# AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 10234 OFFERED BY MS. WATERS OF CALIFORNIA

Strike section 2 and all that follows and insert the following:

**SEC. 2. DEFINITIONS.**

In this Act:

(1) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(2) CONTINGENT DEFERRED ANNUITY.—The term "contingent deferred annuity" means a qualifying contract that establishes a life insurer's obligation to make periodic payments for an annuitant's lifetime when designated investments not owned or held by the insurer are depleted to a contractually defined amount as a result of contractually permitted withdrawals, market performance, fees or other charges, or any other contractually permitted triggering event or transaction.

(3) COVERED INSURANCE CONTRACT.—The term "covered insurance contract" means a contingent deferred annuity, registered index-linked life in-

surance, or other registered non-variable insurance contract.

(4) MARKET VALUE ADJUSTMENT.—The term "market value adjustment" means, following an early withdrawal from or discontinuance of a covered insurance contract, an adjustment to the value of the contract using a predetermined formula or a change in an interest rate or other factor, as determined by the Commission, that applies to the contract.

(5) OTHER REGISTERED NON-VARIABLE INSURANCE CONTRACT.—The term "other registered non-variable insurance contract" means a qualifying contract that does not constitute an equity interest in the issuer of the contract and that is an insurance product subject to regulation under the insurance laws of the domiciliary State or Territory of that issuer.

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

(7) QUALIFYING CONTRACT.—The term "qualifying contract" means a contract, certificate, policy, or rider that is a security, is registered with the Commission under the Securities Act of 1933 (15 U.S.C. 77a et seq.), is issued by an insurance com-

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pany, and is not issued by an investment company, as that term is defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(8) REGISTERED INDEX-LINKED LIFE INSURANCE.—The term "registered index-linked life insurance" means a qualifying contract that is a life insurance policy or rider the returns of which are based on the performance of a specified index or other specified benchmark and may be subject to a market value adjustment.

**SEC. 3. STUDY OF COVERED INSURANCE CONTRACTS.**

(a) STUDY REQUIRED.—Not later than 18 months after the date of enactment of this Act, the Commission shall complete a study of covered insurance contracts in accordance with this section.

(b) REGISTRATION AND DISCLOSURE.—The study shall examine the following:

(1) Whether the registration forms and offering processes available to issuers of covered insurance contracts, including the forms described in sections 239.11, 239.13, 239.17b, and 239.17c of title 17, Code of Federal Regulations, are suited to the features and risks of those contracts, and whether new or revised forms would improve purchaser com-

prehension, reduce unsuitable purchases, and facilitate registration.

(2) Whether a purchaser using an available form receives the information necessary to make a knowledgeable decision, taking into account the availability of information, the knowledge and sophistication of that class of purchasers, the length of the required disclosure, and the complexity of the contract.

(3) Whether disclosure of the following, in a manner comparable to the key information table required by Form N–4, would improve purchaser comprehension:

(A) All fees, charges, and expenses, including surrender charges and cost of insurance charges.

(B) Any cap rate, participation rate, spread, threshold, or other contractual limitation on gain, stated so as to disclose its effect on the return of the purchaser.

(C) Any market value adjustment, buffer, floor, or other mechanism determining the loss borne by the purchaser.

(D) The construction and cost of any index that is proprietary to the issuer or an affiliate or that is volatility-controlled, and the issuer's right to substitute, discontinue, or modify an index.

(E) The circumstances under which a guarantee, benefit base, or income benefit may be reduced or terminated.

(F) The purchaser's reliance on the claims-paying ability of the issuer.

(4) Whether financial statement, filing, and periodic reporting requirements applicable to issuers of covered insurance contracts, including the exemption under section 240.12h–7 of title 17, Code of Federal Regulations, give purchasers adequate information regarding the financial condition of the issuer, the use of affiliated or offshore reinsurance, and the allocation of general account assets to illiquid or affiliate-originated investments.

(5) Any other matter the Commission determines appropriate.

(c) COSTS, SALES PRACTICES, AND COMPLEXITY.—The study shall also examine—

(1) the aggregate cost borne by purchasers, including explicit charges and the implicit cost of contractual limitations on gain, and how that cost com-

pares to that of other products available to retail investors;

(2) compensation paid, directly or indirectly, to persons who recommend or sell covered insurance contracts, including commissions, non-cash compensation, marketing allowances, sales contests, quotas, and compensation paid to an affiliated distributor, and the conflicts of interest so created;

(3) sales practices, including practices directed at persons at or near retirement, persons age 65 or older, and retirement plan participants, and the use of seminars, referrals, and illustrations;

(4) the frequency and cost of exchanges, replacements, and surrenders, and whether those transactions are associated with the compensation described in paragraph (2);

(5) the use of illustrations and of hypothetical or back-tested performance, and its consistency with section 230.156 of title 17, Code of Federal Regulations, and the antifraud provisions of the securities laws;

(6) persistency, lapse, and realized performance experience, and the extent to which realized outcomes have differed from those presented at the time of sale;

(7) the complexity of covered insurance contracts, including the number of index options, crediting strategies, investment terms, and riders available under a single contract, and its effect on the ability of purchasers and of recommending persons to understand the contract;

(8) compliance with section 240.15l–1 of title 17, Code of Federal Regulations, in connection with recommendations of covered insurance contracts, and deficiencies identified through the examination or enforcement programs of the Commission or a registered national securities association;

(9) the adequacy of standards applicable to persons who recommend or sell covered insurance contracts but are not registered with the Commission or with a registered national securities association;

(10) the division of regulatory responsibility between the Commission and State insurance regulators, and any resulting gap in purchaser protection, including with respect to contingent deferred annuities; and

(11) any other investor protection concern the Commission determines appropriate.

(d) INVESTOR TESTING.—The Commission shall engage in qualitative and quantitative investor testing with respect to registered index-linked life insurance and contingent deferred annuities, designed to determine whether key information, including the information described in subsection (b)(3), is conveyed in terms a purchaser is able to understand.

(e) CONSULTATION AND PUBLIC PARTICIPATION.—In conducting the study, the Commission shall—

(1) consult with the Investor Advocate, the Investor Advisory Committee established under section 39 of the Securities Exchange Act of 1934 (15 U.S.C. 78pp), a registered national securities association, the National Association of Insurance Commissioners, and State securities and insurance regulators;

(2) solicit and consider public comment, including from purchasers and investor advocacy organizations; and

(3) consider data obtained through Commission and self-regulatory organization examination and enforcement programs.

(f) INFORMATION.—The Commission may, using its existing authority, collect from issuers of covered insurance contracts and from persons who offer or sell such contracts such information as the Commission determines necessary, including information regarding fees, charges, compensation, sales volume, exchanges, surrenders, lapses, and realized contract performance.

(g) REPORT.—Not later than 24 months after the date of enactment of this Act, the Commission shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, and make publicly available on its website, a report containing the findings of the study, the results of the investor testing conducted under subsection (d), the data collected under subsection (f) presented so as not to disclose confidential information regarding an individual purchaser, the recommendations of the Commission regarding new or revised registration forms or other Commission action, and any recommendation for legislation.

## SEC. 4. AUTHORITY TO ESTABLISH OR REVISE REGISTRATION FORMS.

(a) IN GENERAL.—The Commission may, by rule, establish one or more new forms, or revise one or more existing forms, on which an issuer of a covered insurance contract may register that contract, subject to such conditions as the Commission determines appropriate, in order to better protect purchasers and facilitate the registration of such contracts.

(b) DESIGN.—In establishing or revising a form under subsection (a), the Commission shall—

(1) design the form to ensure that a purchaser using it receives the information necessary to make an informed decision, taking into account the availability of information, the knowledge and sophistication of that class of purchasers, the length of the required disclosure, the complexity of the contract, the findings of the study required under section 3, and any other factor the Commission determines appropriate;

(2) engage in investor testing; and

(3) incorporate the results of that testing in the design of the form, with the goal of ensuring that key information is conveyed in terms a purchaser is able to understand.

(c) NO LIMITATION ON REQUESTED INFORMATION.—The authority of the Commission to determine the information requested in a form established or revised under subsection (a) shall not be limited by the information requested in any other registration form, and the Commission may require information in addition to, or different from, that requested in the forms described in sections 239.17b and 239.17c of title 17, Code of Federal Regulations.

**SEC. 5. RULES OF CONSTRUCTION.**

Nothing in this Act may be construed to—

(1) preempt any law, regulation, rule, or order of a State, the District of Columbia, or a territory of the United States;

(2) require the Commission to extend to a covered insurance contract or its issuer the availability of, or relief under, section 230.485, 230.497, or 230.498A, section 270.24f–2, or section 240.12h–7 of title 17, Code of Federal Regulations, or any successor regulation;

(3) limit the authority of the Commission to determine the information requested in any registration form or to condition the availability of any form, exemption, or relief; and

(4) limit the authority of the Commission under the securities laws, including the antifraud provisions of those laws and section 230.156 of title 17, Code of Federal Regulations.

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