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April 27, 2010

FILED ELECTRONICALLY

Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, VA 22183

*Re: RIN 1506-AB08: Committee of Annuity Insurers' Comments on
Proposed Clarifications to FBAR Regulations*

Dear Sir or Madam:

We are writing on behalf of the Committee of Annuity Insurers (the "Committee") to comment on the notice of proposed rulemaking that the Treasury Department and the Financial Crimes Enforcement Network ("FinCEN") published on February 26, 2010 (the "NPRM"). The NPRM would revise the regulations under the Bank Secrecy Act regarding reporting with respect to foreign bank and financial accounts (the "FBAR regulations"). As explained below, our comments relate to the treatment under the FBAR regulations of foreign insurance companies that have elected to be treated as domestic corporations for U.S. tax purposes.

The Committee is a coalition of life insurance companies formed in 1982 to participate in the development of federal policy with respect to annuities. The Committee's current 31 member companies represent more than 80% of the annuity business in the United States. A list of the Committee's member companies is attached. We recognize and fully support the efforts of FinCEN and the Internal Revenue Service ("IRS") to prevent the use of foreign financial accounts and foreign institutions to evade U.S. law, and we appreciate this opportunity to comment on the NPRM as it relates to life insurance companies.

Under the current and proposed FBAR regulations, U.S. persons having certain interests in (or powers over) a "financial account in a foreign country" in excess of a stated value generally must file Form TD F 90-22.1 (the "FBAR form") with the IRS. The NPRM would amend the FBAR regulations to clarify who must file the FBAR form and with respect to which "accounts." Among other changes, the NPRM would amend the FBAR regulations and the instructions to the FBAR form to clarify that cash value life insurance and annuity contracts purchased by U.S. persons outside of the U.S. from non-U.S. insurers are among the types of

reportable accounts.¹ The proposed clarifications also would identify certain accounts and other situations that are expressly exempted from the reporting requirements. For example, reporting would not be required with respect to any “account” of an entity established under the laws of the United States (the “Domestic Company Exemption”).² Similarly, reporting would not be required in certain cases involving employees and officers of certain entities that are subject to federal regulatory oversight.³

The Committee respectfully requests that the IRS consider extending the Domestic Company Exemption or a similar exemption to foreign insurance companies that have elected to be treated as domestic corporations for U.S. tax purposes. In that regard, section 953(d) of the Internal Revenue Code (the “Code”) provides that a foreign insurance company can make an election to be treated as a domestic corporation for purposes of the Code if the company meets certain requirements. Among the applicable requirements are that the foreign insurer (1) must be a “controlled foreign corporation,” (2) must waive all benefits otherwise available to it under any U.S. treaty, and (3) must comply with any requirements that the Treasury Department prescribes to ensure that any income taxes the company owes are paid.⁴

A foreign insurer that makes this election generally is treated as a domestic corporation for all purposes of the Code.⁵ Thus, for example, while not entirely clear from the applicable Code sections, a foreign insurer that makes a section 953(d) election must comply with the same U.S. tax reporting and withholding requirements that apply to life insurance and annuity contracts that a domestic company issues.⁶ As a result, the affiliates of the Committee’s member companies that have filed elections under Code section 953(d) follow U.S. tax reporting and withholding rules with respect to annuity and life insurance contracts they issue.⁷

¹ See section 103.24(c)(3)(ii) of the proposed FBAR regulations and the draft instructions to the FBAR form attached thereto, 75 Fed. Reg. 8,850 and 8,852 (Feb. 26, 2010).

² See section 103.24(c)(4) of the proposed FBAR regulations, 75 Fed. Reg. 8,850.

³ See section 103.24(f)(2) of the proposed FBAR regulations, 75 Fed. Reg. 8,851.

⁴ Code § 953(d)(1). For purposes of item (1) in the text above, “controlled foreign corporation” is defined in Code section 957(a), but with substituting “25 percent or more” for “more than 50 percent” and by using the definition of United States shareholder under Code section 953(c)(1)(A).

⁵ Certain limited exceptions apply. For example, the electing company is not subject to the branch profits tax or the branch-level interest tax imposed by Code section 884, and the excise tax imposed by section 4371 on policies issued by foreign insurers does not apply. See Rev. Proc. 2003-47, 2003-2 C.B. 55.

⁶ See, e.g., Code § 953(d), flush language (treating an electing company as a domestic corporation for all purposes of the Code); Code § 6047(d) (generally requiring tax reporting by any person issuing any contract under which “designated distributions” may be made); Code § 3405(e)(1) (defining “designated distributions” as any distribution or payment from or under, *inter alia*, a “commercial annuity”); Code § 3405(e)(6) (defining “commercial annuity” as “an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State”). See also PLR 200919025 (Jan. 29, 2009) and PLR 200246022 (Aug. 13, 2002) (each interpreting the term “State” for purposes of Code § 817(h) (regarding accounts of life insurance companies that are segregated from their general asset accounts “pursuant to State law or regulation”) to include the foreign jurisdiction in which a section 953(d)-electing insurer was formed).

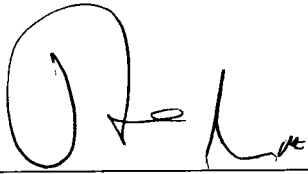
⁷ Some foreign insurance companies that make section 953(d) elections function only as reinsurers, *i.e.*, they do not issue annuity and life insurance contracts directly to policyholders.

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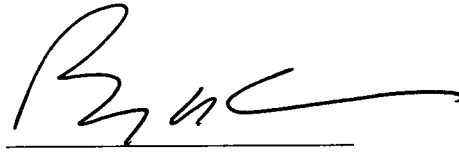
Because section 953(d)-electing companies are treated as domestic corporations for federal income tax purposes and therefore are subject to regulatory oversight by the Treasury Department, we believe that they should be treated as domestic corporations under the FBAR regulations. As such, the Domestic Company Exemption should apply to them in the same manner that it would apply to any domestic corporation. We note that the American Council of Life Insurers has made a similar request in separate comments filed with FinCEN.

Should any questions arise in connection with our comments, or if the Committee can be of any assistance to FinCEN and the IRS in their consideration of this issue, please contact Joe McKeever (jfmckeever@davis-harman.com) or Bryan Keene (bwkeene@davis-harman.com). We also can be reached by phone at 202-347-2230.

Sincerely,



Joseph F. McKeever, III



Bryan W. Keene

Attachment

The Committee of Annuity Insurers

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AEGON Group of Companies, Cedar Rapids, IA
AIG American General, Wilmington, DE
Allstate Financial, Northbrook, IL
AmerUs Annuity Group Co., Topeka, KS
AXA Equitable Life Insurance Company, New York, NY
Commonwealth Annuity and Life Insurance Co.
(a Goldman Sachs Company), Southborough, MA
Conseco, Inc., Carmel, IN
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc, New York, NY
Hartford Life Insurance Company, Hartford, CT
ING North America Insurance Corporation, Atlanta, GA
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Life Insurance Company of the Southwest, Dallas, TX
Lincoln Financial Group, Fort Wayne, IN
MassMutual Financial Group, Springfield, Massachusetts
Metropolitan Life Insurance Company, New York, NY
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
RiverSource Life Insurance Company (an
Ameriprise Financial Company), Minneapolis, MN
Sun Life of Canada, Wellesley Hills, MA
Symetra Financial, Bellevue, WA
TIAA-CREF, New York, NY
USAA Life Insurance Company, San Antonio, TX

The Committee of Annuity Insurers was formed in 1982 to participate in the development of federal tax and securities law policies with respect to annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States.

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