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## Insurance Companies Obtain Relief to Use Statutory Financial Statements in Registration Statements Filed on Form S-1 for Certain Insurance Products

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On September 28, 2018, the staff of the SEC's Division of Investment Management granted requests from certain applicant insurance companies to file audited financial statements prepared in accordance with statutory accounting principles (SAP)—instead of financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP)—in registration statements for certain index-linked annuities and group funding agreements registered on Form S-1. The staff granted the relief pursuant to Rule 3-13 of Regulation S-X, which allows the SEC, upon informal request, to permit a registrant to omit one or more financial statements required by Regulation S-X or to substitute “appropriate statements of a comparable character.”

Non-variable index-linked annuities must register on Form S-1 or Form S-3. Unlike Forms N-4 and N-6 for variable annuity and variable life insurance contracts, respectively, which include prescribed circumstances where a variable product issuer can include SAP financial statements, Forms S-1 and S-3 generally require GAAP financial statements unless the issuer is a mutual life insurance company or the wholly-owned stock subsidiary of a mutual life insurance company.

In seeking this relief, the applicant insurance companies asserted that SAP financial statements audited by an independent auditor are “appropriate statements of a comparable character” for the Form S-1 registration statements for the insurance products at issue. Among other things, the applicants stated that investors would be most interested in information relevant to assessing the sponsoring insurance company's ability to fulfill its contractual obligations and, to that end, SAP financials include detailed information about an insurance company's balance sheet as well as its regulatory capital and surplus.

A footnote to each letter states that the staff would, under similar circumstances, be receptive to considering applications for relief under Rule 3-13 from other registrants seeking to file SAP financial statements in lieu of GAAP financial statements in registration statements filed for insurance products similar to the products described in the letters.

The letters are available at: <https://www.sec.gov/divisions/investment/noaction/2018/athene-092818-regsx-rule-3-13.pdf>

<https://www.sec.gov/divisions/investment/noaction/2018/allianz-092818-regsx-rule-3-13.pdf>

<https://www.sec.gov/divisions/investment/noaction/2018/great-west-092818-regsx-rule-3-13.pdf>

<https://www.sec.gov/divisions/investment/noaction/2018/midland-092818-regsx-rule-3-13.pdf>

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