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VIA ELECTRONIC SUBMISSION

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

Re: File Number S7-05-20; Release Nos. 33-10763; 34-88321.
Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets

Dear Ms. Countryman:

We are submitting this comment letter on behalf of the Committee of Annuity Insurers (the "***Committee***")[1] in response to one of the Securities and Exchange Commission's (the "Commission") proposals in ***Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*** (Release Nos. 33-10763; 34-88321, March 4, 2020) (the "***Proposing Release***"). Among other things, the Commission proposed amendments to provisions in numerous rules and forms that permit registrants to redact terms and provisions from certain exhibits required to be filed, provided that the redacted material is "confidential" (subject to certain other requirements). The proposals would revise the standard for treating information as "confidential" for redaction purposes. This includes proposed amendments to Forms N-3, N-4, and N-6, the registration statement forms for variable annuity contracts and variable life insurance policies.[2]

The Committee strongly supports the proposed amendments to the 'confidential' standard in the Form N-3, N-4, and N-6 variable product registration statement forms.[3] In addition, the Committee recommends minor revisions to Form N-6 (for variable life insurance policies) to properly apply the standard to all of the appropriate categories of exhibits.

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[1] The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For over three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the Commission, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. Today the Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] See pages 103-105 of the Proposing Release.

[3] The Commission's proposals regarding the confidentiality standard for redaction are much broader than just the variable product registration statement forms referred to herein. However, the Committee's interests here focus on insurance products, so these comments are addressed primarily to applicability of the redaction standard to insurance products (both variable and non-variable; see footnote 6 below). Nevertheless, the Committee believes that the broad and consistent application of the new standard proposed by the Commission is appropriate.

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The 'Confidential' Standard

Currently, the registration statement forms for variable annuity contracts (Forms N-3 and N-4) and variable life insurance policies (Form N-6) permit redaction of information from certain types of documents required to be filed as exhibits.[4] The standard in those forms (and in other rules and forms) is that provisions or terms can be redacted if they are both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. The 'competitive harm' requirement is viewed as a test for determining whether the information is 'confidential.'

In June 2019, in a Freedom of Information Act (FOIA) case, the Supreme Court rejected this test for 'confidential' and adopted a new definition that does not include a competitive harm requirement.[5] The Supreme Court stated that information is 'confidential' if it is "both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy." In accordance with that decision, the Commission proposes adjusting the exhibit redaction filing requirements by removing the competitive harm requirement and replacing it with a "customarily and actually treats as private or confidential" standard.

The Committee supports the proposed amendments to Forms N-3, N-4, and N-6 adopting the new confidentiality standard, in accordance with the Supreme Court's interpretation of 'confidential."[6] In addition to applying the appropriate redaction standard (in accordance with the Supreme Court's decision), this would result in all material information being disclosed (since the 'not material' prong for redaction would be retained), and the proposals would retain the Commission staff's ability (pursuant to the instructions cited in footnote 4 herein) to obtain and review the redacted information and request its disclosure if the standard is not met.

Conforming Amendments to Form N-6

There is currently a technical difference in how certain documents are filed as exhibits to variable annuity registration statements (Forms N-3 and N-4) and variable life insurance policies (Form N-6). This results in a significant, but apparently unintended, technical difference in the applicability of the redaction requirements. For variable annuity contracts, the Form N-4 list of exhibits (Item 24(b)) includes two relevant categories: reinsurance contracts (Item 24(b)(7)) and "other material contracts" (Item 24(b)(8)).[7] Form N-4 does not include separate exhibit requirements for participation agreements between the insurer and underlying mutual funds (portfolio companies), or for administrative service contracts. Participation agreements and administrative service contracts (if material) would be filed as "other" material contracts. The Form N-4 exhibit redaction instruction (instruction 5 to Item 24(b)) applies to both paragraphs (7) (reinsurance) and (8) (other material contracts) and therefore would apply to any participation agreements and administrative contracts filed under paragraph (8) of Item 24(b). The new confidentiality redaction standard, then, would apply to reinsurance contracts, participation agreements, administrative service contracts, and other material contracts filed as exhibits to variable annuity registration statements on Forms N-3 and N-4.

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[4] See Instruction 5 to Item 29(b) of Form N-3, Instruction 5 to Item 24(b) of Form N-4, and Instruction 3 to Item 26 of Form N-6.

[5] See *Food Marketing Institute v. Argus Leader Media,* 139 S.Ct. 2356 (2019).

[6] In addition to supporting the proposed amendments to Forms N-3, N-4, and N-6, the Committee also supports the comparable revisions proposed for Regulation S-K (which would apply to, among other things, certain types of "non-variable" insurance products registered on Forms S-1 and S-3); and to Form N-1A (which apply to mutual funds, including funds available as investment options in variable insurance products).

[7] For Form N-3 variable annuity registration statements, the comparable provisions are paragraphs 9 (reinsurance) and 11 (other material contracts) of Item 29(b) and Instruction 5 to Item 29(b)).

However, for variable life insurance policies (Form N-6 registrants), the new confidentiality redaction standard would *not* apply to participation agreements or administrative service contracts. Form N-6 has four relevant exhibit categories: reinsurance contracts (paragraph (g) of Item 26), participation agreements (paragraph 26(h)), administrative contracts (paragraph 26(i)), and other material contracts (paragraph 26(j)). The applicable redaction instruction (Instruction 3 to Item 26) only applies to paragraphs (g) and (j), not paragraphs (h) and (i), so it does not apply to participation agreements or administrative contracts filed under paragraphs (h) or (i). However, there is no reason for this disparate treatment,[8] and the Supreme Court decision defining "confidential" applies broadly and does not distinguish between these categories of exhibits.

The Committee therefore recommends that, in addition to amending the 'confidentiality' standard, the first sentence in Instruction 3 to Item 26 of Form N-6[9] be revised to apply to exhibits filed under paragraphs (g), (h), (i), and (j), rather than just to exhibits filed under paragraphs (g) and (j). The instruction should include applicability to exhibits filed under paragraphs (h) (participation agreements) and (i) (administrative contracts).

Error in Proposed Amendment to Form N-6

There is an error in the proposed amendment to Form N-6 regarding the "confidential" standard. The proposed new standard is "customarily and actually treats that information as private ***or confidential***" in Forms N-1A, N-2, N-3, N-4, N-5, N-14, S-6, 20-F, and in Items 601(b)(2) and 601(b)(10) of Regulation S-K (emphasis added).[10] However, the proposed standard in Form N-6 is "customarily and actually treats that information as private," without the "or confidential." The omission of "or confidential" here was certainly inadvertent.[11] The words "or confidential" should be added to first sentence of the proposed amended Instruction 3 to Item 26 of Form N-6 to apply the same new standard as in all of the other forms.

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[8] Indeed, in many cases a single participation agreement or administrative contract would apply to both variable annuity and life insurance products; it would obviously make no sense to require an unredacted version to be filed with the variable life insurance registration statement on Form N-6 while a redacted version of the same document could be filed with the variable annuity registration statement on Form N-4.

[9] See page 339 of the Proposing Release.

[10] See pages 297, 298, 316, 318, 321, 326, 332, 335, 336, and 337 of the Proposing Release.

[11] See page 339 of the Proposing Release. Note, the standard in the first sentence of proposed instruction 3 to Item 26 of Form N-6 is "private," while the second sentence refers to "private or confidential" and the fourth sentence refers to the "privacy or confidentiality analysis." This further demonstrates that the omission of "or confidential" from the first sentence was inadvertent.

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The Committee appreciates the opportunity to submit these comments in response to the Proposing Release. Please do not hesitate to contact Stephen E. Roth at 202-383-0158 (steveroth@eversheds-sutherland.us) or Frederick R. Bellamy (fredbellamy@eversheds-sutherland.us) if you have any questions regarding this letter.

Respectfully submitted,

The Committee of Annuity Insurers

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Counsel to the Committee of Annuity Insurer

cc: Ms. Dalia Blass, Director of the Division of Investment Management

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Appendix A

THE COMMITTEE OF ANNUITY INSURERS

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

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