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May 9, 2011

VIA ELECTRONIC MAIL

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File No. S7-11-11; Release No. 34-64099
Proposed Amendments to Rule 17Ad-17; Transfer agents', brokers', and
dealers' obligation to search for lost securityholders; paying agents'
obligation to search for missing securityholders**

Dear Ms. Murphy:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),¹ in response to *Proposed Amendments to Rule 17Ad-17; Transfer agents', brokers', and dealers' obligation to search for lost securityholders; paying agents' obligation to search for missing securityholders* (the "Proposing Release").² The Proposing Release requests comment on proposed amendments to Rule 17Ad-17 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The proposed amendments would give effect to Section 929W of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-

¹ The Committee of Annuity Insurers is a coalition of 32 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 The Proposing Release was published as Release No. 34-64099 (Mar. 18, 2011).

Frank Act”),³ which added provisions to Section 17A of the Exchange Act that require the U.S. Securities and Exchange Commission (the “Commission”) to revise Rule 17Ad-17 to, among other things, extend the rule’s requirement that transfer agents search for “lost securityholders” to brokers and dealers, and add to the rule a requirement that “paying agents” notify “missing securityholders” in writing that the paying agent has sent the missing securityholder a check that has not yet been negotiated (the “Proposal”).

EXTENSION OF THE OBLIGATION TO SEARCH FOR LOST SECURITYHOLDERS TO BROKER-DEALERS

Proposal. Currently, Rule 17Ad-17 requires transfer agents to conduct database searches for lost securityholders, generally defined as securityholders for whom mail has been returned to the sender as undeliverable. The proposed amendments would extend these requirements to broker-dealers who hold customer security accounts. The Proposing Release notes in this regard that the Commission preliminarily believes as a practical matter that the only broker-dealers that would have obligations under the amended rule would be those that carry securities for the accounts of “customers” within the meaning of Rule 15c3-3 of the Exchange Act. The Proposing Release elaborates that such brokers and dealers are generally referred to as “clearing firms” and tend to be the larger brokerage firms.

Comments.

The Application of Rule 17Ad-17(a) Only to Clearing Firms Should Be Stated in the Text of the Rule and “Clearing Firms” Should Be Defined As Broker-Dealers That Have Contracted With Introducing Firms to Receive and Hold Customer Funds and Securities.

As noted above, the Proposing Release envisions that a sub-set of broker-dealers, not all broker-dealers, would be subject to the lost securityholder rule. The Committee believes that the Commission’s intentions in this regard should be made clear in the text of the rule itself. It is appropriate that the rule would be limited to clearing firms because clearing firms by contract accept the obligation to hold customer funds and securities. Without this clarification, however, the rule could be overly broad in its potential application to all broker-dealers that “hold” customer security accounts. Underwriters and firms selling annuities and other insurance contracts do not hold securities for the accounts of customers. Security positions are recorded on the books of the insurance company issuing the contracts and these issuers send communications directly to the contract owners. Broker-dealers that introduce customer accounts to clearing firms also do not “hold” securities for the accounts of customers. Each of these examples is

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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consistent with the Proposing Release's statement that the Commission intends the rule to apply only to "clearing" firms, but a problem could be created by the fact that the text of the rule does not explicitly limit the rule's application to clearing firms. To make the point clear and avoid confusion, we urge the Commission to modify the text of the rule to state that the rule applies only to clearing firms, defined as broker-dealers that have contracted with introducing firms to receive and hold customer funds or securities. Broker-dealers that receive customer checks made payable to third parties, or take physical certificates and forward them to a clearing firm, should not be subject to the rule.

Duplication of Effort Should Be Avoided.

Second, the Committee believes that the rule should recognize the allocation of responsibilities under contracts entered into between issuers and transfer agents. If a transfer agent has contractually agreed to search for the lost securityholders of issuer "A," then no principal underwriter or selling broker-dealer of issuer A's securities should be obligated to search for the same securityholder. This approach would appear to be consistent with a recordkeeping transfer agent's obligation to maintain the master securityholder file: transfer agents, not broker-dealers, alone have the ability to update information in the master securityholder file. Accordingly, the rule should be designed to maintain the accuracy of the master securityholder file and should not impose on a broker-dealer a duty to search for lost securityholders if a transfer agent has contractually agreed to do so.

Rule 17Ad-17's Application to Broker-Dealers Must Be Limited to the Same Securities as Apply to Transfer Agents.

Third, the Committee believes that the rule as amended should make clear the securities to which it applies. Section 17A(c)(1) prohibits un-registered transfer agents from using the means of interstate commerce to perform the functions of a transfer agent with respect to any security registered under Section 12 of the Exchange Act or which would be required to be registered except for the exemption from registration provided by sub-section (g)(2)(B) or (g)(2)(G) of that section. Section 17A(c)(1) thus defines the universe of securities for which a securityholder can be deemed to be lost by a transfer agent. When Rule 17Ad-17 is amended to apply to broker-dealers, the rule needs to make clear that a broker-dealer's obligation to search for lost securityholders applies to the same universe of securities to which a transfer agent's obligation extends.

THE ADOPTION OF A DEFINITION OF "PAYING AGENT" AND THE REQUIREMENT THAT PAYING AGENTS SEND WRITTEN NOTIFICATIONS TO SECURITYHOLDERS THAT HAVE NOT NEGOTIATED CHECKS

Proposal. The proposed amendments would add a new class of entities, to be known as "paying agents," that would be obligated to send written notification at specified times to securityholders who have not negotiated checks sent to them. Such securityholders would be classified as "missing securityholders." "Paying agent" would be defined as any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holder of the security. Paying agents would be required to provide at least one written notice to each missing securityholder no later than seven months after sending a check that remains non-negotiated. An exception would be provided where the value of the non-negotiated check is less than \$25.

Comments.

The Term "Paying Agent" Should Be Linked to the Phrase "That Accepts Payments from an Issuer of Securities and Distributes the Payments to Securityholders."

The Committee believes that the term "paying agent" should be linked to the phrase "that accepts payments from an issuer of securities and distributes the payments to securityholders." In other words, a broker-dealer, transfer agent, investment adviser, indenture trustee, custodian, or any other person that is not contractually obligated to distribute money received from an issuer to the issuer's securityholders should not be included within the rule's definition of paying agent.

Duplication of Effort and Investor Confusion Should Be Avoided.

The Committee also believes that duplication of effort and investor confusion should be avoided. Accordingly, in cases where the paying agent is also a transfer agent or broker-dealer that is required to search for a lost securityholder, that transfer agent or broker-dealer should not also be required to send written notification to persons with non-negotiated checks, if the transfer agent or broker-dealer knows that the securityholder's address is inaccurate. We see no regulatory purpose in having multiple correspondences sent to an address already determined to be inaccurate.

Issuers that Contract with Other Paying Agents to Have Written Notifications Sent to Missing Securityholders Should Be Exempt from the Rule.

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Finally, the rule should exempt issuers that contract with other paying agents from the requirement to provide written notification to persons with non-negotiated checks. This would be consistent with current business practice, whereby issuers contract with transfer agents to send corporate communications to securityholders. It is also consistent with the mandate in Section 929W of the Dodd-Frank Act that the Commission “seek to minimize disruptions to current systems used by or *on behalf of* paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.”⁴ It also appears to be consistent with the Commission’s estimate that 1000 entities will have to search for missing securityholders, although there are — by the staff’s estimate — more than 10,000 issuers that will be subject to the rule.

COMPLIANCE DATE

Proposal. The Commission has proposed to establish a compliance date for the proposed amendments of one year following the date on which the Commission takes final action on this Proposal. Subsection (g) of Section 17A of the Exchange Act requires the Commission to take final action on the Proposal no later than one year after the enactment of the Dodd-Frank Act. Accordingly, at the latest, the compliance date for the proposed amendments would be July 21, 2012.

Comment.

The Compliance Date Should Be Extended Because of Practical Difficulties Broker-Dealers Will Face in Complying with the Rule.

The Committee believes that the Commission should extend the currently proposed compliance date to eighteen months, rather than one year, following the date on which the Commission takes final action on the Proposal. To comply with this Proposal, broker-dealers and paying agents will need to implement significant operational changes and undertake considerable IT development. In addition to developing new systems and procedures, broker-dealers and paying agents will need to develop budgets for these projects. Budgets for large operational changes have to be set well in advance of commencing a project, and large new projects typically cannot be funded within a current budget cycle. To allow broker-dealers and paying agents sufficient time to plan for the significant costs associated with this Proposal, and the actual development of new systems, will require more than one year’s time. In light of these

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929W, 124 Stat. 1376, 1869-70 (2010) (emphasis supplied).

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practical difficulties, the Committee believes that eighteen months following the date on which the Commission takes final action on this Proposal would be a more appropriate compliance date.

CONFLICT WITH STATE INSURANCE LAWS

The Commission Should Take Care to Ensure that the Rule Does Not Conflict with State Insurance Laws.

The Committee believes that there is an emerging risk of potential conflict of law issues that could arise out of the Proposal. More specifically, the Committee believes that the rule could conflict with state insurance laws as states consider additional regulation in the area of lost and missing insurance policyholders. Accordingly, the Committee urges the Commission to recognize that the rule may need to be further amended to ensure that the rule does not conflict with state insurance laws as they may apply to insurance policyholders who could also be deemed securityholders under the rule.

CONCLUSION

The Committee appreciates the opportunity to comment on the Proposal. We are happy to provide more specific input on the issues raised in this letter and answer any questions the staff may have regarding our comments.

Please do not hesitate to contact Holly H. Smith (202.383.0245) or Clifford E. Kirsch (212.389.5052) if you have any questions regarding the issues addressed in this letter.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Holly H. Smith

BY: Cliff E. Kirsch by Hs

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
CNO Financial Group, 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 (USA)
Life Insurance Company of the Southwest
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
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)
SunAmerica Financial Group
Sun Life Financial
Symetra Financial
The Phoenix Life Insurance Company
TIAA-CREF
USAA Life Insurance Company