December 16, 2013

Mr. Doug Stolte
Chair, Private Equity Issues Working Group
National Association of Insurance Commissioners
Attention: Dan Daveline (ddaveline@naic.org)

Re: Comments on Suggested Best Practices and New Procedures Relating to Private Equity Investment in and Transactions with Life Insurers

Dear Mr. Stolte:

Athene Holding Ltd. ("Athene") appreciates the opportunity to comment on the suggested best practices and new procedures relating to private equity investment in, and transactions with, life insurers referred to the newly formed Private Equity Issues Working Group by the Financial Analysis Working Group (the “PE Working Group”).

Athene is a life insurance holding company focused principally on the retirement market and whose business, through its subsidiaries, is focused primarily on issuing or reinsuring fixed and equity indexed annuities. Athene’s principal subsidiaries include Athene Annuity & Life Assurance Company, a Delaware-domiciled insurance company, Aviva Life and Annuity Company, an Iowa-domiciled insurance company, Athene Annuity & Life Assurance Company of New York, a New York-domiciled insurance company, and Athene Life Re Ltd., a Bermuda reinsurer. Athene was formed in 2008 by a partnership between James R. Belardi, former President of SunAmerica Life Insurance Company and Executive Vice President and Chief Investment Officer of AIG Retirement Services, Inc. and an affiliate of Apollo Global Management, LLC to provide solutions to the growing need for tax-efficient savings vehicles to support retiring baby boomers. Apollo Global Management, LLC is a diversified asset manager with a 23-year history, deploying capital across the balance sheets of industry-leading businesses and seeking to create value for its investors throughout economic cycles. Apollo Global Management, LLC and its subsidiaries currently have $158 billion in assets under management.

We believe that the life insurance industry greatly benefits from private equity investment. First, private equity investors have substantial expertise to offer, including in areas that are critical for life insurers, such as risk assessment and management, investment strategy, identifying and recruiting executive talent and managing companies. Private equity has the additional advantage of doing so over the long term without the quarterly earnings pressure imposed by public company investors. Finally, private equity investment in the life insurance industry provides capital that is essential to the industry’s future success and has come at a time when many other sources of capital were unavailable for most life insurers.
Further, we believe that the interests of private equity investors and policyholders should be and typically are aligned. Simply stated, private equity loses if policyholders lose. Private equity investment is typically in the form of the purchase of significant amounts of equity, all of which is lost if the insurer is not successful. Private equity investors need to improve the insurer’s business in order to realize a profit in the event of an eventual sale or public offering.

Finally, while Athene agrees that the overriding principle for both the PE Working Group and the Financial Condition (E) Committee (the “(E) Committee”) should be protection of policyholders, Athene also believes that the equitable treatment of companies is an issue that should be of equal concern. Basic principles of competition, fairness and equity support the principle that all life insurers should compete in the marketplace and be regulated on the basis of a level playing field. Many of the best practices discussed in the Financial Analysis Working Group’s referral to the (E) Committee have the potential to be effective tools to monitor and mitigate risks—but they should be applied across the board and not just to companies identified as being associated with private equity firms. In fact, applying the rules in an arbitrary or discriminatory manner may have the ultimate effect of repelling new capital, rather than attracting it, at the very time that the industry is most in need of capital.

We categorize and discuss these suggested best practices in further detail below.

I. Suggested Best Practices Already Within the Purview of State Insurance Departments

State insurance departments already have broad authority to examine both insurers domiciled in their state and affiliates within the insurer’s holding company system, as well as proposed interaffiliate transactions, under existing insurance holding company system laws and regulations and examination authority. It is our belief that the following best practices can be performed under existing regulatory authority, and therefore no changes to laws or regulations are needed:

• Reviewing the investment management and other fees paid by the insurer, the overall fee structure, and any arrangements between the insurer and intercompany broker dealers.

• Limiting the investment strategy of any assets held in trust for the benefit of the insurer to ensure they meet asset liability matching and any state insurance code requirements.

• Requiring the private equity firm (i) to comply with the laws, regulations, bulletins and other standards of practice of the domiciliary state, and (ii) to ensure that its interactions with the insurer will not cause the insurer to be out of compliance with the domiciliary state laws, regulations, bulletins or other standards of practice.¹

• Reviewing (i) investment management and other affiliated and non-affiliated agreements, including the flow of funds related to such agreements, to ensure that such agreements contain appropriate safeguards for conflicts of interest; and (ii) reinsurance agreements, to ensure all material risks are transferred to the reinsurer.

¹ This assumes that sufficient information regarding the corporate structure and controlling persons of the private equity firm has been provided to the insurer’s domiciliary insurance department.
• Requesting more specifics regarding cash flows and reserves. Where obtained, the state’s actuarial resources should thoroughly evaluate the sufficiency of insurer’s process for cash flow testing and modeling. The state’s actuarial resources should also thoroughly evaluate the process the insurer uses for setting its reserves, as well as its proper calculation of charges for risk-based capital associated with any products where the risks are material.

• Reviewing any assets held in trust for the benefit of the insurer to make sure they meet credit for reinsurance requirements and that they comply with state investment laws.

II. Suggested Best Practices That, if Adopted, Should be Applied Across the Board

Athene agrees that certain of the best practices could assist state insurance regulators in monitoring all insurers regardless of ownership structure (and not merely those that are associated with private equity investment or the subject of an application for approval of an acquisition of control). If applied, they should be broadly applied across the life insurance industry. Listed below are such suggested best practices, with modifications suggested by Athene and as further explained in the italicized text appearing below such proposed best practices.

• Coordinating with international or other functional regulators where either another non-U.S. insurer is involved, other financial institutions are involved, or where the ultimate controlling entity is not based in the United States.

  o As states adopt the recent updates to the Insurance Holding Company System Regulatory Model Act and Model Regulation (the “HCA”), they will have the opportunity to participate in supervisory colleges for domestic insurers that are part of an insurance holding company system with international operations in order to, among other things, assess the insurer’s business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes. Therefore, supervisory colleges can serve as an effective tool for implementing this best practice in a uniform manner.

• Reviewing on a granular basis, the investment portfolio of the insurer and its affiliates. The purpose of this review is to ensure a proper understanding of the strategy and how types of specific investments fit into this strategy. This specifically includes investments such as LLCs, equity and mutual fund holdings and other invested assets (e.g., Schedule BA assets). This review may take the form of an annual targeted examination of the insurer and its affiliates to ensure that the investment strategy continues to provide a prudent approach for investing policyholder funds.

  o Athene supports an enhanced review of the insurer’s investment portfolio. We suggest that a two-step process be considered whereby a new annual reporting requirement be introduced. State insurance departments could then review these filings and on a risk-focused basis identify insurers for targeted examination of
investments and investment strategy. An insurer’s affiliates should be included in such a review only to the extent that such affiliates are involved in affiliated transactions with the insurer and such transactions affect the insurer’s investment portfolio. The standard for the level of detail or granularity to be included in any such report or examination should be stated clearly and applied uniformly. Further, any judgment as to the prudence of an insurer’s investment strategy should be reserved for the insurer’s own management and board of directors.

- Requiring ongoing annual stress testing of the insurer and the group. This includes stress testing not only the investments, but also the policyholder liabilities, to ensure that the assets and liabilities continue to be properly matched. The expectation is that this stress testing may go beyond that which is required under the Actuarial Opinion and Memorandum Regulation (cash flow testing). However, the state’s actuarial resources should thoroughly evaluate the sufficiency of insurer’s process for the cash flow testing required by that model.
  
  o While Athene agrees that the life insurance industry could benefit from the uniform application of the suggested best practice, Athene is concerned that regulators and insurers may have insufficient resources to properly implement this suggested best practice, especially in light of other ongoing NAIC initiatives that will demand significant actuarial resources (e.g., principles-based reserving).

- Requiring the acquiring entity to provide pro forma results for the insurer and the other insurers in the group under certain stress scenarios.
  
  o The application of this suggested best practice should be limited to the insurer’s group, where group is as defined for purposes of reporting under the Risk Management and Own Risk and Solvency Assessment Model Act (i.e., affiliated insurers operating under the same governance and enterprise risk management framework). It is our view that potential risks arising from other insurers in the group will be adequately covered by the HCA’s new annual enterprise risk report.

- Requiring a capital maintenance agreement.
  
  o We believe that it makes more sense to have a direct or indirect parent company within the holding company system provide a capital maintenance agreement than a private equity firm. Again, Athene does not see a reason to limit this best practice to insurers affiliated with private equity firms.

III. Suggested Best Practices That Are Not Feasible, Set an Unfair Standard, or Are Not germane to the Regulatory Process

The proposed practices listed below are not feasible, set an unfair standard, or are otherwise not germane to the regulation of insurer solvency, as further explained in the italicized text appearing below such proposed practices.
• Requiring the acquiring entity to demonstrate that the policyholder is **fundamentally more secure** with the proposed acquisition of control.

  - Under the HCA, the standards that apply to an insurance regulator’s consideration of a Form A appropriately take into account the effect of the proposed transaction on policyholder interests, namely that:
    - the financial stability of the insurer would not be jeopardized;
    - that policyholders will not be prejudiced;
    - that the acquiring party’s future plans are not unfair and unreasonable to policyholders; and
    - that the transaction is not likely to be hazardous or prejudicial to the insurance-buying public.

  We believe that it is inappropriate to apply a higher standard to acquisitions involving private equity firms and that any such standard will create a significant barrier to life insurers’ ability to raise capital.

• Requiring the acquiring entity to provide details on their investment strategy of both the insurer **and the entire group** that can be further examined.

  - We believe that examination of investment strategy should be limited to future plans of the acquiring party with respect to the insurer’s investment strategy.

• Providing information on the investment returns necessary to meet the **demands of the investors** and plans for obtaining such returns either through the insurer or its affiliates and the investment strategies needed to realize those returns.

  - Review and approval of extraordinary dividends to shareholders and transactions with affiliates are already within the purview of state insurance departments. Additionally, the HCA’s Form A process already provides an adequate avenue for disclosure of this information to the extent relevant to the protection of policyholders. Finally, all investors, including public company shareholders, expect a return on their investment.

• Performing targeted examination procedures on **non-affiliated insurers** to whom the direct writer has ceded a material portion of their insurance risk.

  - Although state insurance departments have broad authority to review reinsurance transactions with both affiliates and third parties, we do not believe that they have authority to examine unaffiliated insurers. This suggested practice would improperly expand the scope of insurance regulators’ authority over companies not otherwise subject to their jurisdiction. Further, the implementation of this suggested practice could impede the availability of reinsurance to life insurers.
IV. **Suggested Best Practices that Require Subjective Assessment and Are Best Left to the Insurer’s Management and Board of Directors**

Finally, the proposed practices listed below require a subjective assessment and are best left to the insurer’s management and board of directors, as further explained in the italicized text appearing below such proposed practices.

- Reviewing the entire proposed transaction to determine if the investment strategy and related affiliated agreements are appropriate for the backing of annuity contracts.

- Ensuring that the assets properly match the insurance liabilities.
  
  o These suggested practices require the exercise of subjective judgment and therefore should be left to the insurer’s management and board of directors, who are in the best position to exercise business judgment, as set forth in state investment laws applicable to insurers. We do not believe that state insurance departments are in a position to substitute their own judgment for that of the company’s own management and board of directors.

- Reviewing the investment management and other fees paid, the overall fee structure, and any arrangements with intercompany broker dealers and other affiliated and non-affiliated agreements to ensure that they continue to be fair and reasonable.

  o Across the life insurance industry, investment management is a critical requirement for the success of insurance companies and inures to the benefit of policyholders. Any evaluation of the fairness or reasonableness of an arrangement between an insurer and its investment manager must take into account the kind and quality of services provided and the total value delivered to the insurer and policyholders through such services.

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Thank you in advance for your consideration. We would be pleased to discuss these matters further.

Very truly yours,

James R. Belardi  
Chief Executive Officer  
Athene Holding Ltd.