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September 8, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Comments on Proposed Rules and Rule Amendments For Money Market Funds (File No. S7-11-09)

Dear Ms. Murphy:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee").[1] The Committee is pleased to have the opportunity to offer its comments in response to the request of the Securities and Exchange Commission (the "Commission") in Release No. IC-28807 (June 30, 2009) (the "Release") for comments on proposed amendments to Rules 2a-7, 17a-9 and 30b1-5 and on proposed new Rules 22e-3 and 30b1-6 under the Investment Company Act of 1940, as amended (the "1940 Act"). The Committee's comments relate to money market mutual funds that sell their shares to separate accounts of life insurance companies as investment vehicles for variable annuity contracts ("underlying money market funds").

Investment by Registered Separate Accounts in Money Market Fund Shares

Variable annuity contracts are insurance contracts issued to an investor purchasing the contract.[2] Today most variable annuity contracts are issued through a two-tiered investment company structure. The top tier consists of a separate account of the issuing insurance company, which is a segregated investment account established under state insurance law that holds variable annuity contract assets and liabilities separate and apart from the assets and liabilities of the insurance company's general account. Separate accounts are usually divided into sub-

[1] The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

[2] For ease of reference, this letter refers to insurance companies as issuers of variable annuity contracts although, under the federal securities laws, insurance company separate accounts are the primary issuers of the contracts, with the insurance companies serving as the sponsors or depositors of the separate accounts. *See* Stephen E. Roth, Susan S. Krawczyk, and David S. Goldstein, *Reorganizing Insurance Company Separate Accounts Under Federal Securities Laws*, 46 Business Lawyer 546 (Feb. 1991).

accounts, with each sub-account investing in the shares of a single underlying open-end management investment company (a "mutual fund"), such as a money market fund. The underlying mutual funds are the bottom tier of the two-tier structure.[3] Absent an applicable exclusion from the definition of an investment company in the 1940 Act, separate accounts are required to register as investment companies under the Act. Where a registered separate account is the top tier of a two-tier structure, it is almost always registered as a unit investment trust.

Purchase payments under variable annuity contracts are allocated by their owners among the various available sub-accounts and the proceeds are invested in shares of the corresponding mutual fund. On behalf of their separate accounts, insurance companies transmit orders to purchase or redeem shares of mutual funds on a daily basis based on the net results of purchase payments, redemption requests (*i.e.*, surrender or withdrawal requests under the variable annuity contracts) and transfer requests from owners of variable annuity contracts.[4]

Because variable annuity contracts are themselves redeemable securities, the registered separate accounts through which they are issued are subject to Section 22(e) of the 1940 Act.[5] As a result, insurance companies generally may not suspend the right of variable annuity contract owners to surrender their contracts or withdraw cash value from them, and generally may not postpone payment of cash value to contract owners for more than seven days.

Proposed New Specific Liquidity Tests

The Release proposes to amend Rule 2a-7 to include daily and weekly liquidity tests that would be based on a money market fund's legal right to receive cash from a portfolio investment rather than on the fund's ability to find a buyer for the investment. With regard to taxable money market funds, those defined as "retail" funds would be required to invest at least five percent of their total assets in U.S. Treasury securities, or other securities that the fund can reasonably expect to convert to cash within a day ("daily liquid assets"). Similarly, with regard to taxable money market funds, those defined as "institutional" funds would be required to invest at least ten percent of their total assets in daily liquid assets. With regard to all money market funds, retail funds also would be required to invest at least fifteen percent of their total assets in U.S. Treasury securities, or other securities (including repurchase agreements) that mature or are subject to demand features exercisable and payable in five business days ("weekly liquid

[3] Virtually all underlying mutual funds, including underlying money market funds, are taxable funds.

[4] Generally speaking, the facts about variable annuity contracts and the separate accounts through which they are issued are equally true of variable life insurance contracts and the separate accounts through which variable life insurance contracts are issued. Therefore, though this letter speaks in terms variable annuity contracts, the Committee's comments would apply to variable life insurance separate accounts as well.

[5] Most registered separate accounts rely on the exemption from Section 27 of the 1940 Act found in paragraph (i) of that section. Paragraph (i)(2)(A) of Section 27 requires that variable annuity contracts issued through the separate account be redeemable securities.

assets"), whereas institutional funds would be required to invest at least thirty percent of their total assets in weekly liquid assets.

For purposes of the daily and weekly liquidity tests, Rule 2a-7 would define an "institutional" money market fund as one the board of directors of which have determined is intended to be offered primarily to institutional investors (or has the characteristics of such a fund), based on the:

- Nature of the record owners of the fund's shares;
- Minimum initial investment requirements; and
- Historic cash flows that have resulted or expected cash flows that would result from purchases and redemptions.

The Rule would define a "retail" money market fund as one the board of directors of which has not made a determination that it is an institutional money market fund.

In general, the Committee is concerned that the utility of having money market funds characterize themselves as either "retail" or "institutional" may be outweighed by the "cost" in investor confusion of doing so. In the particular context of underlying money market funds, prospective investors receive relatively lengthy and complex prospectuses describing a variable annuity contract and the separate account through which it is issued, as well as prospectuses for one or more underlying mutual funds. To add to this volume of disclosure a discussion of the subtle distinction between "retail" and "institutional" money market funds may be very confusing.[6] This may be particularly so because of the likelihood that in any year some underlying money market funds will change their status. Therefore, the Committee does not believe that introducing a distinction between "retail" and "institutional" underlying money market funds would serve to protect owners of variable annuity contracts. In addition, the Committee does not necessarily agree that a determination of whether a money market fund is a "retail" fund or an "institutional" one should only be made by its board of directors.

In the event that the proposed retail/institutional dichotomy is adopted, Committee believes that the "nature" of insurance company separate accounts as record owners of an underlying money market fund's shares is that of a mere conduit for the investment of contract values of variable annuity contracts by their owners. Owners of variable annuity contracts, and not the separate accounts through which the contracts are issued or their insurance company depositors, have the authority to invest in or redeem investments in underlying money market

[6] At the current time, most variable annuity contracts offer only one underlying money market fund investment option. As a result, except when initially considering the purchase of a variable annuity contract, owners would not have the opportunity to select one money market fund over another and therefore would not care very much whether "their" fund is a retail one or an institutional one.

funds.[7] Therefore, large numbers of individual variable annuity contract owners and participants under many group variable annuity contracts make the investment decisions with respect to underlying mutual funds, rather than the separate accounts or their insurance company sponsors.[8] As a result, the Committee believes that investment in an underlying money market fund by variable annuity contract owners is primarily a "retail" investment and any amendments to Rule 2a-7 should permit boards of directors of such funds to recognize this fact.[9]

With regard to the foregoing, the Committee has some concern with the proposed requirement that boards base their determination of the institutional status of their money market funds, in part, on the nature of the record owners of the funds' shares. Although this requirement could be intended to lead boards of underlying money market funds to consider the "conduit" nature of separate accounts, it also could be read to require such boards to focus on the insurance companies and their separate accounts rather than on owners of variable annuity contracts when evaluating the "retail" vs. "institutional" character of such funds. Therefore, the Committee recommends that the Commission clarify that consideration of the nature of record owners of shares means consideration of the persons that make investment decisions with regard to such shares (*i.e.*, contract owners or other beneficial owners of the shares) where appropriate.

Proposed New General Liquidity Requirement

The Release also proposes to amend Rule 2a-7 to require that money market funds hold sufficient amounts of daily liquid assets and weekly liquid assets to meet reasonably foreseeable shareholder redemptions in light of such funds' obligations under Section 22(e) of the 1940 Act and any commitments a fund may make to shareholders. In this regard, the Release points out that a money market fund should adopt policies and procedures to assure that appropriate efforts are undertaken to identify risk characteristics of its shareholders, particularly shareholders that hold their shares through omnibus accounts.[10] The Committee believes that this would require

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[7] One exception to this would be where an insurance company determines to substitute the shares of one underlying mutual fund for those of another held by one or several of its separate accounts. Substitution transactions, however, generally must carried out pursuant to an approval order from the Commission under Section 26(c) of the 1940 Act.

[8] In many cases, participants under group variable annuity contracts have the authority to make investment decisions regarding underlying mutual funds, including underlying money market funds. In such cases, individual participants, often in large numbers, make investment decisions in a "retail" manner. In cases where a group variable annuity contract leaves the contract owner with the authority to make investment decisions, such an owner may be more of an institutional investor than a retail investor. However, even in these cases, boards of underlying money market funds should look to the owner of the contract rather than the separate account or insurance company to evaluate the retail or institutional nature of the investment.

[9] Otherwise, owners of individual variable annuity contracts and participants under many group variable annuity contracts would likely be denied the higher yield that underlying retail money market funds would presumably provide.

[10] Rule 38a-1 under the 1940 Act requires all mutual funds to maintain written compliance policies and procedures reasonably designed to prevent violation of the Federal Securities Laws.

underlying money market funds to have policies and procedures that reflect the anticipated cash flows resulting from purchases and redemptions of shares arising from variable annuity contract owner transactions. In addition, such policies and procedures also would typically reflect the terms of participation agreements entered into by underlying money market funds with the insurance companies that sponsor separate accounts investing in the funds' shares.

The Release requests comment on whether the Commission should provide guidance to money market funds to assist them in determining the adequacy of their policies and procedures relating to the proposed general liquidity requirement. The Committee believes that the Commission should provide such guidance and requests that the guidance address the circumstances of underlying money market funds that sell shares to separate accounts registered under the 1940 Act as unit investment trusts. In particular, the Committee requests that the guidance affirm that the terms and conditions of participation agreements can be integrated into such policies and procedures.

Proposed New Rule 22e-3

Paragraph (a) of proposed new Rule 22e-3 would permit a money market fund to temporarily suspend redemption of its outstanding shares and postpone the payment of redemption proceeds, in the event that the fund can no longer maintain a constant net asset value per share and the board of directors has approved the liquidation of the fund. Paragraph (b) of proposed Rule 22e-3 would provide a limited exemption from Section 22(e) for certain conduit funds that own (pursuant to Section 12(d)(1)(E) of the 1940 Act) shares of a money market fund that suspends redemptions in reliance on paragraph (a) of the proposed Rule.[11] The Committee believes that the parallel exemption for conduit funds is a critically important element of the proposed rule. As the Commission correctly explained in the Release, without a parallel exemption conduit funds would be placed in the position of having to honor redemption requests while being unable to liquidate shares of money market funds held as portfolio securities. The Committee is very pleased that the Commission proposes to adopt such a provision and wholeheartedly supports the Commission's position in this regard.

However, as worded paragraph (b) fails to achieve the Commission's goal. The Release states that the Commission anticipates that this provision "would be used principally by insurance company separate accounts issuing variable insurance contracts" and certain other conduits. The problem is that paragraph (b) applies to a "fund," and paragraph (a) of the proposed rule defines "fund" to be a registered open-end management investment company or series thereof. As explained above, virtually all insurance company separate accounts registered

[11] Paragraph (b) of proposed Rule 22e-3 was included in the Rule in response to a comment by the Committee on Rule 22e-3T, a current rule that provides a similar exemption for money market funds participating in the Treasury Department's Guarantee Program. *See* note 288 of the Release and accompanying text. The Committee's comment letter explained the reasons why paragraph (b) of Proposed Rule 22e-3 is necessary.

under the 1940 Act are registered as unit investment trusts. Therefore the wording of paragraph (b), as proposed, would make it unavailable for a class of investment companies for whom it was clearly intended. The Committee recommends a simple solution: insert the phrase "or registered unit investment trust" in the beginning of paragraph (b), so that the opening phrase reads "Any fund or registered unit investment trust that owns ... ."[12]

Proposed New Rule 30b1-6

Proposed new Rule 30b1-6 would require money market funds to file a monthly report on portfolio holdings with the Commission on proposed new Form N-MFP (for "money fund portfolio" reporting). Some members of the Committee have affiliates that are investment advisers to underlying mutual funds, including underlying money market funds, that have portfolios managed by sub-advisers.[13] Some of these Committee members believe that preparation of Form N-MFP on a monthly basis would place an undue burden on sub-advised underlying money market funds. This is because a number of the information items required by proposed Form N-MFP require information that typically is in the possession of the sub-adviser that actually manages the portfolio. As a result, investment advisers acting in the capacity of managers-of-managers would have to obtain such information from the sub-advisers managing their money market fund portfolios. As to certain of these information items, obtaining the necessary data for Form N-MFP would be costly and put advisers acting as managers-of-managers at a distinct disadvantage vis-à-vis their counterparts that directly manage money market fund portfolios. In this regard, the Committee believes that the Commission's view that proposed Rule 30b1-6 would not have an adverse effect on competition, may be incorrect for sub-advised money market funds.

In particular, the information required by items 17, 20, 26(b), and 30 – 35 are not typically in the possession of an investment adviser that is not directly managing the portfolio or available from a money market fund's accounting agent. For example, investment advisers and fund accounting agents may rely on different NRSROs to obtain credit ratings for compliance monitoring or valuation than the NRSROs used by a sub-adviser for making investment decisions. In most cases, the investment adviser or another service provider would be responsible for preparing Form N-MFP and would therefore have to obtain the information for the foregoing items from the sub-adviser on a real-time basis. In many cases, this would require a significant investment in new infrastructure. In this regard, the Committee believes that the

[12] We note that Rule 22c-2 under the 1940 Act includes unit investment trusts in the definition of "financial intermediary". *See* paragraph (c)(1)(ii) of Rule 22c-2.

[13] Where this is the case, the investment adviser is often a manager-of-managers. Manager-of-managers arrangements are quite common for underlying funds managed by insurance-affiliated investment advisers. Indeed, it is our sense that manager-of-managers arrangements are more widely used in this segment of the mutual fund industry than in any other.

Commission's estimate of 128 burden hours per money market fund for the first year is far too low for sub-advised funds.[14]

As a result, the Committee believes that the Commission should reconsider the potential benefits that could be provided to investors in money market funds with the information called for in proposed Form N-MFP in light of the significant costs such funds (or their affiliates) would likely have to incur in order to provide it. The Committee recognizes that the outcome of such an analysis is highly dependent on the uses to which the Commission would put such information. In this connection, the Committee requests that if the Commission ultimately adopts Form N-MFP that it explain in some detail how it will use the information and why the resulting benefits to investors would outweigh the costs.

"In Kind" Redemptions

In addition to proposing certain new rules and rule amendments, the Release asked for public comment on several concepts for future regulation of money market funds to improve the ability of money market funds to weather liquidity crisis and other shocks to the short-term financial markets. One concept related to "in-kind" redemption of money market fund shares. Specifically, the Commission sought public comment as to whether money market funds should be required to satisfy redemptions in excess of a certain size through "in-kind" redemptions. The Committee opposes such an idea in the strongest possible terms.

For several reasons, separate accounts registered as unit investment trusts simply cannot accept redemptions "in-kind" from underlying mutual funds, including underlying money market funds. To begin with, if they hold as assets portfolio securities of more than one issuer, such separate accounts would likely fail to meet the requirements of Section 12(d)(1)(E)(ii) of the 1940 Act and would not be able to rely on the exemptions provided by Section 12(d)(1)(E). In addition, the organization documents of most such separate accounts, including plans of operations filed with state insurance regulators, do not contemplate (and in some cases, do not permit) assets in any form other than shares of underlying mutual funds. Likewise, variable annuity contract forms, all of which have been filed for approval with state insurance regulators, typically identify the various available investment alternatives which are shares of underlying mutual funds and not fund portfolio securities. Moreover, separate accounts registered as unit investment trusts do not have investment advisers and therefore would have difficulty managing or disposing a portfolio of securities. Finally, prospectuses and other disclosure documents indicate that shares of mutual funds and not mutual fund portfolio securities are the relevant investment options under variable annuity contracts.[15]

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[14] Note 396 of the Release and accompanying text.

[15] For some or all of the foregoing reasons, participation agreements between insurance companies sponsoring separate accounts and underlying money market funds, may prohibit the fund from making "in-kind" redemptions.

For the foregoing reasons, the Committee believes that if underlying money market funds are required to make certain redemptions "in-kind", insurance companies issuing variable annuity contracts will have to stop offering such funds as investment options under such contracts.

Suspension of Redemptions by Money Market Fund Boards

Another concept for future regulation of money market funds as to which the Commission is seeking public comment is to permit a money market fund's board of directors to suspend redemption of the fund's shares (and postpone payment of redemption proceeds) in the event that the board determines that the net asset value of such shares is "materially impaired" (*i.e.*, the shares may break a buck) even if the board does not determine to liquidate the fund. The Committee believes that for all the reasons that paragraph (b) of proposed Rule 22e-3 is necessary, substantially identical relief would be necessary for registered separate accounts that hold shares of any underlying money market fund whose board suspended redemptions for any reason.[16]

[16] In the event that the Commission proposes to amend Rule 22e-3 to incorporate this concept, the Committee very likely would provide additional comments on it, including comments relating to possible state insurance law issues.

Conclusion

The Committee appreciates the opportunity to comment on proposed amendments to Rules 2a-7, 17a-9 and 30b1-5 and on proposed new Rules 22e-3 and 30b1-6 under the 1940 Act as these would apply to money market funds offering shares to registered insurance company separate accounts through which variable annuity contracts are issued. The Committee looks forward to assisting the Commission in this endeavor in any way possible.

Respectfully Submitted,

SUTHERLAND ASBILL & BRENNAN LLP

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APPENDIX A

Committee of Annuity Insurers

AEGON USA, Inc.
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company