AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 10234

OFFERED BY MR. NUNN OF IOWA

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer-Led Enhancement of Annuity and insurance Registration Forms Act" or the "CLEAR Forms Act".

SEC. 2. REGISTRATION FORMS FOR RILU, CDA, AND OTHER REGISTERED NON-VARIABLE INSURANCE CONTRACTS.

(a) IN GENERAL.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 6 the following:

"SEC. 6A. REGISTRATION FORMS FOR RILU, CDA, AND OTHER REGISTERED NON-VARIABLE INSURANCE CONTRACTS.

"(a) DEFINITIONS.—In this section:

"(1) CONTINGENT DEFERRED ANNUITY.—The term 'contingent deferred annuity' means an annuity contract or rider—

"(A) that is a security;

"(B) that is registered, or that a person seeks to register, with the Commission under this Act;

"(C) that is issued by an insurance company;

"(D) that is not issued by an investment company; and

"(E) that establishes a life insurer's obligation to make periodic payments for an annuitant's lifetime at the time designated investments, which are not owned or held by the insurer, are depleted to a contractually defined amount due to—

"(i) contractually permitted withdrawals;

"(ii) market performance;

"(iii) fees or other charges; or

"(iv) any other contractually permitted triggering event or transaction.

"(2) COVERED INSURANCE CONTRACT.—The term 'covered insurance contract' means any—

"(A) contingent deferred annuity;

"(B) registered index-linked life insurance; or

"(C) other registered non-variable insurance contract.

"(3) FUNDING AGREEMENT.—The term 'funding agreement' means a contract in which an insurer agrees to accept and accumulate funds to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

"(4) INVESTMENT COMPANY.—The term 'investment company' has the meaning given the term in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

"(5) MARKET VALUE ADJUSTMENT.—The term 'market value adjustment' means, with respect to a registered index-linked life insurance, after an early withdrawal or contract discontinuance—

"(A) an adjustment to the value of that insurance contract based on calculations using a predetermined formula; or

"(B) a change in an interest rate (or another factor, as determined by the Commission) that apply to that insurance contract.

"(6) OTHER REGISTERED NON-VARIABLE INSURANCE CONTRACT.—The term 'other registered non-variable insurance contract' means an insurance contract, certificate, or rider—

"(A) that is a security;

"(B) that does not constitute an equity interest in the issuer of the contract, certificate, or rider;

"(C) that is an insurance product subject to regulation under the insurance laws of the domiciliary State or Territory of the issuer of the contract, certificate, or rider;

"(D) that is registered, or that a person seeks to register, with the Commission under this Act;

"(E) that is issued by an insurance company;

"(F) that is not issued by an investment company; and

"(G) that is an annuity contract, life insurance contract, or funding agreement.

"(7) PURCHASER.—The term 'purchaser' means a purchaser of a covered insurance contract.

"(8) REGISTERED INDEX-LINKED LIFE INSURANCE.—The term 'registered index-linked life insurance' means a life insurance policy or rider—

"(A) that is a security;

"(B) that is registered, or that a person seeks to register, with the Commission under this Act;

"(C) that is issued by an insurance company;

"(D) that is not issued by an investment company; and

"(E) the returns of which—

"(i) are based on the performance of a specified index or other specified benchmark; and

"(ii) may be subject to a market value adjustment if amounts are withdrawn or the contract is discontinued before the end of the period during which that market value adjustment applies.

"(b) REGISTRATION FORMS RULEMAKING.—

"(1) IN GENERAL.—Not later than 12 months after the date of enactment of this section, the Commission shall propose, and, not later than 30 months after the date of enactment of this section, the Commission shall finalize, new or amended rules, as appropriate, to establish one or more forms on which an issuer of a covered insurance contract may register that contract, subject to conditions the Commission determines appropriate.

"(2) DESIGN OF FORMS.—In developing the forms required to be established under paragraph (1), the Commission shall—

"(A) design the forms to ensure that a purchaser using the forms receives the information necessary to make knowledgeable decisions, taking into account—

"(i) the availability of information;

"(ii) the knowledge and sophistication of that class of purchasers;

"(iii) the length of the disclosure required by the forms;

"(iv) the complexity of registered index-linked life insurance and contingent deferred annuities; and

"(v) any other factor the Commission determines appropriate;

"(B) engage in investor testing for contingent deferred annuity; and

"(C) incorporate the results of the testing required under subparagraph (B) in the design of the forms for contingent deferred annuities, with the goal of ensuring that key information is conveyed in terms that a purchaser is able to understand.

"(3) LIMITATIONS.—In establishing the forms described in paragraph (1), the Commission shall—

"(A) limit the disclosures requested by such forms with respect to an insurance company to the disclosures requested by the forms described in section 239.17b or 239.17c of title 17, Code of Federal Regulations, as appropriate, or any successor regulation; and

"(B) specify that the financial statements requested by such forms with respect to an insurance company are those called for by the instructions for the financial statements in the forms described in sections 239.17b and 239.17c of title 17, Code of Federal Regulations, or any successor regulation.

"(4) RULE 12h-7 EXEMPTION.—In issuing the rules required by paragraph (1), the Commission may not impede the availability of an exemption to issuers described in section 240.12h-7 of title 17, Code of Federal Regulations, with regard to covered insurance contracts, that meet the qualifications for such exemption.

"(5) OTHER RELATED RULES.—To the greatest extent possible, the Commission shall promulgate an overall regulatory and filing framework that is consistent with the forms described in sections 239.17b and 239.17c of title 17, Code of Federal Regulations, in order to enable issuing insurance companies to offer all of the insurance company's registered insurance product offerings on a consistent basis, including the availability of—

"(A) section 230.498A of title 17, Code of Federal Regulations (permitting and prescribing the use of summary prospectuses for separate accounts offering variable annuity and variable life insurance contracts, and for the offering of registered non-variable annuity contracts);

"(B) section 270.24f-2 of title 17, Code of Federal Regulations (requiring issuers of certain investment company securities and registered non-variable annuity contracts to pay registration fees under the Securities Act of 1933 annually based on the net sales of such securities and contracts); and

"(C) sections 230.485 and 230.497 of title 17, Code of Federal Regulations (permitting automatic and immediate effectiveness for post-effective amendments and supplements filed by certain registered investment companies and issuers offering registered non-variable insurance contracts).

"(c) RULES OF CONSTRUCTION.—Nothing in this section may be construed to—

"(1) except as described in subsection (b)(3), limit the authority of the Commission to determine the information to be requested in the forms described in subsection (b); or

"(2) preempt any State or Territory law, regulation, rule, or order.".

(b) TREATMENT IF RULES NOT PREPARED AND FINALIZED IN A TIMELY MANNER.—

(1) IN GENERAL.—At the end of the 30-month period beginning on the date of enactment of this Act, if the Commission has not finalized the rules required under section 6A(b)(1) of the Securities Act of 1933, any registered index-linked life insurance or contingent deferred annuity may be registered on the forms described in sections 239.17b and 239.17c of title 17, Code of Federal Regulations, or any successor regulation, as appropriate.

(2) PREPARATION.—A registration described in paragraph (1) shall be prepared pursuant to applicable provisions of the forms described in that paragraph.

(3) DEFINITIONS.—In this section—

(A) the terms ''contingent deferred annuity'' and ''registered index-linked life insurance'' have the meaning given those terms, respectively, in section 6A(a) of the Securities Act of 1933; and

(B) the term ''Commission'' means the Securities and Exchange Commission.

(4) TERMINATION.—This subsection shall terminate on the date that the Commission finalizes the rules required under section 6A(b)(1) of the Securities Act of 1933.

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