



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT

March 7, 2019

VIA ELECTRONIC MAIL

RESPONSE OF CHIEF ACCOUNTANT'S OFFICE
DIVISION OF INVESTMENT MANAGEMENT

Stephen E. Roth
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Re: MONY Life Insurance Company of America

By letter dated March 7, 2019, you request authority under Regulation S-X §3-13 (“Rule 3-13”) for MONY Life Insurance Company of America (“Company”) to file audited financial statements of the Company prepared in accordance with statutory accounting principles¹ (“SAP”), in place of financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”), in registration statements filed under the Securities Act of 1933 (“Securities Act”) on Form S-1 for market value adjusted fixed account investment options (“MVA Options”) that are available under certain variable annuity contracts, as well as for index-linked options (“MSOs”) that are available under certain variable life insurance contracts issued by the Company (together with the variable annuity contracts, “Contracts”), in satisfaction of the requirements of Items 11(e), 11(f) and 11(g) and Item 16(b) of Form S-1, as described in your letter.

Background

The Company

You state that the Company is a stock life insurance company organized under the laws of the state of Arizona that is authorized to conduct life insurance and annuity business in the District of Columbia, Puerto Rico, the U.S. Virgin Islands and all states except New York.

¹ You note that these principles are those that are prescribed or permitted by the Company’s domiciliary state regulator.

You also state that the Company is an indirect wholly owned subsidiary of AXA Equitable Holdings, Inc. ("EQH"). In addition, you state that EQH is an indirect majority owned subsidiary of AXA S.A. ("AXA"), a French holding company that prepares its financial statements in accordance with International Financial Reporting Standards. Further, you state that securities issued by EQH are registered with the Commission under the Securities Act, that EQH files reports with the Commission under the Securities Exchange Act of 1934 ("Exchange Act"), and that EQH includes GAAP financial statements in its filings with the Commission.

You note that, in preparing its GAAP financial statements, EQH calculates its consolidated financial information by aggregating financial information for each segment recorded across multiple subsidiaries, not by aggregating financial information entity by entity. You also note that, consistent with this accounting approach, EQH's management evaluates the performance of each of these segments independently. In this regard, you state that the Company's business and the products it issues are combined with those of other EQH subsidiaries, in the Protection Solutions segment.

You assert that the only reason the Company currently prepares GAAP financial statements is for use in the registration statements on Form S-1 for the Contracts. You note that Forms N-4 and N-6 under the Investment Company Act of 1940, on which the Company registers its variable insurance products, each would permit the Company to file audited SAP financial statements if it would not otherwise have to prepare GAAP financial statements in connection with its Form S-1 filings.

In addition, you assert that, but for the requirement to include audited GAAP financial statements in the Company's Form S-1 registration statements, the GAAP information relating to the Company's business that would otherwise be prepared in connection with the preparation of GAAP financial statements for EQH would not constitute a GAAP reporting package or partial GAAP financial statements. In this regard, you note that EQH manages and accounts for its overall business on a business segment basis, not on a legal entity basis, and so its financial statements are not incorporated into EQH's financial statements.

In addition, you state that the Company relies on Rule 12h-7 under the Exchange Act for relief from the requirement to file periodic reports under that Act.² In this regard, you note that the Company is subject to supervision by the Arizona Department of Insurance. You also note that the Company files a statement of its annual condition with, is supervised by, and has its financial condition periodically examined by, the Arizona Department of Insurance.³ In

² Rule 12h-7 exempts insurance companies from filing Exchange Act reports with respect to certain specified types of securities that are subject to state insurance regulation and are registered under the Exchange Act if certain other conditions are satisfied. 17 C.F.R. §240.12h-7 (2018).

³ Rule 12h-7(a) and (c) specify that an issuer qualifying under that rule is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State (as defined in the Exchange Act); and files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State (as defined in that Act). *Id.*

addition, you state that the Company files SAP financial statements, which are audited by an independent auditor,⁴ with the Arizona Department of Insurance and the National Association of Insurance Commissioners.

The Contracts

You state that the MVA Option is an allocation option under certain Contracts that are variable annuity contracts. You state that each of the MVA Options⁵ provides a specified, fixed interest rate for a specified term (“Accumulation Period”), as long as amounts invested in the MVA option are not withdrawn before the end of the Accumulation Period. You note that a different interest rate applies to each Accumulation Period made available. You also note that the Company decides, in its discretion, which specified periods and what interest rates to offer.

You state that withdrawals or transfers made from an MVA Option before the expiration of the Accumulation Period are subject to a market value adjustment (“MVA”). You state that MVAs are used to protect the insurer from the risk that contract reserves will have to be sold at a discount to satisfy an insurer’s obligation to pay the surrender or withdrawal. Specifically, you note that, if prevailing interest rates are lower at the time of withdrawal or transfer than when the contract was purchased, a positive MVA will apply and contract value is adjusted upward. You state that, conversely, if prevailing interest rates are higher at the time of withdrawal or transfer than when the contract was purchased, a negative MVA will apply and contract value is adjusted downward and the contract owner may lose principal.

You state that the MSO⁶ is an allocation option under certain Contracts that are variable life policies. You state that the MSO credits a rate of return at the end of a stated term (“Segment Term”) based on a formula that references the performance of one or more securities indices (each an “Index”). You also state that the rate of return is subject to a cap on index performance gains and is subject to a “buffer,” which is the maximum negative index return that will not result in negative interest being applied to policy value. In addition, you state that, if a policy owner withdraws policy value invested in the MSO or surrenders the policy before the end of the Segment Term, the proceeds payable to the policy owner will be adjusted. You state

⁴ You state that the financial statements filed in registration statements for the Contracts will be audited by an auditor that will satisfy the independence standards of Article 2 of Regulation S-X and be registered with and subject to inspection by the Public Company Accounting and Oversight Board.

⁵ The MVA Options are registered on Form S-1 under Securities Act file number 333-210276, and are offered under the MONY Custom Master variable annuity contract (registered on Form N-4 under Securities Act file number 333-59717)

⁶ The MSOs are registered on Form S-1 under Securities Act file number 333-223704, and are offered as allocation options under the following variable life policies registered on Form N-6: IncentiveLife Legacy, IncentiveLife Legacy II and IncentiveLife Legacy III (Securities Act file number 333-191149); and Incentive Life Optimizer III (Securities Act file number 333-207014).

this adjustment will be made according to a formula stated in the policy that reflects the current value of the options imputed in the formula used to calculate the rate of return credited under the policy.

You state that the only securities registered with the Commission that the Company issues are variable annuity contracts, variable life insurance products, the MVA Options, and the MSOs, which are subject to regulation under Arizona insurance laws. In addition, you state that these securities do not constitute an equity interest in the Company and are not listed, traded or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting.⁷

Discussion

You note Rule 3-13 provides that the Commission “may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements required by Regulation S-X or the filing in substitution therefore of appropriate statements of a comparable character.” You assert 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 Contracts.

In support of this claim, you assert that, similar to investors in variable annuity contracts and variable life insurance policies, investors in the Contracts will be most interested in information relevant to assessing the Company’s ability to fulfill its contractual obligations.⁸ You also assert that SAP financial statements would provide investors in the Contracts with sufficient information to assess the Company’s solvency and its ability to fulfill its contractual obligations.⁹

In this regard, you claim that SAP financial statements contain detailed information about an insurance company’s balance sheet, including its regulatory capital and surplus that serve as financial cushions for paying policyholder claims. In addition, you assert that SAP financial

⁷ Rule 12h-7(b) specifies that the securities that would otherwise trigger Exchange Act reporting obligations must not constitute an equity interest in the issuer, and must either be securities subject to regulation under the insurance laws of the domiciliary State of the issuer or guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction. *Id.* Rule 12h-7(d) further requires that those securities must not be listed, traded, or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting. *Id.*

⁸ You note that the Commission had recognized, in proposing variable annuity registration forms, that investors in those products may only be interested in the insurer’s solvency. *Registration Form for Insurance Company Separate Accounts that Offer Variable Annuity Contracts*, Securities Act Release No. 33-6502 and Investment Company Act Release No. 13689 (December 22, 1983).

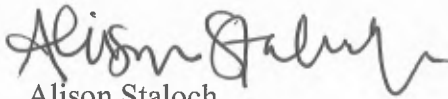
⁹ You also note that, while the use of GAAP assists investors in understanding an issuer’s going concern value, investors in the Contracts do not need information regarding the Company’s going concern value since there is no secondary market in the Contracts.

statements enable regulators to determine the Company's ability to meet its obligations to its contract owners based on the availability of readily marketable assets when obligations are due.

Based on the facts and representations set forth in your letter as summarized above, as well as the conditions outlined above, and without necessarily agreeing with all of your analysis, your request for permission under Rule 3-13 for the Company to file SAP financial statements, audited by an independent auditor, in lieu of GAAP financial statements in Form S-1 registration statements filed for the Contracts, as it relates to the accounting basis of those financial statements only and as described above, is granted.^{10 11}

If you have any questions regarding this letter, please call the Chief Accountant's Office of the Division of Investment Management at (202) 551-6918.

Sincerely,



Alison Staloch
Chief Accountant
Division of Investment Management

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

¹⁰ The staff notes that it would be receptive to considering applications under Rule 3-13 from other registrants seeking to file SAP financial statements in lieu of GAAP financial statements in registration statements filed for products similar to the Contracts described here, under circumstances similar to those described above.

¹¹ Our analysis underlying this assurance has been developed in consultation with the staff of the Commission's Office of the Chief Accountant.

March 7, 2019

Via Electronic Mail

Ms. Alison Staloch
Chief Accountant
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
stalocha@sec.gov

Re: MONY Life Insurance Company of America

Dear Ms. Staloch:

On behalf of MONY Life Insurance Company of America ("MLOA"), we respectfully request that, pursuant to Rule 3-13 of Regulation S-X, the staff of the Division of Investment Management ("Staff") permit MLOA to file audited financial statements prepared in accordance with statutory accounting principles ("SAP") prescribed or permitted by its domiciliary state regulator in place of financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP") in registration statements filed on Form S-1 for market value adjusted fixed account investment options ("MVA Options") available as investment options under certain variable annuity contracts, as well as for index-linked options ("MSOs") available under certain variable life insurance policies issued by MLOA (collectively, "Contracts") in satisfaction of the financial information required by Form S-1, including the requirements of Items 11(e), 11(f), 11(g), and 16(b) of the form.

Because the Contracts are insurance products, MLOA believes that SAP financial statements will provide investors in its Contracts with sufficient information to assess MLOA's ability to meet its obligations under those Contracts and that filing SAP financial statements in place of GAAP financial statements would be consistent with investor protection. Forms N-3, N-4 and N-6 already permit insurers to use SAP financial statements in registration statements for variable insurance products registered on those forms. That relief is intended to reduce the burden on insurance companies that otherwise would prepare GAAP financial statements *solely* to register variable insurance products. Because of the significant costs and administrative burdens associated with preparing GAAP financial statements, the relief permitting use of SAP financial statements in Forms N-3, N-4, and N-6 serves as a precedent for allowing the use of SAP financial statements in registration statements on Form S-1 that MLOA uses to register the MVA Options and MSOs for its Contracts.

More generally, MLOA notes that the time and cost burdens of preparing GAAP financial statements only for non-variable insurance products that must be registered on Form S-1 may impede many insurance companies from offering those products. Reducing these burdens likely will facilitate entry into the marketplace for such products by more insurance companies, and increase the choices available to investors among such products for retirement and other long term purposes.

Background

MONY Life Insurance Company of America ("MLOA")

MLOA is an Arizona stock life insurance company organized in 1969 that is authorized to conduct life insurance and annuity business in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and all states except New York.

MLOA is an indirect wholly owned subsidiary of AXA Equitable Holdings, Inc. ("EQH"), which in turn is an indirect majority owned subsidiary of AXA S.A. ("AXA"), a French holding company for an international group of insurance and related financial services companies. AXA prepares its financial statements in accordance with International Financial Reporting Standards. As the ultimate controlling shareholder of MLOA, AXA exercises significant control over the operations and capital structure of MLOA. No company other than MLOA, however, has any legal responsibility to pay amounts that the Company owes under the Contracts.

EQH conducts its business in four operating segments: Individual Retirement, Group Retirement, Investment Management and Research, and Protection Solutions. Each segment reflects the consolidation of the operations supporting multiple products offered through multiple EQH subsidiaries.

Securities issued by EQH are registered with the SEC under the Securities Act of 1933 ("1933 Act"), and EQH files reports with the SEC under the Securities Exchange Act of 1934 ("1934 Act"). EQH includes GAAP financial statements in its SEC filings. In preparing its GAAP financial statements, EQH calculates its consolidated financial information by aggregating financial information for each segment recorded across multiple legal entities—i.e., its subsidiaries, including MLOA—and not by aggregating financial information entity by entity. Consistent with this accounting approach, EQH's management evaluates the performance of each of these segments independently. MLOA's business and the products it issues are combined with those of other EQH subsidiaries in the Protection Solutions segment.

As an Arizona-based insurance company and pursuant to Arizona's insurance law, MLOA must prepare SAP financial statements, which are audited by an independent auditor and are filed with the domiciliary state insurance regulator and the National Association of Insurance Commissioners. State regulators review the financial statements as part of a comprehensive regulatory program that focuses on MLOA's solvency, with the goal of ensuring that MLOA can fulfill its contractual obligations to policyholders. The ultimate objective of state solvency regulation is to ensure that the insurance company can pay policyholder liabilities when they come due and that the insurance company maintains capital and surplus at all times in such forms as required by state law to provide a margin of safety. With the objective of solvency regulation, statutory accounting principles focus on the insurance company's balance sheet and emphasize MLOA's liquidity.

MLOA does not issue or have outstanding any publicly traded equity securities (i.e., common stock or preferred stock), nor has it issued any publicly traded debt securities. Indeed, the only reason MLOA currently prepares audited GAAP financial statements is for use in the registration statements on Form S-1 for the Contracts. For the reasons set forth below, absent the Form S-1 registration statements, the GAAP financial information related to MLOA's operations that would otherwise be prepared for use by EQH would not constitute a GAAP reporting package or partial GAAP financial statements. Therefore, Forms N-4 and N-6 under the Investment Company Act of 1940 ("1940 Act"), on which MLOA registers its variable annuity and variable life insurance products, each would permit MLOA to

file audited SAP financial statements if it would not otherwise have to prepare GAAP financial statements in connection with its Form S-1 filings.¹

But because certain of the variable annuities registered on Form N-4 contain MVA Options² and certain of the variable life insurance products registered on Form N-6 contain MSOs must be registered on Form S-1, MLOA currently must prepare GAAP financial statements. MLOA devotes significant effort and bears substantial cost to develop and implement rules, procedures and controls to prepare audited GAAP financial statements for inclusion in the registration statements for its Contracts.

MLOA relies on Rule 12h-7 under the 1934 Act³ for relief from the requirement to file periodic reports under that Act. As required by a condition for the relief provided by Rule 12h-7, MLOA is subject to supervision by the Arizona Department of Insurance. MLOA files a statement of its annual condition with, is supervised by, and its financial condition is periodically examined by, the Arizona Department of Insurance. In addition, as required by a condition for the relief provided by Rule 12h-7, the only SEC-registered securities that MLOA currently issues or intends to issue are insurance contracts (i.e., MLOA's variable annuity and variable life insurance products, the MVA Options, and the MSOs) that are subject to regulation under Arizona insurance laws. Those securities do not and will not constitute equity interests in MLOA, and are not and will not be listed, traded or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting.

The Contracts⁴

- Registered MVA Options Offered Under Certain Variable Annuity Contracts

The "Guaranteed Interest Account with Market Value Adjustment" (MVA Option) is an allocation option available under certain variable annuity contracts issued by MLOA. Each non-variable MVA Option provides a specified, fixed interest rate for a specified term (each an "Accumulation Period"), as long as amounts invested in the MVA option are not withdrawn before the end of the Accumulation Period.

¹ See Form N-4 Item 23(b), Instruction 1, and Form N-6 Item 24(b), Instruction 1.

² On October 1, 2013, MLOA entered into a reinsurance transaction with Protective Life Insurance Company ("Protective"), whereby Protective agreed to reinsure a substantial portion of the MLOA's life insurance and annuity business (the "Reinsured Business"). The contracts with MVA Options are included in the Reinsured Business. Protective reinsures all of the insurance risks of the Reinsured Business and is responsible for customer service and administration for all contracts comprising the Reinsured Business. MLOA remains the issuer of the contracts and the terms, features, and benefits of the contracts did not change as a result of the transaction.

³ 17 CFR 240.12h-7 (exempting insurance companies from filing 1934 Act reports with respect to certain specified types of securities that are subject to state insurance regulation and are registered under the 1933 Act, provided that certain conditions are met).

⁴ The Contracts for which MLOA requests relief are:

- MVA Options (SEC File No. 333-210276 (S-1)) available under the following variable annuity contracts:
 - MONY Custom Master, SEC File No. 333-59717 (N-4).
- MSOs (SEC File No. 333-223704 (S-1)) available under certain variable life insurance policies:
 - IncentiveLife Legacy, IncentiveLife Legacy II and IncentiveLife Legacy III, SEC File No. 333-191149 (N-6).
 - IncentiveLife Optimizer III, SEC File No. 333-207014 (N-6).

Beginning in 2019, MLOA intends to offer the MSO as an investment option under two new variable life insurance policies, VUL Legacy and VUL Optimizer.

MLOA currently offers 3-, 5-, 7-, and 10-year Accumulation Periods. A different interest rate applies to each Accumulation Period made available. MLOA decides, in its discretion, which Accumulation Periods and what interest rates to offer. Amounts allocated to an MVA Option and held to the end of the Accumulation Period are credited with interest at the specified rate for the duration of the corresponding Accumulation Period.

Withdrawals or transfers—including transfers made to the contract's loan account as a result of an owner's request for a loan—made from an MVA Option before the expiration of the Accumulation Period are subject to a market value adjustment (MVA). An MVA—which can be positive or negative, depending on changes in interest rates—is calculated pursuant to a formula specified in the Contract.⁵MVAs do not apply upon annuitization or upon payment of a death benefit.

An MVA will either increase or decrease the amount of money paid if a withdrawal or transfer occurs before the end of the Accumulation Period. MVAs are used to protect MLOA from the risk that contract reserves will have to be sold at a discount to satisfy MLOA's obligations to pay the surrender or withdrawal; this is called the insurer's "disintermediation risk." The extent of an insurer's disintermediation risk depends upon the relationship between the contractually guaranteed interest rate and prevailing market interest rates in effect at the time of the transfer, surrender or withdrawal. When prevailing market interest rates rise, the disintermediation risk to the insurer increases; when prevailing market interest rates fall, the risk to the insurer decreases. To the extent an MVA protects MLOA from disintermediation risks, it does so by shifting some or all of that risk to the contract owner.

- Registered Market Stabilizer Options Offered Under Certain Variable Life Insurance Policies

The Market Stabilizer Option (MSO) is an allocation option available under certain variable life insurance policies issued by MLOA. The MSO credits a rate of return at the end of a stated term ("Segment Term") based on a formula that references the performance of one or more securities indices (each an "Index"). (Currently, the return under the MSO is tied to the S&P 500 Price Return Index.) That rate of return is subject to a cap on index performance gains ("Growth Cap Rate") and a buffer⁶ on index performance losses. MLOA sets the Growth Cap Rate in advance.⁷The Growth Cap Rate will not change during a Segment Term. If a policy owner withdraws policy value invested in the MSO—including transfers made to the policy's loan account as a result of an owner's request for a loan—or surrenders the policy before the end of the Segment Term, the proceeds payable to the policy owner are adjusted according to a formula stated in the policy that is designed to reflect the current value of the options imputed in the formula used to calculate the rate of return credited under the

⁵ Generally, the MVA formula approximates the relationship between interest rates prevailing at the time the owner makes the initial allocation to an MVA option, the interest rates prevailing at the time of the withdrawal or transfer, and the amount of time remaining in the Accumulation Period. If the prevailing interest rates are lower at the time of withdrawal or transfer than when the contract was purchased, a positive MVA will apply and contract value is adjusted upward. Conversely, if prevailing interest rates are higher at the time of withdrawal or transfer than when the contract was purchased, a negative MVA will apply; contract value is adjusted downward and the contract owner may lose principal.

⁶ "Buffer" refers to the maximum negative index return that will not result in negative interest being applied to policy value.

⁷ Index-linked return can be positive, zero, or negative. If the performance of the Index has been positive for the Segment Term and equal to or below the Growth Cap Rate, MLOA will credit interest at a rate equal to the full Index performance. If the performance of the Index has been positive for the Segment Term and above the Growth Cap Rate, MLOA will credit interest at a rate equal to the Growth Cap Rate. If performance of the index has been negative for the Segment Term, MLOA will credit interest at a rate of 0% unless the negative Index performance exceeds -0.25%. In that case, the negative performance in excess of -0.25% will be applied in determining the index-linked return.

policy.⁸By shifting some market risk to contract owners, the MSO enables MLOA to offer policy owners the potential for higher rates of return.

The Efforts and Burdens Related to Preparing MLOA GAAP Financial Statements

Constructing GAAP compliant financial statements for MLOA is time consuming and expensive.

As noted above, MLOA is an indirect wholly owned subsidiary of EQH. It is, however, a relatively immaterial subsidiary. More specifically, EQH assets and liabilities are more than 40 times that of MLOA: based on total assets, MLOA is approximately 2% of the size of EQH.⁹ Given the relative immateriality of MLOA to EQH's overall business, preparing standalone audited US GAAP financial statements for MLOA requires a drastically increased level of detail over that which is used to assist EQH in preparing its consolidated financial statements.

As also noted above, EQH manages and accounts for its overall business on a business segment basis, not on a legal entity basis. In other words, MLOA's standalone GAAP financials are not simply incorporated into EQH's. Accordingly, certain GAAP-related items are currently prepared *solely* for MLOA's financial statements, i.e., they are not needed for EQH's GAAP financial statements. If MLOA no longer had to prepare GAAP financials, the significant effort that is required and would continue to be required to break out and/or calculate such "MLOA-only" GAAP information could be eliminated. These items include the following:

- (i) Certain intercompany transactions that would be eliminated on a consolidated basis. MLOA has reinsurance treaties with another subsidiary of EQH, which does not prepare US GAAP financial statements. As this reinsurance is eliminated at the EQH level *and* is not needed for the affiliated counterparty, the calculation of GAAP results for these treaties would not be necessary;
- (ii) Separate MLOA standalone loss recognition testing on a GAAP basis would not be needed (which would also eliminate the need to do separate MLOA deferred acquisition cost calculations);
- (iii) Detailed GAAP tax calculations would not be required, as they are calculated and presented on a consolidated basis at the EQH level; and
- (iv) GAAP calculations with regard to MLOA's ownership interest in AllianceBernstein ("AB"), an affiliated company, would also no longer be required. EQH consolidates its ownership of AB with its ownership of other entities. MLOA, on the other hand, owns a small percentage of AB, and, as a result, currently accounts for it, and would have to continue to do so, using the equity method of accounting, i.e., it does not consolidate it within MLOA as it is done at EQH.

The time, effort and expenses involved to support the preparation of audited GAAP financial statements for MLOA places significant strain on systems and personnel already tasked with data collection and operating reporting systems designed to support both legal entity SAP financial statements (for filing with the states) and roll up to EQH's consolidated financial statements. Production of entity-level GAAP financial statements results in duplicative reporting and auditing of financial statements because MLOA must prepare SAP financial statements for the states. Consequently, additional procedures must be performed to carve out and produce legal entity GAAP

⁸ The adjustment offsets costs MLOA incurs to unwind before the end of the Segment Term the transaction by which MLOA hedges its exposure to changes in the Index value as a result of its obligations to credit a rate of return to account value allocated to the MSO.

⁹ As of December 31, 2017, MLOA's assets were \$5.6B and EQH's assets were \$235.6B. Equity for MLOA was \$376M versus \$16.5B for EQH. MLOA's revenue was \$258M versus \$12.5B for EQH. MLOA's net income was a loss of \$61M versus income of \$834M for EQH.

financial statements for MLOA, which results in higher costs and places additional demands on the systems and personnel involved in implementing the additional procedures.

In sum, for the reasons set forth above, the GAAP information relating to MLOA's business that, but for the requirement to include audited GAAP financial statements in MLOA's Form S-1 registration statements, would otherwise be prepared in connection with the preparation of GAAP financial statements for EQH would not constitute a GAAP reporting package or partial GAAP financial statements.

Request for Relief

Rule 3-13 of Regulation S-X provides that the SEC "may, upon the informal written request of the registrant and where consistent with the protection of investors, permit the omission of one or more financial statements required by Regulation S-X or the filing in substitution thereof of appropriate statements of a comparable character." As previously noted, the costs and administrative burdens of preparing and obtaining an independent audit of GAAP-compliant financial statements for MLOA solely for inclusion in registration statements for the Contracts are substantial and do not provide investors in those insurance products with material information beyond that available in SAP financial statements. Moreover, for reasons stated more fully below, MLOA believes that, for the Form S-1 registration statements for the Contracts, SAP financial statements that have been audited by an independent auditor¹⁰ are appropriate financial statements of a comparable character to GAAP financial statements. Accordingly, MLOA requests relief pursuant to Rule 3-13 of Regulation S-X to file SAP financial statements instead of GAAP financial statements in the Form S-1 registration statements for its Contracts.¹¹

SAP financial statements will provide investors in MLOA's Contracts with sufficient information to assess MLOA's ability to meet its contractual obligations.

In July 2017, Chairman Jay Clayton publicly acknowledged that the SEC's existing rules may require public companies to provide disclosure that is burdensome to produce and is not material to the total mix of information available to investors. Chairman Clayton went on to note that such requirements may be appropriate for relief under Rule 3-13 of Regulation S-X.¹² MLOA believes that requiring it to prepare GAAP financial statements only for inclusion in the Form S-1 registration statements for the Contracts—and for no other purpose—presents such a circumstance.

Forms N-3, N-4 and N-6 used to register variable insurance products under the 1933 Act already permit the use of SAP financial statements in place of GAAP financial statements if the insurance company issuing the variable insurance product would not have to prepare GAAP financial statements except for use in registration statements on such forms. This exception from the general requirement to file GAAP financial statements first appeared in Form N-4 for variable annuities when the form was adopted in 1985¹³, and later was incorporated into Form N-6 for variable life insurance policies, when

¹⁰ The auditor will satisfy the independence standards of Article 2 of Regulation S-X and be registered with and subject to inspection by the Public Company Accounting and Oversight Board.

¹¹ Because MLOA relies on Rule 12h-7, it is not requesting any relief pursuant to Rule 3-13 with respect to the 1934 Act.

¹² Remarks of SEC Chairman Jay Clayton at the Economic Club of New York (July 12, 2017) *available* at <https://www.sec.gov/news/speech/remarks-economic-club-new-york>.

¹³ Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Rel. Nos. 33-6588 and IC-14575 (June 14, 1985) ("Form N-4 Adopting Release").

the form was adopted in 2002¹⁴. In proposing Forms N-3 and N-4 for variable annuity contracts with instructions permitting the use of SAP financial statements, the SEC recognized that: (a) guarantees associated with annuity payments and other benefits provided by the contracts—which are backed by the insurance company’s general account—depend on the solvency of the insurance company; and (b) consequently, contract owners, participants, and annuitants may not want or need disclosure about the financial performance of the insurance company, but instead may be interested only in the insurer’s solvency.¹⁵

Like investors in variable annuity contracts and variable life insurance policies, investors in MLOA’s Contracts are most interested in information relevant to assessing MLOA’s ability to fulfill its contractual obligations. SAP financial statements are designed to provide precisely this type of information. They contain detailed information about an insurance company’s balance sheets, including its regulatory capital and surplus that serve as financial cushions for paying contract owner claims. Furthermore, SAP financial statements enable state regulators to determine an insurance company’s ability to meet its obligations to contract owners based on the availability of readily marketable assets when obligations are due. Among other things, GAAP financial statements assist investors in understanding a company’s “going concern value.” Because there is no secondary market in the Contracts, investors in the Contracts do not need information regarding MLOA’s “going concern value.”

Consequently, SAP financial statements provide owners of MLOA’s Contracts with sufficient information to assess MLOA’s solvency and its ability to fulfill its contractual obligations. GAAP financial statements, on the other hand, do not provide disclosure of additional value to contract owners sufficient to justify the significant costs and administrative burdens of preparing and auditing the additional set of financial statements.

Conclusion

Because the Contracts are insurance contracts subject to state regulation, and SAP financial statements provide owners of the Contracts with sufficient information to assess MLOA’s ability to meet its contractual obligations, MLOA respectfully submits that filing SAP financial statements audited by an independent auditor in place of the GAAP financial statements required by Regulation S-X would be consistent with investor protection. Moreover, as previously noted, MLOA devotes significant resources to preparing audited GAAP financial statements for inclusion in the Form S-1 registration statements for the Contracts. When the SEC provided relief from filing GAAP financial statements in Forms N-3, N-4 and N-6, it explicitly recognized alleviating disclosure burden as a legitimate reason to permit the use of SAP financial statements by insurance companies that would not have to prepare GAAP financial statements except for use in a registration statement for an insurance product.¹⁶ Such relief is also appropriate for MLOA with respect to the Form S-1 registration statements for the Contracts.

¹⁴ Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Rel. Nos. 33-8088 and IC-25522 (April 12, 2002) (Adopting Release).

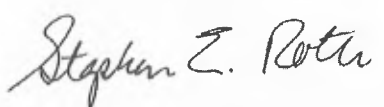
¹⁵ See Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Rel. Nos. 33-6502 and IC-13689 (December 23, 1983) (Proposing Release).

¹⁶ In the adopting release for Forms N-3 and N-4, the SEC stated “the use of statutory financial statements is permitted solely to relieve the disclosure burden upon this group of registrants and their sponsoring insurance company.” See Form N-4 Adopting Release, *supra* note 13, at n.9.

For the reasons stated above, we respectfully request, on behalf of MLOA, that the Staff grant relief pursuant to Rule 3-13 of Regulation S-X to permit MLOA to file SAP financial statements, audited by an independent auditor, in registration statements on Form S-1 for its Contracts.

Thank you for your attention to this matter. Please contact Stephen Roth at 202-383-0158 or Dodie Kent at 212-389-5080 if you need additional information or have any questions concerning this request.

Sincerely,



Stephen E. Roth



Dodie C. Kent

cc: Harry Eisenstein--SEC
William J. Kotapish--SEC
Shane Daly--MONY Life Insurance Company of America