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

OFFICE OF THE
INVESTOR ADVOCATE

December 22, 2023

Submitted Electronically

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F St NE
Washington DC 20549-1090

RE: Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities
File No. S7-16-23

Dear Ms. Countryman:

As the Commission's Investor Advocate,[1] I appreciate the opportunity to comment on the Commission's proposal to amend the form currently used by most variable annuity separate accounts, Form N-4, to require issuers of registered index-linked annuities ("RILAs") to register offerings on that form as well ("Proposed Rule").[2] Congress tasked the Office of the Investor Advocate with analyzing the potential impact on investors of proposed regulations of the Commission and identifying areas in which investors would benefit from changes in existing regulations or rules.[3] I believe the Proposed Rule's RILA registration form makes it easier for investors to understand RILAs, and I am pleased to support the Proposed Rule. As always, however, more work can be done to help investors make well-informed decisions about RILAs and other complex financial products.

Background.

The Commission does not have a specific registration form for RILAs. Currently, insurance companies register the offerings of RILAs on Forms S-1 or S-3.[4] Forms S-1 and S-3, however, are generally ill-suited to help investors understand what RILAs are and how they

[1] The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner. The views expressed herein are my own and do not reflect those of the Commission, the Commissioners, or other members of the staff.

[2] Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, Securities Act of 1933 ("Securities Act") Release No. 11250, Securities Exchange Act of 1934 ("Exchange Act") Release No. 98624, Investment Company Act of 1940 ("ICA") Release No. 35028 (Sept. 29, 2023), 88 Fed. Reg. 71088 (Oct. 13, 2023), https://www.federalregister.gov/documents/2023/10/13/2023-21986/registration-for-index-linked-annuities-amendments-to-form-n-4-for-index-linked-and-variable.

[3] Exchange Act Section 4(g)(4)(B-D).

[4] *See* General Instruction I of Form S-1 ("This Form shall be used for the registration under the [Securities Act] of securities of all registrants for which no other form is authorized or prescribed").

function. These catch-all forms do not include specific line-item requirements addressing disclosures about RILAs and their complex features, such as how limits on gains operate or the application of contract adjustments. The forms also necessitate disclosure of information that may be less material to a RILA purchaser than information about the RILA's features.[5]

In 2022, Congress enacted Division AA, Title I of the Consolidated Appropriations Act, 2023 ("RILA Act"), directing the Commission to adopt a new registration form for RILAs within 18 months of enactment.[6] The RILA Act requires the Commission to design the form to ensure that a purchaser using the form receives the information necessary to make knowledgeable decisions, taking into account (1) the availability of information; (2) the knowledge and sophistication of that class of purchasers; (3) the complexity of the RILA; and (4) any other factor the Commission determines appropriate.

The RILA Act also requires the Commission to engage in investor testing as part of its rulemaking process and to incorporate the results of the testing in the design of the form, with the goal of ensuring that key information is conveyed in terms that a purchaser can understand. Accordingly, researchers in the Commission's Office of the Investor Advocate ("OIAD") conducted investor testing to fulfill Congress' directive to inform this rulemaking initiative. Specifically, OIAD conducted two rounds of qualitative interviews with a mix of investors across demographic characteristics, locations, and levels of financial literacy who either already owned annuities or had expressed interest in investing in an annuity product. The results of the two rounds of qualitative testing then helped inform a round of quantitative testing with approximately 2,500 participants.

OIAD's full report regarding the results of its investor testing research is available at https://www.sec.gov/files/rila-report-092023.pdf. OIAD's investor testing "successfully identified a range of barriers to investor understanding of RILAs and associated disclosures," but "variations in [RILA disclosures presented to participants] did not result in significant improvements in investor comprehension."[7] Because investor testing did not identify superior disclosures, the Commission decided to largely utilize existing Form N-4 disclosures in the Proposed Rule.[8]

The Proposed Rule's RILA registration form is more helpful for investors than the forms currently utilized for RILA registration.

As noted above, Forms S-1 and S-3 are utilized for the registration of a variety of securities without an alternate home. These forms were not designed with RILAs in mind and, as a result, any modified version of Form N-4 is likely to improve investors' comprehension of RILA features, costs, and risks. As the Commission states in the Proposed Rule, "Form N-4's disclosure requirements are designed to provide investors with key information relating to a variable contract's provisions, benefits, and risks in a concise and reader-friendly presentation, along with targeted information about the insurance company and the offering. Form N-4's disclosure requirements thus focus more on the specific features of variable annuities than on the issuing insurance company."[9]

---

[5] *See* Proposed Rule at note 17 and accompanying text. ("Required information about the registrant includes, for example, management's discussion and analysis of financial condition and results of operations, which requires a narrative discussion of the registrant's financial statements, and disclosure about executive compensation. Domestic registrants also must include financial statements prepared in accordance with U.S. generally accepted accounting principles.")

[6] Pub. L. 117-328; 136 Stat. 4459 (Dec. 29, 2022).

[7] *See* Proposed Rule at notes 48-59 and accompanying text.

[8] *See id.*

[9] *See* Proposed Rule at notes 18-19 and accompanying text.

Investors should also benefit from the Proposed Rule's amendments to Form N-4, which were informed by the areas of confusion identified during OIAD's investor testing.[10] The Proposed Rule also allows RILA issuers to utilize a summary prospectus to satisfy prospectus delivery obligations, with additional information available to investors upon request. In the context of disclosure for other financial products, investors have generally indicated that they prefer this type of layered-disclosure approach.

The Proposed Rule's RILA registration form, while informed by investor testing efforts, was not tested itself. This represents a missed opportunity in the Commission's rulemaking process.

Commission staff in the Division of Investment Management, together with OIAD researchers and others, worked diligently to fulfill the Congressional mandate to design a RILA registration form informed by investor testing. However, the *result* of the Proposed Rule is a RILA registration form that has *not itself* been investor-tested. While the modified Form N-4 is likely to improve investor comprehension related to the features, costs, and risks of RILAs, there is no data to demonstrate that these changes will significantly benefit retail investors. Nor is there any data to indicate whether the registration form effectively conveys the information necessary for investors to make well-informed investment decisions about RILAs.

While I recognize that investor testing opportunities for this rulemaking initiative were limited by the 18-month timeline set forth by Congress, the lack of investor testing of the proposed Form N-4 represents a missed opportunity to evaluate the form's effectiveness among potential and actual purchasers of RILAs. I encourage the Commission to continue to make greater use of investor testing during the rulemaking process.

Innovative approaches to disclosure and/or disclosure alternatives are necessary to ease the disclosure burden placed on investors. This concern is not limited to RILAs.

The Commission's core approach to investor protection—disclosure and informed consent—has remained largely unchanged for decades, even as the innovation and complexity associated with financial products and services has rapidly accelerated. Investors shoulder an unmanageable disclosure burden, and the burden continues to grow. While the Proposed Rule is an improvement over the status quo, it may not help ease investors' disclosure burden.

New and innovative approaches to disclosure, informed by investor testing data, are encouraged to significantly reduce investors' disclosure burden. We know that some financial products are too complex to effectively explain through traditional methods of disclosure. Testing conducted in connection with the Proposed Rule, for example, indicated that investors quizzed about RILAs after reading potential RILA disclosure options performed only slightly better than the results expected from random guessing.[11] Testing was limited, however, to disclosure approaches that fit within the existing regulatory disclosure infrastructure.

The Commission has made commendable efforts to improve the clarity and conciseness of disclosure provided to investors within the existing regulatory disclosure infrastructure.[12]

---

[10] *See* Proposed Rule at section II.B.

[11] *See* Proposed Rule at notes 48-53 and accompanying text ("Across all participants, the average percentage of questions scored correct was 58%, which, while higher than the expected score for people randomly guessing (50%), was lower relative to what might be considered a well-informed purchaser of a RILA product.").

[12] *See, e.g.,* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, ICA Release No. 34731 (Oct. 26, 2022) [87 Fed. Reg. 72758 (Nov. 25, 2022)].

Financial product sponsors and financial professionals are encouraged to utilize plain-English discussions and appealing visuals. These welcome efforts, however, do not confront the core issue: Investors are simply faced with an unmanageable amount of information to digest.

To help investors make truly well-informed decisions, I encourage the Commission to explore more significant departures from the status quo in the realm of disclosure related to RILAs and other complex products. Future initiatives, for example, could investigate interactive approaches to disclosure, technology to assist investors with questions about disclosure, and disclosure provided to investors exactly at the time it is needed to make decisions. Any changes to established disclosure requirements, to the extent reasonably practicable, should be subjected to qualitative and quantitative testing with actual investors.

Conclusion

Despite the reservations discussed above, I support adoption of the Proposed Rule's modified Form N-4 for the registration of RILAs. I encourage other stakeholders to also consider the Proposed Rule against the backdrop of investors' existing disclosure burden and, in general, to provide the Commission with a more fulsome perspective of the limits of disclosure as a remedy to complex investor protection concerns. In my view, greater insight into these issues could lead to better policy outcomes. Should you have any questions, please do not hesitate to contact me or my counsel, John Foley.

Sincerely,

Cristina Martin Firvida
Investor Advocate