December 8, 2023

Interstate Insurance Product Regulation Commission
444 North Capitol Street, NW
Hall of the States, Suite 700
Washington, DC 20001

RE: 3rd Draft Uniform Standards for Index-Linked Variable Annuities (ILVAs)

Members of the Product Standards Committee:

The American Council of Life Insurers (ACLI)[1] and the Committee of Annuity Insurers (CAI)[2] appreciate the opportunity to submit comments to the Product Standards Committee (PSC) on its revised draft of the *Uniform Standards for Index-Linked Variable Annuities (ILVAs)* (ILVA Compact Standards or Discussion Draft).

We strongly support the efforts of the Interstate Insurance Product Regulation Commission (Compact), the PSC and the ILVA Subgroup to develop workable Compact product standards for ILVAs. We appreciate the significant efforts that the ILVA Subgroup has made to address most of our comments on the initial and second drafts of the ILVA Compact Standards. We offer the following comments on the revised ILVA Compact Standards, including the following responses to specific questions raised by the PSC, to assist the PSC in finalizing ILVA Compact Standards that will allow for widespread use of the Compact for ILVA product filings as well as continued innovation and competition in the ILVA marketplace.

As you know, the ILVA market has seen substantial growth over the past several years. ILVAs fill an important midpoint on the risk/reward spectrum – between conventional fixed index annuities and conventional unit-linked variable annuities – that is consistent with the investment objectives and risk tolerances of many retirement savers. The growth of this market has been fostered by the diversity of ILVA product designs that offer consumers a wide variety of linked indexes/benchmarks, different index crediting terms, and perhaps most importantly a wide variety of crediting strategies that incorporate different crediting and protection features. This diversity has also been aided by the increasing number

[1] The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

[2] The Committee of Annuity Insurers is a coalition of life insurance companies that issue annuities. It was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of public policy with respect to securities, state regulatory and tax issues affecting annuities. The CAI's current 32 member companies represent approximately 80% of the annuity business in the United States.

of carriers offering these products, and the fact that ILVAs are being distributed and offered through a variety of different distribution channels affording meaningful ILVA choices to consumers.

To facilitate the PSC's review of our comments, we have separated our comments into two sections. First, we provide our views on the specific issues on which the PSC has requested comment. Second, we address a small number of other remaining issues with the Discussion Draft that we believe merit attention at this juncture.

I. <u>Specific Issues on which the PSC has Requested Comments</u>

1. ***What is the need to specify Rule 12h-7 as this draft already allows restrictions for federal law? How can the draft address the concern the standards may need to be amended if the citation in the SEC rules change? Please comment on the extent of agreement that since Rule 12h-7 recognizes state law in terms of the ability to restrict assignment, restriction on assignment would only be available for Compact products in those states that did not prohibit restrictions on assignment.***

We appreciate the ILVA Subgroup's revisions to Sections 3.C and 3.U of the ILVA Compact Standards to add an express reference to the exemption provided by Securities and Exchange Commission (SEC) Rule 12h-7 under the Securities Exchange Act of 1934 (1934 Act) to the existing exception in those Sections from the general requirement that the contract shall not include any restriction on the availability of contract assignments/change of owner "other than for purposes of satisfying applicable laws or regulations." This was an important issue for our members, so we are pleased to respond to the PSC's specific questions relating to this added reference to Rule 12h-7 in the ILVA Compact Standards. Below we first provide some background regarding why the addition of the Rule 12h-7 reference is both necessary and important; then we respond to the PSC's specific questions.

<u>Background</u>

Issuers of ILVAs depend on Rule 12h-7 under the 1934 Act for an exemption from reporting obligations under the 1934 Act that were designed for companies with publicly traded securities, not for issuers of insurance products that are registered under the Securities Act of 1933 and regulated as insurance under state law. These reporting obligations include detailed periodic financial reporting, quarterly on Form 10-Q and annually on Form 10-K, as well as current reports on Form 8-K that are required to be filed by public companies upon the occurrence of certain material events of interest to shareholders. The SEC recognized that such periodic reporting was not necessary for the protection of regulated insurance product 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." (SEC Release Nos. 33-8996: 34-59221 (January 16, 2009).)

In light of the SEC's second justification for the exemption from 1934 Act reporting requirements – the lack of trading in the securities – in order to rely on the exemption Rule 12h-7(e) requires that "[t]he issuer [take] 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*" (emphasis added).

It is important to understand the scope of this Rule 12h-7 requirement and the accompanying exception in the context of Compact's uniform product standards. In correspondence and discussions that the ACLI and CAI had with the SEC staff shortly after Rule 12h-7 was adopted, the SEC staff indicated it was

not clear that Compact uniform product standards constituted the "law of any State" within the meaning of Rule 12h-7, or that Compact standards constitute action of an agency "performing like functions of any State" within the meaning of Rule 12h-7. Therefore, the SEC staff was unwilling to provide comfort that requirements set forth in Compact standards fit within the legal prohibition exception to the Rule 12h-7(e) requirement.

In sum, in order to comply with Rule 12h-7 life insurance companies must reserve the right to approve and restrict assignments of ILVA contracts where not legally prohibited by state law and it is necessary that the Compact's standards recognize this Rule 12h-7 requirement.[3]

Question: What is the need to specify Rule 12h-7 as this draft already allows restrictions for federal law?

Response: Compact standards generally provide that the "contract shall not include any restrictions on the availability of contract assignments, except in situations where restrictions *are required* for purposes of satisfying applicable laws or regulations (emphasis added)." As discussed above, Rule 12h-7 provides an exemption under which insurers can avoid making onerous periodic filings otherwise required under the federal securities laws. As such, an insurer is not "required" to comply with Rule 12h-7 to satisfy applicable law – the insurer can either comply with Rule 12h-7 *or* file periodic reports under the federal securities law, the latter presenting an extremely onerous burden for insurers. Accordingly, we believe that it is necessary that the ILVA Compact Standards expressly permit an insurer that relies on the exemption under Rule 12h-7 to require written notice by the contract owner to, and acceptance by, the company of any assignment, change in ownership or other transfer of the contract, and to reserve the right to refuse assignments, changes in ownership or other transfers at any time on a non-discriminatory basis. As discussed below, an insurer may (and will) only refuse an assignment, change in ownership or other transfer of a contract where not prohibited by state insurance law.

There is clear precedent for Compact standards to permit restrictions on assignability so that insurers may comply with specific provisions of the federal securities laws. Both IIPRC-L-06-I-4 (*Additional Standards for Private Placement Plans for Individual Variable Adjustable Life Insurance Policies*) and IIPRC-AB-03-I-PP (*Additional Standards for Private Placement Plans for Individual Deferred Variable Annuity Contracts*) (together, the Private Placement Standards) provide that a private placement contract shall not include any restrictions on the availability of assignments, except "in situations where restrictions are required for purposes of satisfying applicable laws or regulations, *or the requirement that the assignee be a qualified owner*" (emphasis added). The ability to restrict assignments to qualified owners is significant, as the Private Placement Standards recognize that a "qualified owner" is an owner who is "an accredited investor or qualified purchaser, or both as those terms are defined by the Securities Act of 1933, as amended, the Investment Company Act of 1940, as amended, or the regulations promulgated under either of those acts." Thus, the Private Placement Standards permit insurers to restrict assignments in order to comply with specific provisions under the federal securities laws relating to private placements.

[3] We note that, unlike ILVAs, the issuance of traditional variable annuities does not subject an insurance company to these onerous 1934 Act reporting requirements. Because traditional variable annuities entail the pass through of separate account investment experience, they are considered by the SEC to have been issued by insurance company separate accounts that are registered as investment companies under the Investment Company Act of 1940 (the 1940 Act). As such, the separate accounts are subject to alternative periodic reporting and the issuing insurance companies are not subject to general periodic reporting applicable to public companies under the 1934 Act. Accordingly, insurance companies issuing traditional variable annuities do not need to rely on Rule 12h-7 and are therefore not required to restrict assignments of traditional variable annuity contracts.

Question: How can the draft address the concern the standards may need to be amended if the citation in the SEC rules change?

Response: Rule 12h-7 was issued in 2009 under a specific provision of the 1934 Act, Section 12(h). Therefore, it is highly unlikely that the citation will change. That said, if the Compact is concerned about needing to amend the Standards in the event of a citation change, ACLI and CAI would suggest revising the Standards to include the words "or successor regulation" after the references to Rule 12h-7.

Question: Please comment on the extent of agreement that since Rule 12h-7 recognizes state law in terms of the ability to restrict assignment, restriction on assignment would only be available for Compact products in those states that did not prohibit restrictions on assignment.

Response: ACLI and CAI are in full agreement that Rule 12h-7 respects state law restrictions on the ability of an insurer to restrict or refuse assignments. Accordingly, any assignment (or change in ownership) requested by a contract owner in a state that prohibits restrictions on assignment would be approved by the insurer.[4] Stated differently, an insurer would only exercise the right to refuse an assignment or transfer of ownership for contracts issued in states that permit restrictions on assignments. We note that ACLI maintains a 50-state survey on state insurance laws and regulations regarding assignability of life insurance products, which is readily available to its members.

2. ***Please provide comments on the new provision regarding Appendix C – Illustration Examples of Interim Value Methodology.***

In their response to comments, the ILVA Subgroup and the PSC agreed that if the hypothetical portfolio methodology is used (as it must be under the Discussion Draft), it is presumed to meet the equity requirement. Therefore, providing illustrative examples, rather than "testing", is a more appropriate description of the requirement. We note that the proposed Appendix C illustrates a difference between the calculated Interim Values and the market value of the hypothetical portfolio under realistic economic scenarios, and we understand that the expected results are that each entry will be close to zero. We have included at the end of this letter a redline with proposed revisions to Appendix C to account for Trading Costs and allowing the Fixed Income Asset Proxy to be at either book value or market value.

3. ***Please provide comments on the requirement in the Application Standards regarding an acknowledgement of a product comparison. The PSC is seeking specific reasons and examples for whether to include or remove this requirement prior to making its recommendation to the Product Standards Committee.***

We urge the PSC not to include a requirement for a comparison of ILVAs with other product types in Section 3(M)(8) of the Individual Annuity Application Standards (the "Application Standards"). Such comparisons are: (1) unnecessary in light of the clear prospectus disclosures prospective contract owners will receive; (2) inconsistent with other Compact standards; (3) onerous and practically unworkable for insurers that do not offer all product types; and (4) likely inconsistent with other applicable laws.

[4] We would generally note that, unlike life insurance policies, consumers rarely seek to assign or change ownership of annuity contracts due to significant constraints on such transactions under the Internal Revenue Code. Assignment or change of ownership of qualified annuity contracts, including individual retirement annuities (IRAs), is prohibited under the Code. For non-qualified annuities, assignment or change of ownership to anyone other than a spouse or grantor trust is a taxable event that is treated as a surrender of the annuity contract for tax purposes, ending tax deferral and subjecting the original owner to income tax on all earnings.

Product Comparisons Are Unnecessary in Light of Prospectus Disclosures That Prospective Contract Owners Will Receive

ILVAs registered with the SEC must be offered with a prospectus that describes its unique features and risks in detail, including numerous examples that demonstrate the mechanics of upside performance limits, such as caps and participation rates, as well as the limits of downside protections such as buffers and floors, under a wide variety of index performance scenarios. More specifically, insurers offering ILVAs must comply with, and provide prospective contract owners with, particularized prospectus disclosures required by the SEC and the SEC staff that reviews and comments on disclosures in prospectus filings. These requirements are designed to ensure that prospective contract owners have a clear understanding of all features and risks of ILVAs, including limits on upside potential and the potential for losses.

In the time since the IVLA Subgroup first exposed draft ILVA standards, the SEC has issued a proposed amended registration form (Form N-4) that will dictate specific information about ILVAs that must be set forth in an ILVA prospectus. The amendments to Form N-4 are designed specifically for ILVAs, as required by Division AA, Title I of the Consolidated Appropriations Act, 2023 ("RILA Act"). Pursuant to the RILA Act, this tailored registration form must be finally adopted by the SEC no later than June 29, 2024.

The RILA Act requires the SEC to design the form "to ensure that a purchaser … receives the information necessary to make knowledgeable decisions, taking into account (1) the availability of information; (2) the knowledge and sophistication of that class of purchasers; (3) the complexity of the RILA; and (4) any other factor the SEC determines appropriate." As part of the development of the new registration form, the SEC conducted qualitative investor testing interviews, as well as quantitative testing designed to assess whether the design of certain hypothetical RILA disclosures provided to participants affected their comprehension of the disclosed information. Additionally, in developing the form, the SEC relied on past feedback "showing that investors generally prefer concise, layered disclosure."

Based on these factors, the SEC's new RILA registration form will require prospectus disclosure of the unique attributes of an ILVA contract through a brief overview of that contract and a standardized key information table, including the following specific requirements:

- a statement that the insurer will credit positive or negative interest at the end of a crediting period;
- disclosure that an investor could lose a significant amount of money if the Index declines in value;
- an explanation of how downside protections such as buffers and floors work under different negative return scenarios, with numerical examples that show how losses may still be incurred;
- an explanation of how upside limitations on returns such as caps and participation rates work under different positive return scenarios, with numerical examples that show how upside will be limited;
- disclosure that withdrawals during a crediting period could result in significant losses due to contract adjustments, such as negative interim value adjustments and MVAs; and
- key risks of investing, including the risk of loss from negative index performance as well as limits on positive index performance, risks related to the indexes, and early withdrawal risks, including withdrawal charges and negative interim value adjustments and MVAs.

All of the above will be supplemented with more detailed disclosure required by the form regarding all materials terms of the ILVA contract. This required disclosure must explain the features and risks of an

ILVA contract, clearly distinguishing it from other forms of annuity contracts.[5] The SEC's focus, appropriately so, is to ensure that prospective contract owners understand the product that they are considering. Although the SEC has never required comparisons with other potential investments (which, of course include a plethora of financial products other than annuities), the prospectus disclosures required by the form are sufficiently robust that such differences are readily apparent. Comparisons between the ILVA and other potential annuity products such as fixed index annuities, fixed interest annuities and variable annuities would not meaningfully add to the consumer's understanding and in fact may create consumer confusion.

Product Comparisons Are Inconsistent with Other Compact Standards

As we indicated in our prior comments on the Application Standards, such comparisons are not required under Compact standards for other products. This is the case for variable annuities, which, like ILVAs, subject the contract owner to the risk of loss (greater than an ILVA) and have prospectus disclosure to that effect. It is also the case for fixed index annuities and fixed rate annuities, which don't have a risk of loss, but generally offer less upside potential, and have no required prospectuses. It isn't clear why ILVAs, which fall in the middle of this risk spectrum, would require such disclosure.

A Comparison Requirement Would Be Onerous for Insurers Not Offering All Product Types

Not all insurers offer ILVAs, fixed index annuities, fixed rate annuities and variable annuities. The prospect of a required product comparison is especially problematic, and indeed would be unworkable, for companies that do not offer all of the product types that would be required by the comparison, potentially putting those companies in a position where they must artificially invent information for that purpose. Moreover, not all selling firms and/or insurance producers offer all product types or even all products offered by an insurer, and a comparison document would force them to explain products not on their menu of offerings.

Issues Under Other Applicable Law

We further submit that such comparisons may raise issues under other applicable law. For example, we strongly suspect that the SEC would not permit a comparison of other products in an ILVA prospectus. Nor do we expect that FINRA would allow any such comparisons in marketing material.

For all of the forgoing reasons, we once again request that the comparison requirement be removed from the Application Standards entirely. This requirement is not only unnecessary, but also impractical and unworkable. If it is retained, it will be a serious impediment to our members' use of the Compact for filing their ILVA products. Therefore, if, notwithstanding what we believe are the compelling points made above, the PSC is not inclined to remove this requirement, we respectfully request that we be given the opportunity for further discussions about the path forward.

II. Other Remaining Issues

1. Allow for Fixed Account MVA options that do not comply with Model #805

In the previous joint ACLI/CAI comment letter, we provided the following comment:

> The definition of "account value" should be broadened to encompass additional types of non-variable investment options that have been included in ILVA contracts to date and/or that may be built into ILVA contracts that insurers may offer in the future.

[5] We note that while the new RILA form will result in more uniform presentation of this important information in RILA prospectuses, making it easier to understand and to compare different products, current RILA prospectuses also include prominently provide all of this disclosure.

> Specifically, in addition to fixed account options supported by a general account that accumulate interest at a guaranteed minimum interest rate greater than or equal to 0%, *the definition should also contemplate: (i) fixed account MVA options supported by a separate account that do not comply with Model #805 (subject to IIPRC-A-07-I-3, Additional Standards for Market Value Adjustment Feature Provided Through a Separate Account)*, revised as we propose below… Without these revisions, it is unclear whether the above-referenced options may be offered as part of an ILVA contract approved through the Compact (emphasis added).

We appreciate that the definitions section in the ILVA Compact Standards was revised in response to our comments. However, it does not appear that our comment regarding fixed account options that do not comply with Model #805 was addressed.

Non-variable accounts should not universally be required to comply with NAIC *Standard Nonforfeiture Law for Individual Deferred Annuities*, Model #805. Some contracts offer non-variable accounts that are more similar to Modified Guaranteed Annuities (MGAs). Although these accounts credit a fixed rate of interest, they may have the same market value adjustment (MVA) formula that ILVA accounts do. Requiring non-variable accounts to comply with Model #805 would effectively limit the amount of MVA that could be applied to such a non-variable account.

Because both non-variable and ILVA accounts use an investment spread-based manufacturing model, insurers may choose to manage their fixed income asset portfolio similarly for both non-variable and ILVA accounts. In such cases, if the underlying asset portfolio is similar, one would also expect similar MVA methodology to be allowed across non-variable and ILVA accounts.

An inability to apply the same MVA methodology to non-variable and ILVA accounts may create policyholder behavior risk that an insurer would prefer to mitigate via product design. For instance, policyholders who intended to lapse could receive higher surrender benefits by first transferring funds to those account(s) with the most favorable MVA.

If this issue isn't resolved, some insurers may be forced to modify existing product designs to manage this risk. Insurers may choose to limit transfers between ILVA and non-variable accounts to manage the risk cited in the previous paragraph. This would ultimately result in less policyholder flexibility and choice in the ILVA marketplace.

To be clear, we are not seeking to remove Model #805 compliance as an avenue for companies to offer non-variable accounts. Rather, our proposed solution is to add NAIC *Modified Guaranteed Annuity Model Regulation*, Model #255 as a nonforfeiture compliance alternative for non-variable accounts. This approach would align the ILVA Compact Standards with the updated Purpose and Scope of IIPRC-A-07-I-3. We also note that there is precedent for companies receiving approval from Compact member states for ILVA products that offer MGA-like non-variable accounts.

Our proposed redlines to several sections of the ILVA Compact Standards necessary to clarify this issue are set forth in Exhibit A at the end of this letter.

2. Clarify permissible duration in the determination of the MVA

The ILVA Subgroup's and PSC's responses to our previous comments reflect agreement that MVAs are properly tied to the value of the Fixed Income Asset Proxy. Accordingly, the definition of Market Value Adjustment (MVA) in Section B(1)(h)(v) should be revised as follows for consistency with the rest of the ILVA Compact Standards:

"Market Value Adjustment (MVA)" means a positive or negative adjustment applied to the fixed income asset proxy or strategy value in order to reflect an increase or decrease in the value of the hypothetical fixed income assets ~~fixed income assets held by the company supporting the ILVA~~;

In addition, we believe it would be helpful to revise the Drafting Note following Section 1(B)(1)(d)(vii)(3)(ii) on page 6 to outline the specific allowable durations in the determination of the MVA. While the response to comments implied that durations of the Index Strategy Term, surrender charge period, or the fixed income assets backing the ILVA would be allowed in the determination of the MVA, our members believe that this clarification is necessary. As we noted in our previous comments, there are numerous practical considerations to allow this flexibility, including, for example, how to handle flexible premiums, index credits, index strategies with allocations from different durations, and the application of explicit fees in the determination. Accordingly, we ask that the Drafting Note be augmented as follows:

Drafting Note: The determination of the MVA in i above may be based on the duration of the Index Strategy Term, surrender charge period, or the fixed income assets backing the ILVA. The alternative methodology in ii above, is intended to allow methodologies that result in values reasonably consistent with values resulting from the methodology in i.

3. **Clarify requirement for Index substitution**

We appreciate the ILVA Subgroup's revisions to Section 3(K) of the ILVA Compact Standards concerning the replacement of an index. We would ask that the scope of this section be clarified to make clear that it only applies during a strategy term. We also note, however, that in the second sentence of Section 3(K)(1), the ILVA Subgroup changed the language from stating that the company "may substitute a comparable index" to "will substitute a comparable index." The corresponding section of the non-variable indexed annuity standards uses the original "may" language, and restoring that language would promote consistency between the standards for these two product types. This is an important issue, as, in practice, there are instances in which it may not be possible to substitute a comparable index if an index is discontinued during an index strategy term, particularly if the index is a custom index that uses a unique methodology. In this case, companies should have the ability not to substitute a comparable index as long as the contract explains what will happen if this occurs. We also note that some product designs provide for acceleration of the end of the index strategy term upon discontinuation of an index, rather than substitution with another index, and the ILVA Compact Standards should not unnecessarily limit this alternative approach.

4. **Clarify Separate Account disclosure requirement**

In its most recent changes to the Discussion Draft, the ILVA Subgroup revised Section 3(AA) to distinguish between separate account contract provisions required for both variable account values and ILVAs, and those only required with respect to variable account values. Subsection 3(AA)(1)(d) includes the following as being required for both variable account values and ILVAs:

If there is no readily available market for assets in the separate account, then the contract shall specify how the assets would be valued.

This contract provision is only appropriate for separate accounts that support variable account values because those values are tied to separate account investment experience. The value of an ILVA is not directly tied to the value of the assets in the separate account. Therefore, separate account assets and

their values are generally not disclosed (or relevant) to contract owners. Accordingly, the requirement for this contract provision should be moved to Subsection 3(AA)(2) as subsection (c).

5. **Minor updates to *Additional Standards for Market Value Adjustment Feature Provided Through a Separate Account* (IIPRC-A-07-I-3)**

We appreciate the ILVA Subgroup's adoption of our proposed updates to IIPRC-A-07-I-3. We have no substantive concerns with the version that was included with the current exposure, but wanted to note two minor items as the draft standards progress toward formal adoption:

- The revised title of the standards should reference "Modified Guaranteed Annuities and Index-Linked Variable Annuities."
- Section 3(G)(1)(b) should strike the words "modified guaranteed" (matching 3(G)(1)(a)).

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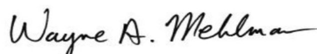
In our previous comments to the ILVA Subgroup, we expressed the view of our members that the ILVA Compact Standards should allow for interim value approaches other than the hypothetical portfolio methodology that is the sole approach permitted in the Discussion Draft. We understand that the PSC will not be considering this issue, which will be taken up as a policy decision for the Compact. Accordingly, this letter does not address the issue of alternative interim value approaches. The ability to use such alternative approaches remains a significant concern for a number of our members, so we look forward to reengaging with the Compact on this issue at the earliest possible opportunity.

The ACLI and the CAI appreciate this opportunity to comment on the Discussion Draft of the *Uniform Standards for Index-Linked Variable Annuities (ILVAs).* We look forward to continued discussion and collaboration with the PSC and the Compact to finalize a standard that will allow ILVA products to be approved through the Compact while fostering innovation and competition.

Respectfully submitted,

AMERICAN COUNCIL OF LIFE INSURERS (ACLI)



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December 10,2023 Follow-up from ACLI

Please note that on the very last page of our joint comment letter, on our Proposed Revisions to Appendix C, the double asterisk (which refers to "Less Trading Costs, if applicable") should immediately follow "Hypothetical Portfolio Return **" in the header. For some reason it dropped out when I combined the chart into the letter. We will address our proposed revisions during the PSC call on Tuesday along with our other comments.

Wayne

EXHIBIT A

Proposed Changes to Allow for Fixed Account MVA Options that do not comply with Model #805

Section 1(B)(e)(iii):

A nonforfeiture demonstration that the values of the contract comply with either ~~the~~:

- *NAIC Standard Nonforfeiture Law for Individual Deferred Annuities*, Model Law #805; or
- Section 7 of NAIC *Modified Guaranteed Annuity Model Regulation*, Model #255 (as referenced by Additional Standards for Market Value Adjustment Feature for Modified Guaranteed Annuities and Index-Linked Variable Annuities).

~~but using t~~The nonforfeiture interest rate as defined in these standards shall be used in the demonstration. The nonforfeiture calculations shall be presented in the format prescribed in Appendix A of these standards. The free partial withdrawal provision of the contract may be used in the demonstration of compliance, if applicable. For the purpose of the nonforfeiture demonstration, notwithstanding the language of the contract, the maturity date shall be the later of the tenth contract anniversary or the contract anniversary following the annuitant's 70th birthday, except as provided for by Items 3 and 8 of Appendix A. The maturity value used to demonstrate compliance with the prospective test shall be the contract account value. No surrender charge is permitted on or past the maturity date;

Section 1(B)(g)(viii):

The nonforfeiture demonstration for a non-variable account value complies with either ~~the~~ NAIC *Standard Nonforfeiture Law for Individual Deferred Annuities*, Model #805 or Section 7 of NAIC *Modified Guaranteed Annuity Model Regulation*, Model #255, but using the nonforfeiture interest rate ~~as defined in these standards,~~ as modified by Section 1B of these standards;

Section 2(B)(9):

If the non-variable account value under the contract utilizes the minimum nonforfeiture values under the *Standard Nonforfeiture Law for Individual Deferred Annuities*, Model #805~~,~~ or *Modified Guaranteed Annuity Model Regulation,* Model #255 in the determination of the minimum contract values applicable under the contract, the minimum nonforfeiture value parameters (expense loads and initial nonforfeiture rate) shall be disclosed on the specifications page.

Section 3(T)(1)(d):

We also observe that Section 3(T)(1) pertains to non-variable account value, but Section 3(T)(1)(d) references Section 7B of Model #250. We suggest that a direct reference to Model #805 and an added reference to Model #255 would be most clear by mirroring the other similar references throughout the standards:

A statement that any paid-up annuity, cash surrender value or death benefits that may be available under the contract are not less than the minimum benefits required by either Model #805 or Section 7 of Model #255~~Section 7B of the *Model Variable Annuity Regulation*, model #250~~, using the nonforfeiture interest rate consistent with the

minimum nonforfeiture interest rate prescribed in the law of the state in which the policy is delivered or issued for delivery;

Section 3(T)(5):

If the contract utilizes the minimum nonforfeiture values under NAIC *Standard Nonforfeiture Law for Individual Deferred Annuities*, Model Law #805 or NAIC *Modified Guaranteed Annuity Model Regulation,* Model #255 (but using the nonforfeiture interest rate as defined in these standards), in the determination of the minimum contract values applicable to any non-variable account value under the contract, the minimum nonforfeiture value parameters (expense loads and initial nonforfeiture rate) shall be disclosed on the specifications page."

Proposed Revisions to Appendix C – Illustration Examples of Interim Value Methodology

For a [One Year] Segment Term*: Interim Value Segment Return Less ~~Market Value of~~ Hypothetical Portfolio Return													
Volatility	Segment Index Performance	1	2	3	4	5	6	7	8	9	10	11	12
25%	30%												0%
25%	25%												0%
25%	20%												0%
25%	15%												0%
20%	10%												0%
20%	5%												0%
20%	0%												0%
20%	-5%												0%
20%	-10%												0%
25%	-15%												0%
25%	-20%												0%
25%	-25%												0%
25%	-30%												0%

*For segment terms longer than three years, quarterly demonstrations can be provided through the end of the segment term.

**Less Trading Costs, if applicable