

April 10, 2024

**Via E-Mail**

Kaitlin C. Bottock  
Co-Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

**Re: Request for No-Action Relief Under the Redemption Requirements of Section 22(e) of the Investment Company Act of 1940**

Dear Ms. Bottock:

The Committee of Annuity Insurers (the "Committee")<sup>1</sup> seeks assurances from the staff of the Division of Investment Management (the "Staff") that it will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "SEC") against an insurance company and the "Separate Accounts" it sponsors<sup>2</sup> under the redemption requirements of Section 22(e) of the 1940 Act if, in the limited circumstances described in this letter, the insurance company temporarily delays for more than seven (7) days the disbursement of redemption proceeds from "Direct Held Variable Contracts"<sup>3</sup> owned by a Specified Adult<sup>4</sup> based on the insurance company's

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<sup>1</sup> The Committee is a coalition of many of the largest and most prominent issuers of annuity contracts. The Committee's 32 member companies represent approximately 80% of the annuity business in the United States. The Committee was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of insurance, 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 at both the federal and state levels, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury Department, and Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee's member companies is available on the Committee's website at [www.annuity-insurers.org/about-the-committee/](http://www.annuity-insurers.org/about-the-committee/).

<sup>2</sup> For purposes of this letter, the term "Separate Accounts" refers to insurance company sponsored separate accounts established under state law and registered with the SEC as investment companies under the Investment Company Act of 1940 (the "1940 Act") which fund variable annuity contracts and variable life insurance policies registered as securities under the Securities Act of 1933 (the "1933 Act").

<sup>3</sup> For purposes of this letter, the term "Variable Contracts" means variable annuity contracts and variable life insurance policies registered as securities under the 1933 Act which are funded by Separate Accounts. The term "Variable Contracts" does not include non-variable insurance contracts, such as fixed interest annuity contracts with market value adjustment features and index-linked annuity contracts, which non-variable insurance contracts are not subject to regulation under the 1940 Act but whose interests are registered as securities under the 1933 Act. The term "Direct Held Variable Contracts" means only those Variable Contracts that are direct held products and are not custodied or held in a brokerage account.

This request seeks relief from Section 22(e) only with respect to the payment of redemption proceeds attributable to a Direct Held Variable Contract owner's investment in subaccounts of a Separate Account. This request does not seek relief from processing requests for redemption involving Direct Held Variable Contract owner investment in subaccounts of a Separate Account. Moreover, this request does not seek relief with respect to the payment of redemption proceeds attributable to a Direct Held Variable Contract owner's investment in an insurance company general account or fixed account investment option, including any fixed interest crediting options with a market value adjustment feature or index-linked options made available under the Direct Held Variable Contract, interests in which may or may not be registered as securities with the SEC.

<sup>4</sup> For purposes of this letter, "Specified Adult" means (A) a natural person age 65 and older or (B) a natural person age 18 and older who the insurance company reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. The term "Specified Adult" as used in this letter has substantially the same meaning as this term is defined in FINRA Rule 2165.

reasonable belief that financial exploitation<sup>5</sup> of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.

The financial exploitation of seniors and other vulnerable adults has continued to grow and remains a serious problem. According to the U.S. Department of Justice, millions of older adults lose more than \$3 billion annually to financial fraud.<sup>6</sup> In 2020 alone, over 62,000 suspicious activity reports (SARs) related to elder financial exploitation were filed, totaling an estimated \$3.4 billion in suspicious transactions.<sup>7</sup>

Providing insurance companies and Separate Accounts the relief we request is consistent with the SEC's mission of protecting investors, particularly senior investors, and will enable insurance companies to protect senior and other vulnerable adult investors in a manner consistent with that permitted for broker-dealers under the Financial Industry Regulatory Authority, Inc.<sup>8</sup> ("FINRA") Rule 2165 (Financial Exploitation of Specified Adults). The temporary hold<sup>9</sup> permitted by FINRA Rule 2165 applies to "disbursements" from customer accounts held with a broker-dealer firm, and does not apply to disbursements of redemption proceeds from the subaccounts of a Separate Account ("Direct Held Variable Contract Proceeds").

### **A GAP IN THE PROTECTION FOR DIRECT HELD VARIABLE CONTRACT OWNERS**

Direct Held Variable Contract Proceeds will be subject to the terms of the contract itself between the insurance company and the Direct Held Variable Contract owner. Neither a broker-dealer serving as the selling firm to the Direct Held Variable Contract owner, nor the broker-dealer serving as the principal underwriter of the Direct Held Variable Contract, will have a disbursement account for Direct Held Variable Contract Proceeds to be held prior to distribution to the Direct Held Variable Contract owner. Instead, under the terms of the applicable Direct Held Variable Contract, the Direct Held Variable Contract Proceeds will be directed to the Direct Held Variable Contract owner as allowed under the terms of the Direct Held Variable Contract, and as directed by the Direct Held Variable Contract owner (e.g., through a check, or by ACH or wire transfer). Since the insurance company, rather than a broker-dealer, controls the disbursements of proceeds from a Direct Held Variable Contract, FINRA Rule 2165 does not provide protection for Direct Held Variable Contract owners who are Specified Adults. Depending on the facts and circumstances, either the insurance company or the selling firm, or both may become aware of the suspected financial exploitation, and the information will be shared among the parties as necessary. It is unlikely that the principal

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<sup>5</sup> For purposes of this letter, "financial exploitation" means: (A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or (B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a Specified Adult, to: (1) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or (2) convert the Specified Adult's money, assets or property. The term "financial exploitation" as used in this letter has the same meaning as this term is defined in FINRA Rule 2165.

<sup>6</sup> See Internet Crime Complaint Center (IC3), *Perpetrators Use Various Methods to Deceive and Defraud Elderly Victims for Financial Gain*, (September 19, 2019), available at <https://www.ic3.gov/Media/Y2019/PSA190919>.

<sup>7</sup> See U.S. Department of Treasury, Financial Crimes Enforcement Network ("FinCEN"), *Advisory on Elder Financial Exploitation* (June 15, 2022), available at <https://www.fincen.gov/sites/default/files/advisory/2022-06-15/FinCEN%20Advisory%20Elder%20Financial%20Exploitation%20FINAL%20508.pdf>; See also FinCEN, SAR Stats, available at <https://www.fincen.gov/reports/sar-stats>; See also Federal Trade Commission, *Consumer Sentinel Network: Data Book 2021* (February 2022), at p. 13, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf).

<sup>8</sup> According to an analysis that the Life Insurance Marketing and Research Association performed on behalf of the Committee, as of year-end 2022, Committee members represented approximately \$2.7 trillion in annuity assets (83% of annuity business in the US). A very large part of these assets represent variable annuity contracts which would be covered by the relief requested in this letter.

<sup>9</sup> We note that FINRA Rule 2165 was amended in January 2022 to extend the period in which redemption proceeds may be held prior to payment and to provide relief from processing requests for securities transactions, as well as disbursements, from a Specified Adult in cases where the broker-dealer has a reasonable belief that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted. As noted in footnote 3 above, this request does not seek relief from processing requests for redemption involving Direct Held Variable Contract owner investment in subaccounts of a Separate Account.

underwriter of the Direct Held Variable Contract will play any role in the withdrawal/surrender request.

Many Direct Held Variable Contract owners will look to the issuing insurance company, rather than the selling firm, as their point of contact for servicing related to the Direct Held Variable Contract. Given its relationship with the Direct Held Variable Contract owners, in certain cases, the issuing insurance company may be best positioned to detect financial exploitation of certain Specified Adults. Insurance companies wish to protect Specified Adults from financial exploitation related to distributions under their Direct Held Variable Contracts.

### **REQUEST FOR NO-ACTION ASSURANCES**

Under current law, when an insurance company suspects financial exploitation related to a Direct Held Variable Contract redemption, it cannot lawfully delay the disbursement of redemption proceeds for more than seven days while it investigates the situation. This is because the insurance company is the depositor of the Separate Account that holds the assets funding the Direct Held Variable Contract, and Section 22(e) of the 1940 Act prohibits a Separate Account from delaying the payment of Variable Contract redemption proceeds for more than seven days. As a practical matter, the Direct Held Variable Contract redemption process is administered, and the redemption proceeds are paid, by the insurance company that sponsors the Separate Account and issues the Variable Contract.

Section 22(e) was designed to prevent mutual funds from interfering with the redemption rights of shareholders for “ulterior motives,” such as to retain fund assets for the benefit of the management company.<sup>10</sup> While Section 22(e) provides important protections for Direct Held Variable Contract owners, in light of FINRA Rule 2165, it results in a disparity between the tools a broker-dealer may use to protect its senior and other vulnerable adult investors and those available to insurance companies to protect Direct Held Variable Contract owners. An insurance company’s temporary hold on a disbursement of redemption proceeds under the circumstances described in this letter does not raise the ulterior motives concern underlying Section 22(e) because, among meeting other conditions, such a temporary hold will be for the sole purpose of protecting a Specified Adult from financial exploitation and will be based on a reasonable belief that such exploitation has occurred, is occurring, has been attempted, or will be attempted.

Accordingly, we respectfully request assurance that the Staff would not recommend enforcement action to the SEC under Section 22(e) of the 1940 Act against an insurance company and the Separate Account it sponsors if a temporary hold is placed on the disbursement of redemption proceeds for the protection of Specified Adults in the case of Direct Held Variable Contracts,<sup>11</sup> provided that the insurance company complies with each of the conditions identified in this letter. The Committee notes that the conditions are substantially similar to the conditions imposed on broker-dealers under FINRA Rule 2165 and mutual funds and their transfer agents based on the no-action relief previously provided by the Staff to the mutual fund industry.<sup>12</sup> The following are the Committee’s conditions for relief:

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<sup>10</sup> See Hearings Before a Subcomm. of the Comm. On Banking and Currency on S. 3580, 76th Cong., 3d Sess. (1940) at p. 291 (statement of David Schenker).

<sup>11</sup> A temporary hold pursuant to the requested relief may be placed on a particular suspicious disbursement(s) but not on other, non-suspicious disbursements. Where a questionable disbursement involves less than all of the Direct Held Variable Contract owner’s investment in the Direct Held Variable Contract, the insurance company may not place a blanket hold on the entire Direct Held Variable Contract. Each disbursement must be analyzed separately.

<sup>12</sup> ICI No-Action Letter (June 1, 2018) (“ICI No-Action Letter”). This Committee letter includes some relief reflected in amendments to FINRA Rule 2165 which were approved in January 2022. Specifically, if granted this request for relief would give the sponsoring insurance company and its Separate Account the ability to extend the temporary hold on redemption proceeds for up to 30 business days in addition to the time period permitted under FINRA 2165 as originally adopted if the sponsoring insurance company reports the matter to a state regulator or agency of competent jurisdiction or to a court of competent jurisdiction. The ICI No-Action Letter does not provide such relief.

1. Prior to issuing a Direct Held Variable Contract, the insurance company issuing such contract:
  - A. Will request from the Direct Held Variable Contract owner the name of and contact information for a trusted contact person age 18 or older who may be contacted about the Direct Held Variable Contract ("Trusted Contact Person").<sup>13</sup> If the Direct Held Variable Contract owner provides the name of a Trusted Contact Person, the insurance company must maintain such person's name and contact information.
  - B. Will disclose in writing, which may be electronic, to the Direct Held Variable Contract owner that the insurance company or an employee of the insurance company is authorized to contact the Trusted Contact Person and disclose information about the Direct Held Variable Contract to address possible financial exploitation or to confirm the specifics of the Direct Held Variable Contract owner's current contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney.<sup>14</sup>
2. With respect to any Direct Held Variable Contract that was issued prior to the issuance of the requested relief, the insurance company will comply with conditions 1.A. and 1.B. above when updating the information for the Direct Held Variable Contract either in the course of the insurance company's routine and customary business or as otherwise required by applicable laws or rules.<sup>15</sup>
3. The absence of the name of or contact information for a Trusted Contact Person will not prevent reliance on the requested relief, provided that the insurance company makes reasonable efforts to obtain such information from the Direct Held Variable Contract owner as required under conditions 1 or 2, above.<sup>16</sup>

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<sup>13</sup> FINRA Rule 2165(a)(3) defines a "Trusted Contact Person" as the person who may be contacted about the Specified Adult's Account in accordance with FINRA Rule 4512. The term "Trusted Contact Person" as used in this letter has the same meaning as this term is defined in FINRA Rule 2165.

The Trusted Contact Person is intended to be a resource for the insurance company in administering the Direct Held Variable Contract, protecting assets, and responding to possible financial exploitation. The insurance company may use its discretion in relying on any information provided by the Trusted Contact Person. The insurance company may elect to notify an individual that he or she was named as a Trusted Contact Person; however, such notification is not required. The insurance company and the Direct Held Variable Contract owner may benefit from the trusted contact information in many different settings. For example, consistent with the disclosure, if the insurance company has been unable to contact the Direct Held Variable Contract owner after multiple attempts, the insurance company could contact a Trusted Contact Person to inquire about the Direct Held Variable Contract owner's current contact information. Or, if the Direct Held Variable Contract owner is known to be ill or infirm and the insurance company has not been able to contact the Direct Held Variable Contract owner after multiple attempts, the insurance company could contact a Trusted Contact Person to inquire about the Direct Held Variable Contract owner's health status. The insurance company also could reach out to a Trusted Contact Person if it suspects that the Direct Held Variable Contract owner may be suffering from Alzheimer's disease, dementia, or other forms of diminished capacity. The insurance company could contact a Trusted Contact Person to address possible financial exploitation of the Direct Held Variable Contract owner before placing a temporary hold on disbursement of redemption proceeds.

<sup>14</sup> The insurance company will provide this disclosure even if a Direct Held Variable Contract owner fails to identify a Trusted Contact Person.

<sup>15</sup> In the absence of applicable laws or rules, the insurance company should consider asking the Direct Held Variable Contract owner to review and update the name of and contact information for a Trusted Contact Person on a periodic basis or when there is a reason to believe that there has been a change in the Direct Held Variable Contract owner's situation. A Direct Held Variable Contract owner's request to change his or her Trusted Contact Person may be a possible red flag of financial exploitation. For example, a senior Direct Held Variable Contract owner instructing the insurance company to change her Trusted Contact Person from an immediate family member to a previously unknown third party may be a red flag of financial exploitation.

<sup>16</sup> Asking a Direct Held Variable Contract owner to provide the name of and contact information for a Trusted Contact Person ordinarily would constitute reasonable efforts to obtain the information. A mailing address, phone number and email address for the Trusted Contact Person may be the most useful contact information to the insurance company.

4. The insurance company may place a temporary hold<sup>17</sup> on a disbursement of redemption proceeds from a Direct Held Variable Contract provided that, in addition to satisfying conditions 1 and 2, above, it satisfies each of the following conditions:
  - A. The insurance company reasonably believes that financial exploitation of the Specified Adult who owns the Direct Held Variable Contract has occurred, is occurring, has been attempted, or will be attempted;<sup>18</sup>
  - B. The insurance company, not later than two business days after the date that the insurance company first placed the temporary hold on the disbursement of redemption proceeds, provides notification orally or in writing, which may be electronic, of the temporary hold and the reason for the temporary hold to: (i) all parties authorized to submit requests or orders related to the Direct Held Variable Contract, including the Direct Held Variable Contract owner, unless a party is unavailable or the insurance company reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and (ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the insurance company reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult;<sup>19</sup>
  - C. The insurance company will immediately initiate an internal review of the facts and circumstances that caused the insurance company to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and
  - D. The insurance company, on behalf of the Separate Account, will hold the delayed redemption proceeds from the Direct Held Variable Contract in a subaccount of the Separate Account that invests in an underlying money market mutual fund (a "money market subaccount"), or in an insurance company general account investment option available under the Direct Held Variable Contract whose interests are not registered as securities with the SEC, but only where no money market subaccount is available under the Direct Held Variable Contract. The insurance company, on behalf of the Separate Account, will also maintain records for either the general account investment option or money market subaccount and the Specified Adult's Direct Held Variable Contract documenting that such proceeds in the general account investment option or money market subaccount are being held for the Direct Held Variable Contract owner pending their disposition pursuant to this relief. The amount of redemption proceeds being held for the Direct Held Variable Contract owner will also be accurately reflected on the next confirmation statement that is provided to the Direct Held Variable Contract owner.
5. The temporary hold permitted by condition 4 will expire not later than 15 business days after the date that the insurance company first placed the temporary hold on the disbursement of redemption proceeds, unless otherwise terminated or extended by a state

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<sup>17</sup> Unless the insurance company reasonably believes that doing so would cause further harm to a Specified Adult, the insurance company is encouraged to attempt to resolve a matter with a Direct Held Variable Contract owner before placing a temporary hold.

<sup>18</sup> This relief is not intended to impact any obligations related to suspicious financial activity (e.g., anti-money laundering, suspicious activity reporting), the prevention of identity theft under the SEC's Red Flags Rules, and activities related to Customer Identification Programs, though we note that currently the identity theft regulations and the Customer Identification Program requirements do not apply to Variable Contracts or insurance companies.

<sup>19</sup> The lack of an identified Trusted Contact Person, the inability to contact the Trusted Contact Person, or a person's refusal to act as a Trusted Contact Person would be considered to mean that the Trusted Contact Person is not available. Furthermore, the inability to contact a party authorized to submit requests or orders related to the Direct Held Variable Contract would be considered to mean that the party was not available.

regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to condition 6 or condition 7.<sup>20</sup>

6. Provided that the insurance company's internal review of the facts and circumstances supports the insurance company's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold may be extended by the insurance company for no longer than 10 business days following the date authorized by condition 5, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to condition 7.
7. Provided that the insurance company's internal review of the facts and circumstances supports the insurance company's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted and the insurance company has reported or provided notification of the insurance company's reasonable belief to a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, the temporary hold may be extended by the insurance company for no longer than 30 business days following the date authorized by condition 6, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.
8. The insurance company, on behalf of the Separate Account, will establish and maintain written procedures reasonably designed to achieve compliance with the terms and conditions of this relief, including, but not limited to, procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of Specified Adults, as well as procedures on whether to release or reinvest delayed redemption proceeds, taking into account the facts and circumstances of each case, should the insurance company's internal review support the insurance company's reasonable belief that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.
9. The insurance company's written procedures will identify the title of each person authorized to place, terminate, or extend a temporary hold on behalf of the insurance company and Separate Account pursuant to this relief. Any such person will be an employee of the insurance company who serves in a supervisory, compliance, or legal capacity for the insurance company.
10. The insurance company, on behalf of the Separate Account, will retain records related to compliance with this relief, which will be readily available to the SEC upon request. The retained records will include records of: (a) the redemption request(s) that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (b) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement of redemption proceeds; (c) the name and title of the employee that authorized the temporary hold on a disbursement of redemption proceeds; (d) notification(s) to the relevant parties pursuant to condition 4.B. of this relief; (e) the internal review of the facts and circumstances pursuant to condition 4.C. of this relief; and (f) the reason and support for any extension of a temporary hold, including information

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<sup>20</sup> The insurance company would not be precluded from terminating a temporary hold after communicating with either the Direct Held Variable Contract owner or a Trusted Contact Person. A Direct Held Variable Contract owner's objection to a temporary hold or information obtained during an exchange with the Direct Held Variable Contract owner or Trusted Contact Person may be used in determining whether a hold should be placed or lifted. While not dispositive, the insurance company should weigh a Direct Held Variable Contract owner's or Trusted Contact Person's objection against other information when determining whether a hold should be placed or lifted.

regarding any communications with or by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.<sup>21</sup>

11. Prior to imposing a temporary hold on the disbursement of redemption proceeds from a Direct Held Variable Contract in reliance on the requested relief: (a) the insurance company, on behalf of the Separate Account, will develop and document training policies or programs reasonably designed to ensure that the insurance company's employees comply with the terms and conditions of the requested relief; and (b) the insurance company will disclose in the Direct Held Variable Contract's prospectus that the insurance company may place a temporary hold on the disbursement of redemption proceeds in accordance with the terms and conditions of the requested relief.
12. Lastly, the insurance company, on behalf of the Separate Account, has established or will establish, as part of the Separate Account's compliance policies and procedures pursuant to Rule 38a-1 under the 1940 Act, escalation and periodic reporting protocols under which the insurance company will memorialize information regarding instances in which the insurance company and Separate Account relied upon this relief. Such information should include, for example, the insurance company's findings of a reasonable belief, as documented under condition 10 above, that financial exploitation of a Specified Adult Direct Held Variable Contract owner has occurred, is occurring, has been attempted, or will be attempted, and how the matter was resolved consistently with the terms and conditions of this relief.

In closing, the Committee appreciates the Staff's consideration of our request for relief. If granted, the relief will permit insurance company sponsors of Separate Accounts to do their part to protect seniors from financial exploitation. The requested relief is also wholly consistent with both the purposes behind Section 22(e) and with the SEC's authority under Section 22(e)(3) to relax the statutory mandate when necessary to protect investors.

Sincerely,

Eversheds Sutherland (US) LLP

By: Clifford E. Kirsch  
Clifford E. Kirsch  
Eric A. Arnold  
Thomas E. Bisset

For the Committee of Annuity Insurers

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<sup>21</sup> Separate Accounts are subject to recordkeeping requirements under Section 31 of the 1940 Act and the rules thereunder. Consistent with the records required by Rules 31a-1 and 31a-2, the records listed in condition 10 will be maintained for a period of not less than 6 years, the first two years in an easily accessible place.