of the type of annuity or life insurance product, an investor's contractual relationship with the insurance company is inherently limited to the company's ability to honor its contractual guarantees.[61] Inconsistent and illogical regulation with respect to these requirements would result in real-world harms to investors and insurance companies, and doing nothing to address those harms would be counter to the SEC's

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[60] If the SEC does not announce the requested non-enforcement policy for Form S-1 registration statements, the SEC should similarly consider whether any new company-related disclosure or financial statement requirements should apply to a non-variable insurance product offering registered on Form S-1.

[61] The CAI entirely agrees with the SEC's statements in the Proposing Release regarding the immateriality of extensive company-related disclosures to RILA investors. In juxtaposing the Form S-1/S-3 and Form N-4 disclosure frameworks, the SEC stated that:

- Form S-1 and Form S-3 require "extensive information about the registrant issuing the securities that may be less material . . . than information about the contract's features";
- Form N-4 is "designed to provide investors with key information relating to a [contract's] provisions, benefits, and risks . . . , along with targeted information about the insurance company . . . .";
- Form N-4 highlights "the most important information for an investor in a [contract], so that the only matters included in the prospectus are those for which there is a substantial likelihood that a reasonable investor would consider them important in deciding whether to invest."
- Form N-4's focus is "the [contract] itself, rather than certain details about the operation of the insurance company, [and this] reflects that . . . the investor's exposure to the insurance company generally is limited to the company's ability to honor any guarantees associated with the contract."

See Proposing Release, pp. 14-17. Importantly, these statements as they relate to the immateriality of extensive company-related information hold true regardless of the product type at hand. The SEC's overall framework should reflect these principles regardless of the registration form on which a product happens to be registered.

mission to protect investors, maintain fair, orderly, and efficient markets, and promote capital formation.

With the practicalities of this rulemaking in mind, the CAI proffers the actions below as sensible and pragmatic actions that could be taken by the SEC to mitigate the harms arising from inconsistent regulation and to achieve a more fundamentally consistent disclosure framework for all registered offerings of non-variable annuity and life insurance products.

1. Non-Enforcement Policy for Form S-1 Registration Statements

With respect to non-variable annuity and life insurance product offerings registered on Form S-1, consistent with the principles underlying the proposed Form N-4 framework for RILAs, the SEC should announce a non-enforcement policy that minimizes the amount of immaterial company-related disclosure, permits the limited use of SAP financial statements, and limits the circumstances under which interim financial statements are necessary.

More specifically, the non-enforcement policy should provide that the SEC would not have a basis for an enforcement action in the following circumstances:

(i) If the registrant omits from the Form S-1 prospectus information about the registrant generally required by Regulation S-K that would not be required by Form N-4, subject to Rule 408 under the 1933 Act.[62]

(ii) If the prospectus includes financial statements prepared in accordance with SAP rather than GAAP as required by Regulation S-X, provided that the use of SAP financial statements would be permissible based on the financial statement instructions set forth in Form N-4.

(iii) If the registrant omits from the Form S-1 prospectus interim period financial statements that would generally be required by Regulation S-X, provided that the omission of interim financial statements is consistent with the financial statement instructions set forth in Form N-4.

The following chart further outlines how the non-enforcement policy would apply or not apply to different types of registrants:

[62] Rule 408(a) provides: "In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading." Pursuant to Rule 408(a) under the 1933 Act, the registrant would still be required to disclose all material information beyond the information expressly required, including company-related information. The responsibility for assessing the materiality of such information would rest with the registrant. We would observe that an express Commission statement that the non-enforcement policy remains subject to Rule 408 would seem to be extraneous, given that all registrants are subject to Rule 408, but the Commission could reiterate that requirement for clarity. Just as a Form N-4 registrant is obligated to always disclose all material information, so too would a Form S-1 registrant.

Registration Form	Reliance on Rule 12h-7?	Omission of Company-Related Information from the Prospectus	Use of SAP Financial Statements in the Prospectus	Omission of Interim Period Financial Statements from the Prospectus	Impact of Non-Enforcement Policy on 1934 Act Reports
Form S-1	Yes[1]	Under the non-enforcement policy, the registrant may omit information not required by Part A or B of Form N-4, subject to Rule 408 under the 1933 Act.[63]	Under the non-enforcement policy, the registrant may use SAP financial statements if consistent with Form N-4.	Under the non-enforcement policy, the registrant may omit interim financial statements if consistent with Form N-4.	No reports.
Form S-3	No[2]	Non-enforcement policy inapplicable. Company-related information will not appear directly in the prospectus, but will be incorporated by reference to the registrant's 1934 Act reports as required by Form S-3.	Non-enforcement policy inapplicable. GAAP financial statements will not appear directly in the prospectus, but will be incorporated by reference to the registrant's 1934 Act reports as required by Form S-3.	Non-enforcement policy inapplicable. Interim financial statements will not appear directly in the prospectus, but will be incorporated by reference to the registrant's 1934 Act reports as required by Form S-3.	No impact. Reports would be subject to the generally applicable requirements of Regulation S-K and Regulation S-X.

[1] Currently, there are no companies with Form S-1 registration statements that do not rely on Rule 12h-7, and any companies that intend to register on Form S-1 in the future will very likely structure the offering so that they can rely on Rule 12h-7. In the highly unlikely event that a Form S-1 registrant did not rely on Rule 12h-7, the non-enforcement position would apply in the same manner as reflected in this row, except (i) the registrant would not be permitted to use SAP financial statements in the registration statement, as the registrant would be required to prepare GAAP financial statements for its 1934 Act reports; and (ii) the registrant's 1934 Act reports would be subject to the generally applicable requirements of Regulations S-K and S-X.

[2] Form S-3 registrants are generally prevented from relying on Rule 12h-7 because 1934 Act reporting is an eligibility requirement for Form S-3.

We believe this non-enforcement policy would substantially mitigate the harms of inconsistent regulation, without raising any investor protection concerns or public policy issues inconsistent with the proposed RILA framework or the practicalities of this rulemaking. To illustrate this, the following table contrasts (a) the benefits/practicalities of the non-enforcement policy against (b) the significant harms to investors and insurance companies that would arise from inconsistent regulation:

Benefits/Practicalities of the Non-Enforcement Policy	Harms Arising from Inconsistent Regulation
• No consequential harm to any investors or insurance companies. • Grounded in the principles of the proposed RILA framework. It is difficult to see how one could support the proposed RILA framework, but not the goals of the non-enforcement policy. • All investors would benefit from a short, more decision-useful prospectus, regardless of the SEC form on which the product offering happens to be registered. • Within the practicalities of this rulemaking. Would not require any additional rule or form amendments.	• The framework for Form S-1 products would be fundamentally at odds with the SEC's policy judgments for the proposed RILA framework. • Investors in Form S-1 products would continue to receive a lengthy prospectus with voluminous immaterial company-related disclosures, without any guide or instruction as to their relative importance. Put another way, and to echo the U.S. Supreme Court, the consequence would be to "bury [investors in Form S-1 products] in an avalanche of trivial

[63] *See* fn. 62.

Nor would there be any changes to the Form S-3 or the 1934 Act framework. • Would not lessen the protections afforded to investors. Form S-1 registration statements would remain fully subject to the applicable liability provisions of the federal securities laws, *e.g.*, Sections 11, 12, and 17 of the 1933 Act and Rule 10b-5 under the 1934 Act. • Would not raise doubt as to the applicability of Regulation S-K and S-X to non-insurance product securities offerings. This is a special situation where the SEC is making policy judgments about RILAs, and the SEC would be simply extending those underlying principles to other similar regulated annuity and life insurance product offerings. • Would foster product innovation as the costs and burdens associated with Form S-1 registration statements would be substantially reduced.	information – a result that is hardly conducive to informed decision making."[64] • For Form S-1 products, the SEC would be conditioning access to the public markets based on (a) the preparation of extensive company-related disclosures that are immaterial, burdensome, and costly to prepare, (b) the use of GAAP financial statements, even though the SEC determined SAP financials are sufficient for RILA offerings, and (c) potentially the use of interim financial statements, even though the SEC has determined that interim financials are generally unnecessary for RILA offerings. • Insurance companies with products registered on Form S-1 would be automatically disqualified from using SAP financial statements for any products registered on Form N-4 or N-6. • The substantial costs and burdens associated with product offerings on Form S-1 will stunt innovation as companies will be hesitant to bring new products to the market, especially as the SEC's requirements under Regulations S-K and S-X continue to grow in length and complexity as a result of new rulemakings.

Furthermore, we submit that the non-enforcement policy would be entirely within the SEC's authority without a re-proposal. A non-enforcement policy of this nature would be within the SEC's discretion.[65] This would not be an instance where the SEC would be abdicating its statutory responsibilities. Rather, it would be the opposite. The SEC would be effectuating its statutory responsibilities by prioritizing investor protection and capital formation above the formalistic application of technical form requirements—technical requirements that were not only adopted without insurance products in mind, but also found by Congress and the SEC to be wanting for RILAs. We respectfully suggest that there is no reason why fundamental principles underlying the proposed RILA registration form should not be extended to regulated annuity and life insurance product offerings registered on Form S-1.

2. Applicability of New 1934 Act Reporting Requirements

We believe the reporting framework under the 1934 Act needs significant reform insofar as it applies to insurance companies whose reporting obligations arise solely from the registration of non-variable annuity and life insurance product offerings under the 1933 Act. As a practical matter, this issue is relevant to product offerings registered on Form S-3 (as all companies registered on Form S-1 currently rely on Rule 12h-7). However, we recognize that the practicalities at hand preclude comprehensive reform as part of this expedited rulemaking. As such, we are not advocating that the final rulemaking include new exemptive rules or policies related to the content of 1934 Act reports (or Form S-3 registration statements).

Although comprehensive reform as part of this rulemaking may not be possible, we want to ensure our views are clear: (i) the company-related disclosures included in the 1934 Act reports are just as immaterial to investors in non-variable annuity and life insurance products registered on Form S-3

[64] *See* Basic, Inc. v. Levinson, 485 U.S. 224, 231 (1988).

[65] *See, e.g.*, Heckler v. Chaney, 470 U.S. 821 (1985).

as to investors in other non-variable products, and (ii) there is no logical reason why the financial statement requirements for non-variable annuity and life insurance products registered on Form S-3 should differ from the financial statement requirements for other non-variable products. Yet, given how the 1934 Act reporting framework and Form S-3 are closely intertwined, as well as the overlay of other statutory frameworks (such as the Sarbanes-Oxley Act of 2002), addressing the 1934 Act reporting framework and/or Form S-3 raises complex legal issues that would be best handled as part of a separate rulemaking. Fortunately, given that Form S-3 broadly permits incorporation by reference to 1934 reports, investors are not severely burdened by the ill-suited and immaterial disclosures dictated by the Form S-3/1934 Act framework, as investors in Form S-3 products receive a short, decision-useful prospectus with only targeted company information, and are not provided with the 1934 Act reports (including financial statements) except upon request. Given the absence of the obscuring and irrelevant information directly in the prospectus provided to investors in non-variable insurance products registered on Form S-3, it is understandable that the SEC would decline to address the Form S-3/1934 Act framework as part of this expedited rulemaking.

Nonetheless, until broader reform can be instituted, we believe it is critically important that the SEC not take actions that would cause insurance companies with non-variable annuity and life insurance products registered on Form S-3 to incur even more undue costs and burdens in preparing 1934 Act reports. In that regard, as part of any other ongoing or future rulemaking that would impose ***new*** company-related disclosure or financial statement requirements, we ask the SEC to give close consideration to whether those requirements should be applicable to insurance company issuers whose reporting obligations arise solely from the registration of non-variable annuity and life insurance product offerings under the 1933 Act, in light of the fundamental principles underlying the RILA registration form.[66]

For many years, the CAI has been commenting in response to SEC rulemakings that company-related disclosures under Regulation S-K are generally immaterial to investors in insurance products and that the financial statement requirements under Regulation S-X are not appropriately tailored for insurance product offerings.[67] The SEC has now validated those comments by proposing a RILA framework that includes only targeted company-related information and has tailored financial statement requirements. But without comprehensive reform for all non-variable annuity and life insurance products, the SEC should minimize the grave inconsistencies and undue burdens to issuers of products registered on Form S-3 (and Form S-1 if the SEC declines to adopt the requested non-enforcement policy) by applying the fundamental principles underlying the RILA framework to ongoing and future rulemakings that would impose new or different requirements under Regulation S-K or Regulation S-X. To do otherwise would be contradictory to this rulemaking and counter to the SEC's mission.

Of particular concern, with respect to the SEC's proposed rulemaking titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors," in no event should the SEC make that rulemaking applicable to life insurance companies that issue registered non-variable insurance products.[68] Applying those proposed requirements to such companies would not serve the SEC's

[66] As previously noted, if the SEC does not announce the requested non-enforcement policy for Form S-1 registration statements, the SEC should similarly consider whether any new company-related disclosure or financial statement requirements should apply to a non-variable annuity and life insurance product offering registered on Form S-1.

[67] *See, e.g.*, comment letters submitted by the CAI on Concept Release on Business and Financial Disclosure Required by Regulation S-K, File Number S7-06-16 (letter dated July 21, 2016); Modernization of Regulation S-K Items 101, 103, and 105, File No. S7-11-19 (letter dated Oct. 22, 2019); The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22 (letter dated June 17, 2022).

[68] *See* comment letter submitted by the CAI on The Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22 (letter dated June 17, 2022).

purpose of providing investors with decision-useful information, and the compliance costs for such companies would far outweigh any benefits given the immaterial nature of that information to potential and existing contract owners.

M. MARKETING MATERIALS

1. Rule 156

The CAI is not opposed to the proposed amendments to Rule 156, which would make that rule's provisions applicable to RILA sales literature. However, we are concerned with the implication in the Proposing Release that misleading marketing practices are "common" in the RILA marketplace. We would unequivocally disagree with any such characterization. While there is always room for improvements and new best practices, and while the RILA industry will value the SEC's guidance as set forth in the Proposing Release, RILA issuers and intermediaries always strive to market RILAs in a fair and balanced manner. Furthermore, it's noteworthy that even though there is currently no legal requirement to do so, virtually all RILA marketing materials are voluntarily submitted to the Financial Industry Regulatory Authority ("FINRA") for review (one reason being that intermediaries generally will not use marketing materials without a FINRA "no objections" letter). As such, the RILA industry has been fully transparent with FINRA with respect to marketing materials, and those marketing materials reflect the input and judgement of experienced FINRA reviewers. Yet, there is no mention of this close coordination with FINRA in the Proposing Release. By implying that misleading marketing practices are common and unchecked by regulators, this portion of the Proposing Release unfairly undermines the trustworthiness of the RILA industry and potentially exposes it to risk. The CAI would deeply appreciate if this feedback is taken into account when drafting the adopting release.

2. Rule 482 / Rule 433

In the Proposing Release, the SEC declined to propose amendments to Rule 482 under the 1933 Act. We appeal to the SEC to reconsider. As discussed further below, the SEC should amend Rule 482 to permit RILA advertising under that rule, *conditioned upon a requirement that such advertisements do not contain historical performance data for the RILA or any particular index-linked option*. In the event that the SEC chooses not to amend Rule 482 as requested, in the alternative, the SEC should amend Rule 433 under the 1933 Act to include RILAs registered on Form N-4 as a type of offering for which free writing prospectuses ("FWPs") may be used without an additional prospectus delivery requirement.

Problems with the Current Regulatory Framework. Currently, RILA offerings (as well as other registered non-variable annuity and life insurance product offerings, including MVAs, RILUs, and CDAs) are generally subject to the same regulatory framework for marketing materials as stock and bond offerings registered on Form S-1 or Form S-3.[69] RILA issuers and intermediaries are not eligible to rely on Rule 482, the free writing advertising rule for investment companies, including variable product separate accounts. RILA issuers and intermediaries must look to other provisions of the federal securities laws to market RILAs, particularly (i) Section 2(a)(10) of the 1933 Act, which treats written communications that are accompanied or preceded by the final statutory

[69] One difference is that insurance companies generally do not rely on Rule 172 for notice-and-access prospectus delivery, as that rule is generally incompatible with the practicalities of insurance product offerings, as the SEC noted in the Proposal.

prospectus as "supplemental sales literature";[70] (ii) generic communications/notices under Rule 134 or 135 under the 1933 Act;[71] and (iii) FWPs under Rule 433.[72]

The current framework is problematic primarily because it is often practically impossible to do broad-based advertising for RILAs (beyond simple generic advertising or notices[73]), whether such advertisements take the form of written publications (*e.g.*, magazines, newspapers), television commercials, or similar media. Such advertising is often practically impossible due to prospectus delivery requirements under applicable law, where a summary or statutory prospectus must accompany or precede the advertisement. Treatment of broad-based print and television advertisements as supplemental sales literature is not possible because there is no practical way to previously or concurrently deliver the prospectus to, for example, every reader of a magazine or every viewer of a commercial. Similarly, treatment of these advertisements as FWPs often is not possible because many RILA issuers are subject to a prospectus delivery requirement under Rule 433, and therefore encounter the same practical problem associated with supplemental sales literature. In fact, many RILA issuers and intermediaries are only able to perform broad-based advertising in the online setting by using active hyperlinks to concurrently deliver the prospectus.[74]

While all supplemental sales literature must be accompanied or preceded by the prospectus, not all FWPs are subject to a prospectus delivery requirement. Rule 433 has several universal conditions, including SEC filing and legend requirements. However, Rule 433's prospectus delivery requirement applies only to certain offerings, as follows:

- Eligible offerings under Rule 433(b)(1) *are not* subject to the prospectus delivery requirement. The list of eligible offerings includes, *e.g.*, most securities offerings registered on Form S-3. RILA offerings registered on Form S-3 fall into this category.[75]

- All offerings that do not fall within Rule 433(b)(1) consequently fall under Rule 433(b)(2). These offerings *are* subject to the prospectus delivery requirement.[76] This category includes RILA offerings registered on Form S-1.

Due to this dichotomy established by Rule 433(b)(1) and (2) with respect to the prospectus delivery requirement, RILAs registered on Form S-3 can be broadly advertised in print and on television using FWPs while RILAs registered on Form S-1 cannot. The uneven playing field under Rule 433 for RILAs registered on Form S-1 and Form S-3 is not the result of any public policy judgment related to RILAs or insurance products. The dichotomy traces back to the SEC's decision to treat

[70] Investment companies, including variable product separate accounts, also use supplemental sales literature in accordance with Section 2(a)(10). For insurance product offerings, treatment of materials as supplemental sales literature is especially important to the point of sale process, as it allows not only for the use of marketing materials, but also the provision of contractual documents such as policy forms and riders.

[71] Most investment companies, including variable product separate accounts, are not able to rely on Rule 134. *See* Rule 134(g). All investment companies may rely on Rule 135 to provide notice of registered offerings.

[72] The ability to use FWPs under Rule 433 is also conditioned upon the requirements and limitations in Rule 164. Most investment companies, including variable product separate accounts, are not eligible to use FWPs under Rule 433. *See* Rule 164(f). However, as noted, investment companies generally have access to Rule 482, which is corollary to Rule 433.

[73] Rules 134 and 135 do not have a prospectus delivery requirement, but severely limit the content of communications under those rules.

[74] *See* Note 1 to Rule 433(b)(2)(i). *See also* Use of Electronic Media, Release Nos. 33-7856, 34-42728 and IC-24426 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (discussing the application of the "envelope theory" to online communications with active hyperlinks).

[75] *See* Rule 433(b)(1)(i)-(iv) for the full list of eligible offerings.

[76] *See* Rule 433(b)(2)(i).

"seasoned issuers and well-known seasoned issuers" differently than "non-reporting and unseasoned issuers,"[77] allowing the former to use FWPs more liberally due to their established 1934 Act reporting histories. When the SEC adopted Rule 433, it concluded that recipients of FWPs from non-reporting and unseasoned issuers should have the prospectus in hand because it would "assure that an investor has a balanced disclosure document of an issuer with no or limited reporting history against which to evaluate the free writing prospectus and to place the statements made in context."[78]

Clearly, that concern isn't relevant to RILA offerings. A RILA issuer's reporting status or the content of a RILA issuer's 1934 Act reports has nothing to do with an investor's ability to contextualize an FWP for a RILA, as reflected in the proposed RILA framework. In the context of RILA offerings, the Rule 433(b)(1) and (2) dichotomy has no substance behind it and should be eliminated, either by amending Rule 482 to include RILAs or amending Rule 433(b)(1) to include all RILA offerings on Form N-4.

Another problem with the current regulatory framework for marketing materials is that the absence of uniformity between the regulation of non-variable and variable annuity and life insurance products unnecessarily complicates the compliance function. Companies with both RILAs and variable products dedicate substantial time and resources to analyzing marketing practices against conflicting legal frameworks. Also, companies with both RILAs and variable products have to closely monitor the activities of business and marketing professionals, as well as financial intermediaries, to ensure that their activities are compliant with whichever framework applies to the products that they happen to be dealing with at that time. In addition, companies with combination RILA/VA contracts have to apply frameworks that have inherent conflicts, and insurance company families with both Form S-1 and S-3 registrations are subject to different regulatory requirements from company to company. More uniformity in the regulatory scheme would reduce these complexities and the risk of inadvertent error.

Requested Improvements to the Regulatory Framework. The SEC should amend Rule 482 to include RILAs, subject to a condition that such advertisements do not contain historical performance data for the RILA or any particular index-linked option. There are several reasons and justifications for amending Rule 482 in this manner:

- First, the condition to exclude performance data addresses the SEC's concern about the absence of standard performance for RILAs. As the SEC correctly noted in the Proposing Release, RILA issuers do not utilize such performance metrics in RILA advertisements, so this condition would not be a substantive departure from existing practice.

- Second, the mere absence of standard performance rules for RILAs should not be a bar to amending Rule 482. Refusing to amend Rule 482 on those grounds would be inconsistent with precedent. Closed-end funds may advertise using Rule 482, even though standard performance rules do not exist for those investments.

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[77] In response to the SEC's Request for Comment No. 35, it is possible that a life insurance company could be a WKSI, even if RILAs are to be registered on Form N-4. For example, if a life insurance company is a majority-owned subsidiary of a WKSI, and the life insurance company subsidiary registers a CDA offering on Form S-3, the life insurance company subsidiary could be a WKSI itself. Whether a WKSI with a RILA registered on Form N-4 could rely on Rule 433(b)(1)(iii) to market the RILA would be an interpretive issue given that the RILA offering wouldn't be eligible for registration on Form S-3.

[78] *See* Securities Offering Reform, Release Nos. 33-8591, 34-52056 and IC-26993 (July 19, 2005) at pp. 103-104 [70 FR 44721 (Aug. 3, 2005) at 44747-48].

- Second, RILA advertisements under Rule 482 would be subject to regulatory oversight. Pursuant to Rule 482(h), Rule 482 advertisements must be filed with the SEC unless filed with FINRA. As previously noted, RILA issuers/intermediaries already file with FINRA voluntarily in normal course, and will therefore have no concerns abiding by this requirement. The CAI would even be in favor of a requirement that all RILA advertisements under Rule 482 be filed with FINRA.

- Fourth, amending Rule 482 would establish regulatory uniformity between RILAs and variable products. This would substantially reduce the burdens and risks that companies and compliance departments currently face when applying conflicting legal frameworks to different insurance product offerings.

Should the SEC decline to amend Rule 482 as requested, it should alternatively level the playing field under Rule 433 by amending Rule 433(b)(1) to include all RILA offerings registered on Form N-4. Like the requested amendments to Rule 482, such an amendment to Rule 433 would facilitate broad-based advertising by all RILA issuers, regardless of their 1934 Act reporting status. As previously explained, the SEC's underlying justification for the Rule 433(b)(1) and (2) dichotomy with respect to prospectus delivery—*i.e.*, the risks associated with no or a limited reporting history for non-reporting and unseasoned issuers—does not carry any weight in the context of marketing materials for RILAs or other insurance products. Furthermore, in light of the SEC's view that historical RILA and index-linked option performance is generally misleading, RILA issuers would not include such performance information in their FWPs.

No Universal Prospectus Delivery Requirement. In the SEC's Request for Comment No. 143, the SEC asked whether it should permit insurance companies to provide RILA sales literature to investors without being accompanied or preceded by a summary or statutory prospectus, and whether investors would be able to understand RILA marketing material without the benefit of a prospectus.[79] We disagree that a prospectus should be delivered with marketing material in all cases. Furthermore, we wish to make clear that the SEC must make a change from the Proposal in order to avoid that result with respect to Rule 433, as all RILA offerings registered on Form N-4 would necessarily fall under Rule 433(b)(2) regardless of whether the RILA issuer is a 1934 Act reporter.[80]

A universal prospectus delivery requirement for marketing material would be fundamentally unfair to the RILA industry and an unnecessary regulatory measure. It would be fundamentally unfair because it would treat RILAs as if they are not valuable and legitimate investment products. Many complicated investments can be advertised using Rule 482 or Rule 433 without the need for a prospectus to accompany or precede. Structured notes, to which the SEC analogizes to RILAs, are often advertised using FWPs without prospectus delivery. Moreover, other complicated products that often present far more investment risk, such as certain types of closed-end funds and exchange-traded products, can be advertised using Rule 482 and/or Rule 433 without prospectus delivery. While RILAs may have complicated elements, they are regulated insurance products, and in no way

[79] *See* Proposing Release, p. 205. Within the context of the current regulatory framework, the SEC's Request for Comment could be taken as asking: (1) whether all FWPs for RILAs should be relegated to Rule 433(b)(1); (2) in the event that the SEC amends Rule 482 to include RILAs, whether a prospectus delivery requirement should be imposed; or (3) whether the SEC should limit RILA marketing material to supplemental sales literature under Section 2(a)(10). For the reasons above, we disagree with all of these possibilities, as well as any other approach that would impose a prospectus delivery requirement on all RILA marketing material.

[80] Surely, this would be an unintended and unduly restrictive outcome. In order to simply maintain the status quo, the SEC would need to amend Rule 433(b)(1) to include RILA offerings registered on Form N-4 by issuers who file reports pursuant to Section 15(d) of the 1934 Act.

present an overarching public policy concern that warrants a categorically different regulatory treatment than most other offerings.

A universal prospectus delivery requirement would entirely shut RILA issuers out of broad-based advertising outside of the online setting. There is no need for such an extreme restriction on marketing materials. To the extent that it can be performed today, all broad-based public advertising is (and will continue to be) reviewed by FINRA. Furthermore, due to costs and media limitations, such advertisements tend to be especially high level. They normally do not describe the specific product features and functionalities that can be complicated and difficult to understand. As such, members of the public do not need a prospectus for context. It is also noteworthy that all Rule 482 or Rule 433 advertisements would necessarily contain a legend regarding the availability of a prospectus with additional information. The prospectus will therefore be readily available to all, and most investors would be able to access the prospectus immediately online.

RILAs are valuable retirement savings products for Americans. They can help Americans save for retirement and realize their financial goals. Americans will be better served by knowing that these products are available and how additional information may be obtained, but the SEC's current regulatory framework makes it difficult for insurance companies to bring public awareness to these products. A universal prospectus delivery requirement would make it even more difficult. We support the SEC's goal that RILA marketing material be fair and balanced, but the SEC should not severely restrict how fair and balanced communications are delivered to investors.

N. OTHER COMMENTS

a. Confirmations under Rule 10b-10

The CAI applauds the Commission's decision not only to extend the existing variable product registration and disclosure framework to accommodate the registration of RILAs, but also to extend the overall VA offering framework to RILAs, as appropriate. In this regard, the CAI believes that, in addition to the form and rule amendments included in the Proposal, a minor Rule 10b-10 amendment is also needed. Specifically, the ability for insurers to send quarterly statements in lieu of immediate confirmations for certain transactions, which is a prevalent practice in the variable product space, is currently *unavailable* to RILAs. A minor revision to Rule 10b-10, as described below, would allow RILA issuers to use quarterly statements on the same basis as variable product issuers, which the CAI believes is both reasonable and appropriate and furthers the Commission's intention to provide a consistent framework and efficiencies for all offerings registered on Form N-4.

By way of background, Rule 10b-10 under the 1934 Act generally makes it unlawful for a broker-dealer to effect a transaction in a security for or with an account of a customer without providing the customer with a written confirmation at or before completion of a transaction (sometimes referred to as an "immediate confirmation"), unless an exemption applies. One such exemption permits a broker-dealer to furnish statements *on a quarterly basis* in lieu of immediate confirmations for certain transactions in certain "periodic plans" or "investment company plans." Variable product issuers routinely rely on the investment company exemption, as appropriate, to confirm certain transactions on a quarterly basis, *e.g.*, transactions including rebalancing, dollar cost averaging, scheduled and/or payroll deduction premium payments, systematic withdrawals, etc.

- Unlike RILA issuers, variable product issuers cannot look to the "periodic plan" exemption because, as defined in Rule 10b-10, it excludes a plan involving investment company securities. On the other hand, the periodic plan exemption is not typically applicable to

RILA transactions because it also requires broker-dealer involvement in the confirmed transaction. The types of transactions that insurers confirm quarterly are set up directly with the insurer by the investor, with no broker-dealer involvement.

- The "investment company plan" exemption is, of course, inapplicable to RILAs.

In general, the no-action letters in this area are viewed as applicable to variable contracts only.

As a result, insurers must program their administrative systems to generate immediate confirmations for RILA contract owners for the same set of transactions they generate quarterly statements for variable contract owners. In effect, there is a different confirmation framework for the same insurance transactions—sometimes within the same contract. This could lead to investor confusion and certainly creates undue insurer burdens. The CAI urges the Commission to address this inefficiency by amending Rule 10b-10(b)(1) to include RILAs.

b. Streamlined EDGAR Filing Process for Combination Products

Understanding that a registration statement for a combination RILA/VA will need to be filed by both the insurance company and separate account registrants, and that associated post-effective amendments, prospectus supplements, and potentially other filings (*e.g.*, financial statements) will need to be filed by both registrants as well, we hope the SEC can automate the EDGAR system in such a way that identical filings can be automatically filed by both registrants without having to incur the costs and burdens of actually making the same filing twice. For example, perhaps using the EDGAR Contract Identifier, the EDGAR system could have an automated function that automatically files a post-effective amendment for both registrants.

c. Insurer Company Costs to Support Index-Linked Options

In the section of the Proposing Release discussing the principal disclosures regarding RILAs, the Commission in Request for Comment No. 48 references numerical disclosure by issuers of structured notes of the valuation of such notes at the time of issuance and asks whether a similar disclosure for RILAs, provided with respect to each permutation of an index-linked option, would be helpful to investors. While both RILAs and structured notes offer bounded returns, these financial products and the manner in which they are offered and priced are otherwise very different. Because of those differences, discussed below, the CAI strongly believes that any such disclosure in connection with RILA offerings would not be helpful to investors. Indeed, such disclosure would at best be irrelevant and at worst would be confusing and potentially misleading to retail investors.

Background. Specifically, unlike structured notes, RILAs are continuous offerings with both investment and insurance components that are inherent to their overall value. A RILA contract is a long-term retirement savings investment that does not terminate at the end of a single crediting period. Instead, contract owners reallocate their principal and any earnings to subsequent crediting periods by electing from numerous index-linked options with varying crediting methods and crediting periods. RILA investors often also have access to fixed options and/or variable options. RILAs offer significant other features to investors: the ability to lock in index-linked option performance, liquidity, permitting a contract owner to access his or her contract value on any business day during the life of the contract, often with partial exemption from surrender charges that otherwise apply in early contract years; access to guaranteed retirement income through annuitization options; enhanced death benefits and living benefits; as well as other competitive insurance features. Importantly, RILA contracts are supported by a collective and dynamic portfolio of investments backing multiple contracts issued over time, as necessitated by a RILA's significant

liquidity features, including annuitizations, benefit withdrawals, systematic withdrawals, required minimum distributions, death benefits, and partial and full surrenders. This means that the insurer's portfolio supporting RILAs at the time of issuance of one contract may differ from the portfolio at the time of issuance of another contract, and will surely differ over the life of the RILA contract and its many successive crediting period s. In addition, insurers may commingle the fixed income and/or derivative assets supporting the RILA with assets supporting one or more other annuity product lines.

On the other hand, a structured note is a single debt security with a specified finite end date and no guarantees related to continuing terms. They are underwritten offerings that are issued to all purchasers on a date certain. They have no guarantee of liquidity or insurance features. Also, structured notes implicitly recoup distribution costs through their spread, rather than through an explicit surrender charge like RILAs.

Value or Cost Disclosure Differences and Concerns. Issuers of structured notes disclose an initial value at the time of issue that is based on the value of (1) the embedded derivatives; and (2) the fixed-income bond or bonds tied to the structured note. As noted in the Proposal, "[t]his disclosure allows investors to understand the difference between the issuer's valuation and the original issue price that they are paying for the structured note." While this disclosure may provide a structured note investor with the implied cost of that note, there is not comparable disclosure that could be provided to RILA investors that would be relevant or helpful.

Unlike structured notes, as described above, RILAs are multi-featured continuous offerings, and a RILA contract's initial "value" cannot be measured simply by the value of the insurer's underlying bonds and portfolio of derivatives at a moment in time. The "cost" to the investor or profit to the insurer is dependent on numerous factors, including but not limited to: the contract issue date, the index-linked options elected, the feature functionality of the contract, persistency, and the exercise of insurance benefits by the contract owner over the life of the contract. Consequently, *any* number purporting to represent a RILA's initial "value" would be oversimplified and potentially misleading, as it would not be representative of the "value" over the life of each individual contract, and would differ on each business day for each new purchaser. The footnote disclosure that would be required to try to make sense of the calculation of any "value" of a RILA would be so substantial as to demonstrate the futility of the exercise.

To put a finer point on this, while it is true that structured notes and RILAs are both "spread" products, meaning that the issuer's profit is principally embedded in the structuring of the product and is not a portion of an overt fee or charge, what is embedded in those spreads is very different. In the case of structured notes, the spread covers expenses and compensates the issuer for the contractually promised downside protection and growth potential for *a single strategy over a fixed period of time*. In the case of a RILA, the spread covers expenses and compensates the insurer not only for the investment elements of the product, but liquidity, protection and other insurance features that are bundled together and can vary significantly from issuer to issuer. This complexity renders any attempt to calculate and disclose a RILA contract's initial "value" fundamentally different from such disclosure for a structured note and such disclosure would not provide a RILA investor with useful information.[81]

[81] We also note that it is almost impossible to imagine that a retail RILA contract purchaser would—or could—actually attempt to replicate the dynamic portfolio underlying a RILA contract and purchase the insurance elements "a la carte," further calling into the question the utility of such disclosure.

Moreover, we are concerned that any disclosure of a "value" of a RILA at time of issuance would be misleading and have the potential to undermine investor decision making. Whereas the highly limited purpose and make-up of a structured note investment may facilitate a representation of a single "value" at purchase, creating a numerical representation of an annuity contract's value based exclusively on an estimate at one point in time risks significantly misrepresenting the actual value to an individual investor by, among other things, suggesting that this number represents a meaningful way to distinguish between different RILA contracts. For example, an investor selecting a product based on the lowest "cost" could sacrifice significant liquidity and insurance benefits that would be of great value to them.

We also note that including the "value" for each index-linked option offered in a particular RILA could lead to confusion, as the investor may try to make investment decisions among different index-linked options offered within a RILA contract based on "cost," rather than an assessment of the fit of each defined strategy with the investor's objectives and risk tolerance. Indeed, such disclosure could mislead an investor to base their investment decision on an initial value and implicit costs, and may result in decisions that are not in line with their needs or risk tolerances. For example, by overly focusing on what would purport to be the "cost," an investor with a low tolerance for risk could choose an index-linked strategy with lower buffer (such as -10%), when an index-linked strategy with a higher buffer (such as -20%) might be more appropriate.

Other Comments. Because of our strong view that any disclosure of an initial "value" of a RILA contract would not be relevant or useful to RILA investors, we are not specifically commenting on the subsidiary questions that were set forth in the Proposal (Requests for Comment Nos. 49 through 55). However, if the Commission were for whatever reason to continue to consider these questions, it should be aware that there are many misconceptions about RILA operations and pricing embedded in these questions and in the economic analysis section of the Proposing Release. These misconceptions include:

- Insurers generally do not price products by assembling the individual components underlying index-linked strategies (derivatives exposure, fixed income component and insurance features). As previously discussed, investments supporting RILA contracts are not generally specifically earmarked to a contract, but rather are managed based on the insurer's aggregate reserves supporting all its RILA contracts.
- Exchange-listed derivatives are not generally used to hedge RILA strategy exposure for several reasons. Over-the-counter derivatives and dynamic hedging allow for more accurate duration matching with the many specific crediting periods made available under continuously offered RILAs. In addition, an increasing number of index-linked options made available in RILAs reference indexes for which there are no relevant exchange-listed derivatives. Moreover, even if one were to attempt to estimate value or prices based on exchange-listed derivatives, because of the inability to match exchange-listed derivative maturities to specific crediting periods, that exercise would be fraught with having to make significant assumptions and structuring that would vary among companies, likely frustrating any effort to create a meaningful point for comparison between index-linked strategies and RILA contracts.
- Neither suggested approach to valuing the fixed-income component of an index-linked option reflects the actual considerations that go into establishing the pricing of a RILA. The yield on a zero coupon bond issued by a bank is a much more straightforward concept than the yield of an insurer's fixed income asset portfolio and therefore using the crediting rate on fixed annuities generally would not be an appropriate approach to valuation. Using a risk

free rate of return to value the fixed income component as outlined in Section III.B.3 of the Proposal would not provide meaningful information to investors because the derivatives budget that is used to determine limitations on upside performance is not a function of a risk free investment yield. Valuing the derivative structure once these rates have been established and then approximating the value of a fixed income asset with a risk free yield would exhibit an inherent disconnect that would render the disclosure at best irrelevant.

- It is fundamentally incorrect that insurance companies benefit from the sale of RILAs due to (1) a favorable imbalance between the downside protections that a RILA contract offers, and the contractual limitations on upside performance; (2) a "credit risk premium"; and (3) dividend payments when a RILA offers index-linked options whose index for measuring performance is a price return index that does not account for dividend payments. The first is incorrect because insurers do not invest directly in the index, but rather determine their limits on upside performance based on an established derivatives budget for the specified downside protection, and therefore from a pricing perspective are indifferent regarding the level of the upside performance limitations and do not benefit from returns in excess of these upside performance limitations. The second is incorrect because it suggests that insurers are offering a crediting structure that could be replicated with risk free investments and are benefitting entirely from the credit risk premium. Much of this credit risk premium is used to pass additional value to customers via greater participation in upside performance. The third is incorrect because insurers purchase derivatives based on the price return index and do not somehow earn or keep any dividends paid by the companies whose securities comprise that index. It is true that using price return indices lowers option costs and allows for greater participation in upside performance, but this does not mean that insurers make more money as a result of offering price return indices. An insurance company could also offer total return indices if desired. In that instance, the derivatives budget would be substantially the same, with the result that the strategies linked to total return indices would have less participation in upside performance than strategies linked to equivalent price return indices, but the pricing/profitability would be the substantially the same for the insurer.

III. CONCLUSION

We cannot stress enough our deep appreciation for the careful consideration, time, and energy that the Commission and the SEC staff has devoted to developing not just a tailored registration form but a comprehensive registration framework for RILAs, particularly in light of the expedited rulemaking timeline set forth in the RILA Act. The CAI is in enthusiastic support of a vast majority of the elements of the Proposal, and applauds the Commission and staff for thoughtfully and artfully addressing many of the challenges facing RILA issuers under the current Form S-1/S-3 registration regime.

We thank you for the opportunity to provide these comments and recommendations, and we are hopeful that they will be helpful to the Commission and the SEC staff's continued efforts to finalize the rule and form amendments. Please do not hesitate to contact Steve Roth (202.383.0158; SteveRoth@eversheds-sutherland.us), Dodie Kent (212.389.5080; DodieKent@eversheds-sutherland.us), or Ron Coenen Jr. (202.383.0940; roncoenen@eversheds-sutherland.us) with any questions or to discuss this letter.

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Respectfully submitted,

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FOR THE COMMITTEE OF ANNUITY INSURERS

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Mr. William A. Birdthistle, Director, Division of Investment Management

* * *

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APPENDIX

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Security Benefit Life Insurance Company
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