



August 11, 2015

Mr. Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Investment Company Reporting Modernization
File No. S7-08-15
Release Nos. 33-9776, 34-75002, IC-31610**

Dear Commissioners:

The Committee of Annuity Insurers¹ (the “Committee”) appreciates the opportunity to submit these comments to the Securities and Exchange Commission (the “Commission” or “SEC”) on its proposals to modernize the reporting and disclosure of information by registered investment companies. Those proposals include a new Form N-PORT, a new Form N-CEN, related amendments to Regulation S-X, and a new Rule 30e-3 under the Investment Company Act of 1940 (the “1940 Act”) to permit electronic, website based transmission of shareholder reports subject to certain conditions. The Committee’s comments focus primarily on proposed new Rule 30e-3, although the Committee also has brief comments regarding new reporting Form N-CEN, and a comment strongly supporting wider applicability of electronic delivery of required documents.

¹ The Committee is a coalition of 29 of the largest and most prominent issuers of annuity contracts; its member companies represent more than 80% of the annuity business in the United States. The Committee was formed in 1982 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of securities, banking, and tax policies regarding annuities. For more than three decades, the Committee has played a prominent role in shaping government and regulatory policies with respect to annuities, working with and advocating before the SEC, CFTC, FINRA, IRS, Treasury, Department of Labor, as well as the NAIC and relevant Congressional committees. A list of the Committee’s member companies is attached as Appendix A.

I. Introduction

Proposed Rule 30e-3 would permit but not require registered investment companies to transmit periodic reports to their shareholders by making the reports accessible on a website and satisfying certain other conditions. The Committee enthusiastically supports the modernization of reporting requirements through reliance on electronic delivery mechanisms and an implied consent procedure, and views proposed Rule 30e-3 as a very positive step forward in this regard.

This modernization of the investment company shareholder reporting requirement is certainly not premature; if anything, it is long overdue. Two decades ago, in its seminal 1995 interpretive release “Use of Electronic Media for Delivery Purposes,”² the Commission expressed its favorable views on electronic delivery of documents such as prospectuses and shareholder reports. There the Commission explicitly recognized that “none of the federal securities statutes exclusively require paper delivery,”³ and the Commission also expressed its appreciation for “the promise of electronic distribution of information in enhancing investors’ ability to access, research, and analyze information, and in facilitating the provision of information by issuers.”⁴ In addition, the Commission noted its belief that “given the numerous benefits of electronic distribution . . . in many respects it may be more useful to investors than paper.”⁵ That was twenty years ago; since then, the use of electronic media by investors and consumers has increased exponentially.⁶ For example, the total percentage of households owning mutual funds that have Internet access increased from 68% in 2000 to 94% in 2014.⁷ The very widespread Internet access holds true even for those demographic groups that may generally be assumed to have relatively less Internet access than most. The ICI study found the following with respect to Internet access of households owning mutual funds in mid-2014: (1) for heads of household age 65 or older, 86% have Internet access; (2) for those with an education level of high school diploma or less, 84% have access; and (3) for household incomes of less

² *Use of Electronic Media for Delivery Purposes*, Release Nos. 33-7233, 34-36345, IC- 21399 (Oct. 6, 1995), 60 Fed. Reg. 53458 (Oct. 13, 1995).

³ *Id.* at 53459.

⁴ *Id.* at 53458.

⁵ *Id.*

⁶ Indeed, ten years ago, in adopting a limited form of “access equals delivery” in Rule 172 under the Securities Act of 1933, the Commission stated: “Internet usage in the United States has grown considerably since 2000, when we published our most recent interpretive guidance on the use of electronic media in securities offerings, including with regard to prospectus delivery by electronic means. For example, recent data indicates that 75% of Americans have access to the Internet in their homes, and that those numbers are increasing steadily among all age groups.” *Securities Offering Reform*, SEC Release No. 33-8591; 34-52056; IC-26993 (July 19, 2005) at n. 559.

⁷ See *2015 Investment Company Fact Book, 55th edition*, Investment Company Institute (“ICI”), at 129, available at https://www.ici.org/pdf/2015_factbook.pdf. 2000 is the first year for which the ICI collected such data.

than \$50,000, 84% have access.⁸ It is clearly time for the Commission's rules on transmission of mutual fund shareholder reports to recognize, and to take advantage of and adapt to, society's heavy reliance on electronic media. The time is ripe for adoption of Rule 30e-3.

The Commission clearly is not the only Federal agency that is, or would be, permitting required disclosures to be provided by online posting, instead of paper delivery. For example, the Consumer Financial Protection Bureau (CFPB) recently adopted a rule that enables financial institutions to post legally required privacy notices online instead of distributing an annual paper copy.⁹ The Gramm-Leach-Bliley Act¹⁰ and Regulation P mandate that financial institutions provide their customers with initial and annual notices regarding their privacy policies. Under the new CFPB rule, if an institution qualifies for and elects to rely on the online disclosure method, it will have to inform customers annually about the availability of the disclosures.¹¹ Customers can "opt out" of the online disclosure method by telephone; the CFPB rule provides that for those customers with limited or no internet access, financial institutions will have to mail annual notices to customers who request them by phone. Proposed Rule 30e-3 is very similar to the CFPB rule in these regards. Both rules allow a required disclosure document to be delivered electronically, with online posting the default option, and with regular (annual or semi-annual) notices allowing customers to opt out and have paper delivery by a simple phone call.

The advantages and benefits of website transmission of mutual fund shareholder reports should be available not only to direct investors in mutual funds, but also to those who invest in funds indirectly, through intermediaries. Owners of variable annuity contracts and variable life insurance policies (together, "variable insurance products") are one such class of investor. However, in order for investors in variable insurance products to realize the benefits of proposed Rule 30e-3, certain important revisions and clarifications are necessary, as discussed below. To effectively serve the entire investor population, the use of electronic delivery and implied consent should apply both in connection with "retail" or "public" funds and with funds underlying variable insurance products offered to retail investors ("VIP Funds").¹² The release

⁸ *Id.*

⁹ See *Amendment to the Annual Privacy Notice Requirement Under The Gramm-Leach-Bliley Act (Regulation P)*, 79 Fed. Reg. 64057 (Oct. 28, 2014).

¹⁰ 15 U.S.C. §6801 *et seq.*

¹¹ This annual notice of the availability of the privacy notice need not be a separate statement. The CFPB rule specifically permits the notice to be included on an account statement, coupon book, or other notice or disclosure (12 CFR §1016.9(c)(2)(ii)(A)). Thus, the new CFPB rule allows institutions to include the required annual notice on a regular customer communication, such as a monthly billing statement for a credit card.

¹² Due to restrictions in the Internal Revenue Code, mutual funds that are funding vehicles for variable insurance products offered to retail investors cannot be available directly to the public (that is, they cannot be publicly available outside of variable insurance products and tax-qualified retirement plans). See Section 817(h) of the Internal Revenue Code of 1986, as amended, and regulations thereunder.

proposing Rule 30e-3¹³ addresses applicability of the proposal to public funds,¹⁴ but the Proposing Release does not discuss applicability of Rule 30e-3 to VIP funds or insurance company separate accounts.

As proposed, Rule 30e-3 does not accommodate, and is not workable for, VIP funds or insurance company separate accounts. The implied consent and certain other requirements in Proposed Rule 30e-3 need to be refined or adjusted in order to be practical and workable in the context of variable insurance products. Certain of the requirements as proposed would be overly burdensome for both contract owners¹⁵ and issuers of variable insurance products. The refinements that the Committee is recommending are fully consistent with providing investors in variable insurance products with clear and timely notice of the availability of shareholder reports electronically, and with clear and easy means of requesting paper delivery of the documents. Accordingly, as explained below, we urge that revisions be made to the proposed rule so that the benefits of the innovative implied consent process and electronic delivery can be enjoyed by investors in variable insurance products.

In addition, the Committee strongly supports permitting electronic, Internet based delivery options for other documents including summary and statutory prospectuses for both public mutual funds and VIP funds, and also for variable insurance product separate accounts.

II. Current Rules and Practices for Delivery of VIP Fund Shareholder Reports

Almost all SEC registered variable insurance products are offered through two-tier structures, where an insurance company separate account¹⁶ (the top tier) invests exclusively in underlying VIP funds (the bottom tier). The insurance company separate account is registered under the 1940 Act as a unit investment trust (“UIT”), and the VIP fund generally is registered as

¹³ *Investment Company Reporting Modernization*, Release Nos. 33-9776, 34-75002, IC-31610 (May 20, 2015), 80 Fed. Reg. 33590 (June 12, 2015) (the “Proposing Release”).

¹⁴ The term “public funds” is used herein to refer to registered, open-end management investment companies that sell their shares to the public (*i.e.*, mutual funds), as distinguished from “VIP funds,” registered, open-end management investment companies that sell their shares exclusively to insurance companies (for funding variable insurance products) and retirement plans. Public funds sometimes have been referred to as “retail” funds, but that term is not used to avoid confusion with the definition of “retail” money market fund in the recent amendments to Rule 2a-7 under the 1940 Act (*see* paragraph (a)(25) of Rule 2a-7).

¹⁵ “Contract owner” or “owner” is used herein to refer to the owners of variable annuity contracts or variable life insurance policies.

¹⁶ “Separate account” is defined in Section 2(a) (37) of the 1940 Act.

an open-end management investment company. The insurance company is the sponsor, or depositor, of the separate account.¹⁷

Rule 30e-1 under the 1940 Act requires that registered management investment companies (including VIP funds as well as public funds) transmit to each “stockholder of record,” at least semi-annually, a report containing certain specified information (generally referred to as shareholder reports). These shareholder reports must be transmitted within 60 days of the close of the period for which the report is being made. In the context of variable insurance products, Rule 30e-2 requires that a registered UIT separate account transmit, to its contract owners, the shareholder reports of the applicable underlying VIP fund, and the separate account (*i.e.*, the insurance company depositor) must transmit the shareholder report to its contract owners “within the period allowed the management company” by Rule 30e-1 (*i.e.*, within the same 60 day period that the VIP fund has to transmit the report to the insurance company).

Currently, unless the contract owner has affirmatively consented to electronic delivery, the insurance company fulfills the requirements of Rule 30e-2 by delivering a paper copy of the applicable VIP fund semi-annual and annual shareholder reports to contract owners. A typical SEC registered variable insurance product offers a large number of underlying VIP fund portfolios as investment options; several dozen is very common, and 80 or more is not unusual.¹⁸ Accordingly, twice each year, the insurer identifies the portfolios in which each particular contract owner’s account value is invested, prints written copies of the applicable shareholder reports received from the VIP fund, and mails the shareholder reports for those particular portfolios to the contract owner.¹⁹ In addition, fund annual and semi-annual shareholder reports generally are posted on the fund’s website and may also be posted on the insurer’s website.

As indicated above, a single purchase of one variable annuity contract generally includes the opportunity to allocate premium payments among dozens of underlying VIP fund portfolios, and to make tax-free transfers and re-allocate cash values among the portfolios. The result is that for a single investment in one variable annuity contract, the contract owner could receive from several to several dozen fund shareholder reports twice each year.

It is important to recognize that in this two-tier VIP fund structure, the fund’s “stockholder of record” (the term used in Rule 30e-1) is the insurance company, not the variable

¹⁷ See General Instruction D to Form N-4, defining “Depositor.” The insurance company is the legal owner of the VIP fund shares held in its separate accounts.

¹⁸The insurance company separate account typically is composed of numerous subaccounts (sometimes called investment divisions), each of which corresponds to and invests in a particular VIP fund portfolio. Generally, a particular variable insurance product offers portfolios from numerous different fund groups.

¹⁹In some cases, the insurer may transmit the shareholder reports for additional portfolios (in which the contract owner is not invested), depending on how the fund groups prepare their reports and the administrative capabilities of the insurer or its administrator.

insurance product contract owners. Rule 26a-2 under the 1940 Act explicitly recognizes that the insurance company sponsor is the legal owner of the shares of the VIP fund, and that although the separate account is a registered unit investment trust, nevertheless it is the insurance company that holds the VIP fund shares as the assets of the separate account; the insurance company does not hold those shares in trust for contract owners, whether pursuant to a trust indenture or other such instrument.²⁰ Accordingly, the VIP fund frequently delivers just one electronic version of its shareholder report to the insurance company pursuant to Rule 30e-1, and the insurance company then has the tasks of printing the reports, assembling the reports applicable to each particular contract owner, and mailing those reports to the contract owner pursuant to Rule 30e-2. The VIP fund generally knows only that the insurance company owns a certain number of its fund shares; the VIP fund (and its transfer agent) generally does not know who the individual contract owners are, what their addresses are, or how many of its shares are allocable to each contract owner.²¹

As discussed below in more detail, proposed Rule 30e-3 simply does not recognize, acknowledge, or accommodate this two-tier VIP fund structure. For the proposal to be workable and usable in the context of VIP funds, a number of significant revisions should be made.

III. Proposed Rule 30e-3 and Its Barriers to Use by VIP Funds

There are three principal components to relying on Proposed Rule 30e-3's implied consent option for electronic transmission of shareholder reports as an alternative to delivery of paper shareholder reports: (1) delivery of the Initial Statement (paragraph (c) of Rule 30e-3);²² (2) delivery of the semi-annual Notices (paragraph (d)); and (3) website posting of the shareholder reports and other fund documents (paragraph (b)).²³

²⁰ In adopting Rule 26a-2 under the 1940 Act, the Commission recognized that state insurance laws generally "require that the insurance company own and hold the assets of the separate account and prohibit the insurance company from holding those assets in trust." Release No. IC-13706, p. 6 (footnote omitted) (Jan. 6, 1984). Rule 26a-2 accommodates these state law requirements regarding ownership and custody of separate account assets by providing exemptions from conflicting requirements of the 1940 Act.

²¹ Insurance companies generally do not share individual contract owner information with the VIP funds because it is proprietary customer information, including for purposes of soliciting pass-through voting instructions from contract owners when a VIP fund holds a shareholder vote.

²² In order for website availability to be considered transmission of shareholder reports under proposed Rule 30e-3, paragraph (c) of the proposed rule would require either (i) actual prior shareholder consent ('affirmative' consent) to website transmission, or (ii) implied consent through compliance with the Initial Statement conditions. To rely on the rule, paragraph (d) would require compliance with the semi-annual Notice conditions both where there was affirmative shareholder consent and where there is reliance on the Initial Statement process for implied consent.

²³ Other requirements include prompt delivery of paper reports upon request or opt-out, pursuant to paragraph (f) of proposed Rule 30e-3.

A. Initial Statements. The fundamental advance in proposed Rule 30e-3 is the reliance on implied consent, based on the “opt out” procedures built in to the Initial Statement and semi-annual Notice requirements.²⁴ Under Rule 30e-3 as proposed, the Initial Statement for each fund must be sent separately from other communications, cannot be incorporated into or combined with any other document, and must contain a toll-free number and be accompanied by a postage paid, pre-addressed reply form to opt out of the website delivery and request paper reports.

In the context of variable insurance products and underlying VIP funds, these Initial Statement conditions mean that each underlying VIP fund in which the contract owner invests would need to send a separate Initial Statement to the contract owner, using a separate envelope, and containing a separate reply form (and toll-free number). A typical variable annuity contract owner would receive a dozen or more individual, separately mailed Initial Statements in individual envelopes with a prominent legend on each envelope, containing individual reply forms that identify the individual contract owner. On an on-going basis, additional Initial Statements would be triggered by any new premium or cash value reallocations. Given the typically large menu of available underlying VIP funds, frequently in excess of 60 funds, to which premiums and cash values can be allocated and reallocated,²⁵ this could lead to many additional Initial Statements being received by the investor over the life of the variable insurance product.²⁶ Considering that the contract owner has purchased only one variable insurance product, issued by only one insurance company, the requirement for numerous and separate Initial Statements for each fund would certainly be confusing and overwhelming for the contract owners. It would also be such an administrative burden and expense for the insurance company and the VIP funds that the Rule 30e-3 option would not be practical for variable insurance products and their VIP funds.

B. Semi-Annual Notices. The Notices that would be required present the same problems as the Initial Statements, but on a much larger scale. Similar to the requirements applicable to the Initial Statements, the semi-annual Notices for each fund must be sent separately from other communications, cannot be incorporated into or combined with any other document, and must contain a toll-free number and be accompanied by a postage paid, pre-addressed reply form to opt out of the website delivery and request paper reports. In addition, the Notices must include a website address where the investor can access the shareholder report.

²⁴Of course, proposed Rule 30e-3 allows for ‘affirmative’ consent to electronic delivery instead of implied consent. The Initial Statements and Notices, discussed below, should be permitted to include provisions for contract owners to give affirmative consent to website or other electronic delivery of shareholder reports and other documents.

²⁵ Within the variable annuity (or variable life insurance) product, cash value can be transferred between underlying VIP funds without tax consequences and generally without charge.

²⁶ Everything said herein regarding variable annuity contracts, and the recommendations made herein, apply equally to variable life insurance policies.

In the context of variable insurance products and underlying VIP funds, these Notice conditions, as proposed, mean that contract owners would receive two separate Notices each year *from each underlying VIP fund* in which the owner invests. Accordingly, contract owners would receive a potentially large number of separate Notices, with separate reply forms and separate toll-free numbers and websites per year on a continuous basis. Receiving this number of letters will be overwhelming and confusing for contract owners as well as an administrative burden for the industry. The receipt of numerous such Notices on a continuous basis would certainly obscure the message and defeat the purpose of putting investors on notice that the shareholder reports are available and accessible on the designated website. The Notices would just become so much mailbox clutter.

C. *VIP Funds Cannot Send the Initial Statements and Notices.* In the two-tiered investment company structure of variable insurance products, as noted above, the fund shares are owned by the insurance company and the only information that the underlying VIP funds have regarding their “stockholders” is the identity of the insurance companies. The underlying VIP funds have no particularized information about the individuals who purchase the variable insurance product. In this context, the underlying VIP funds cannot send Initial Statements or semi-annual Notices to contract owners because they do not have the necessary information.

D. *Overly Confusing, Impractical Opt-Out Process.* As proposed, Rule 30e-3 would require separate reply forms and separate toll-free telephone numbers for each fund, since each fund would prepare and send their own Initial Statements and Notices. The barrage of separate Initial Statements, Notices and reply forms for each underlying VIP fund portfolio would be very burdensome for insurers to send and track and for contract owners to receive, read and track – and likely would be ineffective and highly confusing. For a contract owner who has purchased one variable insurance product from just one insurance company, having separate reply forms in separate envelopes and separate toll-free telephone numbers for each of the numerous VIP fund investment portfolios in the contract would not be an effective or practical opt-out method for requesting paper delivery of shareholder reports.

IV. Committee Recommendations to Modify Proposed Rule 30e-3.

For the reasons stated above, the Committee recommends that the Initial Statement and Notice requirements be revised and streamlined and communications be simplified so that they are practical and workable for VIP funds, in the variable insurance product context. These recommended revisions would not change the basic components of Rule 30e-3 as proposed, and would align Rule 30e-3 more closely with other Commission rules (such as those regarding summary fund prospectuses, “householding” of certain disclosure documents, and Internet delivery of proxy materials).²⁷

The following recommendations are necessary and appropriate given that a contract owner’s direct relationship is with the insurance company. Rule 30e-3 should recognize and accommodate the insurance company’s role as both the issuer of the security, the variable insurance product, and the intermediary between the contract owner and the underlying VIP funds.²⁸ These clarifications or revisions of proposed Rule 30e-3 are needed in order for the website transmission option to be viable and practical for variable insurance products, and they should not compromise the Commission’s goals of ensuring that investors have full and clear notice of the website delivery, access to the shareholder reports and other fund documents, and an easy and effective means of opting out and receiving paper shareholder reports.

A. *Single Consolidated Initial Statement for Variable Insurance Products.* The Proposing Release does not discuss applicability of the Initial Statement condition to the two-tier structure of registered variable insurance products, but in this context it appears to require (1) that *the fund* send the Initial Statement, (2) that a *separate statement* be sent from each fund, (3) that the contract owner *reply separately* to each fund, (4) that there be a *separate postage paid, pre-addressed reply envelope* and form for each fund, (5) that the contract owner’s *opt out apply separately* to each fund, and (6) that the Initial Statement *cannot be accompanied by a prospectus or SAI*²⁹ for the variable insurance product. Stated in this way, the onerous nature of the requirements is obvious and should be remedied.

Instead, we request that insurance companies be permitted to send to contract owners one consolidated Initial Statement per variable insurance product, informing the owner about all of the underlying VIP funds for which website delivery of the fund shareholder reports is available and explaining that the insurer will no longer mail paper copies of the funds’ reports unless the

²⁷ See Rule 498 under the Securities Act of 1933 (summary fund prospectuses), Rule 14a-3 under the Securities Exchange Act of 1934 (the “1934 Act”) (householding rules), and Rule 14a-16 under the 1934 Act (Internet availability of proxy material).

²⁸ The Committee’s comments herein focus on registered variable insurance products and the availability and usefulness of Rule 30e-3 to insurance company issuers of variable insurance products. These comments, however, may also be applicable to other types of intermediaries.

²⁹ “SAI” means Statement of Additional Information (as defined in paragraph (h) (4) of proposed Rule 30e-3).

contract owner notifies the insurer that he or she wishes to receive paper reports. The contract owners should be allowed to either call or send a single, consolidated opt-out only to the insurer, and postage paid reply envelopes should not be required.

1. **Insurance Company Initial Statement.** The insurance company should be permitted to send the Initial Statement, rather than requiring that the statement be sent by the underlying VIP funds. The insurer has the contract owner information; moreover, the contract owner's relationship is with the insurer, not directly with the underlying VIP funds.
2. **Single, Consolidated Insurance Product Initial Statement.** The insurance company should be permitted to send *a single* Initial Statement for the variable insurance product, covering all of the underlying VIP fund options in the insurance product. The contract owner purchased a single insurance product, so it simply makes no sense, and would be extremely burdensome, for the insurance company to send a separate Initial Statement to contract owners for each underlying investment option in the variable insurance product.
3. **Consolidated Reply Option to Insurance Company.** The single Initial Statement should provide the contract owner with the option to *reply just once*, to the insurance company, to request paper reports from all of the applicable VIP funds. A contract owner should not have the burden of replying separately for each fund. The various underlying VIP funds will have no record of or information regarding particular contract owners, so as a practical matter any requests for paper shareholder reports must go to the insurance company, because only the insurance company can identify the contract owner.³⁰
4. **Alternative Methods of Reply.** Insurance companies should be permitted the option of offering additional means of communication for opting out and requesting paper delivery of shareholder reports. In addition to phone and U.S. mail, these alternative means should include e-mail, fax, and website. Many contract owners and other investors communicate with public funds or insurance companies using these methods, not just by phone and mail. Insurance companies should be allowed to offer and rely on such means of communication as a convenience to investors.
5. **No Required Postage Paid, Pre-Addressed Reply Envelope.** Sending postage paid, pre-addressed reply forms and envelopes for owners to use to

³⁰ We note that pursuant to paragraph (f) of proposed Rule 30e-3, an intermediary can fulfill requests for paper versions of the shareholder reports.

mail back an opt-out election is not only expensive and outdated, but also unlikely to yield much contract owner response.³¹ Rule 30e-3 should permit the Initial Statement to provide either one toll-free number *or* one postage paid, pre-addressed reply form³² (and other means; see above); a postage paid, pre-addressed reply form and envelope should not be required.

6. **Universal Opt-Out.** If the owner does not accept website delivery for the available shareholder reports, the procedure for opting out should be that contract owner will either telephone (toll-free) the insurance company or otherwise contact the insurer (via fax, e-mail or website) to continue to receive fund shareholder reports by US Mail. The contract owner's opt-out should apply on a contract-wide basis, to the single and whole insurance product, and not separately for each sub-account or available fund.
7. **Accompanying Documents.** The Initial Statement must contain a prominent legend regarding the opt-out option, and this prominent legend may also be required on the envelope. With this in mind, the Committee recommends that:

(A) The Initial Statement should be permitted to be accompanied by the *statutory prospectus and SAI for the variable insurance product* or any update to that prospectus or SAI, in addition to VIP fund's statutory and summary prospectus, SAIs and proxy notice materials. This would be similar to the relief provided in Rule 498 with respect to the "binding" and "greater prominence" requirements for fund summary prospectuses.³³

(B) In addition, Rule 30e-3 should permit the variable annuity *contract* itself (or the variable life insurance *policy*) to accompany the Initial Statement. Unlike an investment in public mutual funds, an investor in a variable insurance product receives an actual annuity contract or life insurance policy (*i.e.*, the security), a form of which has been filed with state insurance

³¹ Moreover, even if a single consolidated Initial Statement is allowed as recommended above, as currently proposed Rule 30e-3 would require a separate postage paid, self-addressed reply form for each underlying VIP fund to be included with the Initial Statement. This would be extremely burdensome and may not be feasible for many insurers. In any event, there are significant problems with contract owners receiving multiple reply forms and return envelopes with respect to their purchase of a single insurance product (all of which would be addressed to the insurance company). See the recommendation above for a consolidated reply option.

³² Rule 14a-3(e) (1) (ii)(B)(2)(iii) requires either a toll-free number *or* a postage paid, pre-addressed reply form (regarding Internet availability of proxy materials).

³³ See paragraphs (c) (2) and (f) (2) of Rule 498 under the Securities Act of 1933. See also paragraph (f) (2) (iii) of Rule 14a-16 under the 1934 Act (materials that can accompany a Notice of Internet Availability of Proxy Materials).

regulators,³⁴ and this contract or policy must be delivered to the contract owner.

(C) Finally, other important account materials, such as new contract owner welcome kits and confirmation statements and account statements,³⁵ should also be permitted.³⁶

8. **Carry Through of Implied Consent.** After an insurance company sends a consolidated Initial Statement to a contract owner, the owner's implied consent to website delivery should apply to any new underlying VIP funds that the contract owner elects within the variable insurance product. Nothing would be gained by requiring that contract owners receive multiple Initial Statements from the insurance company, all pertaining to the same variable insurance product, over a period that could be many years. The semi-annual Notice mailings (see below) would alert contract owners on a continuous, on-going basis of the website availability of the shareholder reports and of their option to elect to receive paper delivery.

B. *Single Semi-Annual Notices.* The problems and difficulties with applying proposed Rule 30e-3's Notice requirements to variable insurance products are largely the same as with the Initial Statement requirements. Generally the same requirements and flexibility should apply to Notices as to Initial Statements, discussed above (generally, the explanations and arguments made above are not repeated here).

Insurers, rather than the underlying VIP funds, should be permitted to send to owners one Notice per variable insurance product twice a year informing each contract owner about the underlying VIP funds for which the shareholder reports are available on the designated website. The Notice would inform each owner about the underlying VIP funds for which Internet delivery

³⁴ A form of the variable annuity contract or variable life insurance policy is filed as an exhibit to the SEC registration statement. See Item 24(b)(4) of Form N-4 and Item 26(d) of Form N-6.

³⁵ As noted in footnote 11 above, in very similar circumstances the new CFPB rule that allows electronic delivery of privacy notices explicitly allows the annual notices of the electronic availability to not only be accompanied by other documents, but actually to be included *on* other documents. Under the CFPB rule, the annual notice of the availability of the privacy notice need not be a separate statement. The CFPB rule requires that the annual notice be "in a clear and conspicuous manner," but specifically permits the notice to be included "on an account statement, coupon book, or a notice or disclosure you are required or expressly and specifically permitted to issue to the customer under any other provision of law" (12 CFR §1016.9(c)(2)(ii)(A)). Thus, the new CFPB rule allows institutions to include the required annual notice on a regular customer communication, such as a monthly billing statement for a credit card. The CFPB rule is an example of achieving a regulatory goal of ensuring that consumers receive actual and clear disclosure of the availability of certain information online, while providing flexibility that is appropriate in light of the practicalities of the particular circumstances and advances in technology.

³⁶ As noted in footnote 24 above, the Initial Statement also should be permitted to provide for an affirmative consent to electronic delivery.

of the fund reports is available and encourage contract owners to access and review the report, and explain how the contract owner would notify the insurer (or other party) that he or she wishes to receive paper copies of the reports. The Notices would provide the website addresses, which lead directly to each VIP fund's report available on the Internet, as well as the portfolio holdings of that fund. The website address may be a central site with prominent links to each document. Specifically, the Committee recommends the following regarding applying the Notice requirement to variable insurance products

1. **Insurance Company Notice.** The insurance company should be permitted to send the Notices, rather than the funds. As explained above, the insurer has the contract owner information, and the contract owner's relationship is with the insurer, not directly with the underlying VIP funds.
2. **Single, Consolidated Insurance Product Notice.** The insurance company should be permitted to send a single semi-annual Notice for the funds in the variable insurance product for which website delivery of the fund's report is available.³⁷ The contract owner purchased a single annuity (or life insurance) contract. It simply makes no sense for the insurer to send a separate Notice for each investment option in the variable insurance product.
3. **Consolidated Reply Option.** The Notices should provide the contract owner with the (optional) means to reply just once, to the insurance company, to request paper reports. The various underlying VIP funds will have no record of or information regarding particular contract owners, so as a practical matter any requests for paper shareholder reports must go to the insurance company, because only the insurance company can identify the contract owner.³⁸
4. **Alternative Methods of Reply.** Insurance companies should be permitted (but not required) the option of offering additional means of communication for opting out and requesting paper delivery of shareholder reports. In addition to phone and U.S. mail, these alternative, optional means should include e-mail, fax, and website.
5. **No Required Postage Paid, Pre-Addressed Reply Envelope.** For the reasons discussed above, postage-prepaid, pre-addressed reply forms and envelopes should not be required.

³⁷ In almost all cases, VIP funds are all on a calendar year (December 31st) fiscal year. Insurance companies are required to be on a calendar year fiscal year; separate accounts are a part of the insurance company, hence they are on a calendar year fiscal year. To facilitate and coordinate various operational and reporting requirements, most VIP funds have adopted a calendar year fiscal year.

³⁸ We note that pursuant to paragraph (f) of proposed Rule 30e-3, a financial intermediary can fulfill requests for paper copies of shareholder reports.

6. **Universal Opt-Out.** If the owner does not accept website delivery for the available fund reports, the owner will either call the insurer or contact the insurer (via fax, e-mail or website) to continue to receive the fund reports by US Mail. The owner's opt-out should apply on a contract-wide basis, to the single and whole insurance product and not separately for each sub-account.
7. **Accompanying Documents.** The Notice should be permitted to be accompanied by the statutory prospectus and SAI for the variable insurance product or any update to that prospectus or SAI, in addition to fund statutory and summary prospectus, SAIs and proxy notice materials. This would be similar to the relief provided in Rule 498 with respect to the "binding" and "greater prominence" requirements for fund summary prospectuses. Other important account documents, such as confirmation statements and account statements, should also be permitted.
8. **Filing of Notices.** The proposed rule requires that the Fund file a form of the Notice within 10 days after it is sent to shareholders. Instead, the insurance company should be permitted to file the form of Notice with the SEC, rather than requiring the underlying VIP fund to file the Notice.

C. Website Availability of Fund Documents. The insurer's Notices should be permitted to specify either a single website or different websites for different funds or fund groups, for availability of fund reports to shareholders and other fund materials required to be posted. The insurance industry's experience with fund summary prospectuses (Rule 498 under the Securities Act of 1933) has shown that as a practical matter, in most cases it is only feasible for the required fund documents to be posted on the applicable fund's website. Just as with Initial Statements and semi-annual Notices, Rule 30e-3 should provide a reasonable degree of flexibility to accommodate different variable insurance product and VIP fund arrangements.

V. Additional Recommendations for Internet Delivery Options

The Commission requested comment on whether the Commission should consider options for permitting similar electronic delivery of summary or statutory prospectuses.³⁹ The Committee strongly recommends that the Commission permit website or other electronic delivery of such other documents.

For variable insurance products, an updated statutory prospectus generally is delivered to each contract owner annually.⁴⁰ In addition, for each underlying VIP fund that the contract's cash value is allocated to, an annual summary or statutory "evergreen" prospectus for that fund

³⁹ Proposing Release at p. 179.

⁴⁰ This is commonly known as the "evergreen" prospectus delivery requirement. It keeps the financial statements and other data current pursuant to the sixteen month requirement in section 10(a) (3) of the Securities Act of 1933.

generally is also delivered to the contract owner (in addition to the fund's annual and semi-annual shareholder reports). Permitting electronic delivery of these documents would not only save the very substantial expenses of printing and mailing (ultimately born directly or indirectly by the contract owners), but it would also result in more efficient, practical and useful disclosure of appropriate information.⁴¹

The Committee notes that as part of the overall Securities Offering Reforms adopted ten years ago, the Commission adopted a limited form of "access equals delivery" reliance on the Internet in Rule 172 under the Securities Act of 1933.⁴² The Commission did not make Securities Act Rule 172 available to registered investment companies, stating that they "are subject to a separate framework governing communications with investors" and that it would be more appropriate to consider any changes to investment company prospectus delivery requirements in the context of a broader reconsideration of that (Investment Company Act) framework. The time for that broader reconsideration of delivery requirements for Investment Company Act documents in general, and variable insurance products in particular, has long since arrived.

Accordingly, the Committee recommends that electronic delivery options be developed for other variable insurance product and VIP fund documents. Such options should include permitting (1) evergreen variable annuity and variable life insurance statutory prospectuses, (2) other annual updates of insurance product prospectuses,⁴³ and (3) VIP fund statutory and summary prospectuses, to be delivered electronically utilizing implied consent procedures similar to those in final Rule 30e-3. In addition, the Committee recommends that the Commission consider amending Rule 172 so that it is also available to variable insurance products and other registered investment companies. The Committee would be pleased to work with the Commission and its staff in connection with the development of such electronic reporting and disclosure options.

⁴¹ The Committee has proposed that a summary prospectus be permitted for variable annuities, and that an annual update document be permitted in lieu of an annual statutory evergreen prospectus. The benefits of electronic delivery could apply to these documents as well as to the current delivery of statutory evergreen prospectuses. Accordingly, the adoption of Rule 30e-3 (with the recommendations made herein to improve proposed Rule 30e-3) is fully consistent with the proposals for a summary variable annuity prospectus and an annual update document. The Committee urges the Commission to proceed expeditiously with proposing the variable annuity summary prospectus and annual update document while also adopting Rule 30e-3 with the refinements recommended herein.

⁴² See *Securities Offering Reform*, SEC Release No. 33-8591; 34-52056; IC-26993 (July 19, 2005) (see footnote 6, *supra*).

⁴³ Certain insurance products that are not variable products (and therefore not eligible for registration on Forms N-3, N-4 or N-6) are nevertheless registered as securities under the Securities Act of 1933, such as certain annuities with market value adjustments (modified guaranteed annuities) that are registered on Forms S-1 or S-3. The benefits of electronic delivery should be extended to these types of products as well.

VI. **Form N-CEN Filing Requirements**

New Form N-CEN would replace current Form N-SAR. Along with other types of investment companies, insurance company separate accounts registered under the 1940 Act as UITs or as management investment companies would be required to file Form N-CEN annually, within 60 days after the close of the investment company's fiscal year. The proposed compliance date for Form N-CEN is 18 months after the effective date.

A. Form N-CEN Filing Deadline. As noted above, all insurance company separate accounts are on a calendar year fiscal year. Many insurance companies have numerous separate accounts registered under the 1940 Act, and unlike public funds, they do not have the option of spreading the accounts' fiscal years throughout the calendar year. The insurance company personnel who would be responsible for preparing and filing the Form N-CEN reports must have the reports for all of the insurance company's registered separate accounts (and usually affiliated insurance companies' separate accounts as well) prepared and filed at the same time. And this usually coincides with other SEC disclosure and filing requirements for registered insurance products, such as preparing the evergreen prospectuses noted above and Form 24f-2 filings. Since many of these SEC requirements fall on the same insurance company personnel, some additional time to prepare and file the new Form N-CENs is appropriate. The Committee therefore recommends a deadline for Form N-CEN of 75 days after the end of the fiscal year.

B. Form N-CEN Compliance Date. Compiling the census information and data required by a new Form N-CEN, in the correct format, will likely require system development and operational updates, and coordination among various company divisions and among various systems. This is particularly true since Form N-CEN requires new reporting data, such as details on Section 1035 exchanges. Accordingly, the Committee recommends a compliance date for the new Form N-CEN reporting of 30 months after the effective date.

VII. **Conclusion**

The Committee, as noted above, strongly supports the Commission's efforts to modernize reporting and disclosure requirements and to facilitate the use of electronic communications. While the Committee recommends a number of changes to proposed Rule 30e-3, they are refinements that are fully consistent with, and indeed advance, the goals of providing investors with full, clear, and timely initial and on-going periodic notices of the availability of the shareholder reports on a website, easy access to those reports, and a simple and effective means of requesting delivery of paper copies. With the refinements recommended above, owners of variable insurance products, who have a financial interest in the VIP funds that they have selected, can realize the same advantages that Rule 30e-3, the Internet and other modern advances would make available to investors in public funds.

Mr. Brent Fields, Secretary
U.S. Securities and Exchange Commission
August 11, 2015
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If there are any questions regarding these comments or more generally regarding modernizing delivery requirements for investors in variable insurance products, please do not hesitate to contact Stephen E. Roth at 202.383.0158 (steve.roth@sutherland.com), Frederick R. Bellamy at 202.383.0126 (fred.bellamy@sutherland.com), or Mary Jane Wilson-Bilik at 202.383.0126 (MJ.Wilson-Bilik@sutherland.com).

Sincerely,

THE COMMITTEE OF ANNUITY INSURERS

By: Sutherland Asbill & Brennan LLP

A handwritten signature in cursive script that reads "Stephen E. Roth". The signature is written in black ink and is positioned above a horizontal line.

Stephen E. Roth
Frederick R. Bellamy
Mary Jane Wilson-Bilik

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AIG Life & Retirement
Allianz Life
Allstate Financial
Ameriprise Financial
Athene USA
AXA Equitable Life Insurance Company
Fidelity Investments Life Insurance Company
Genworth Financial
Global Atlantic Life and Annuity Companies
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Symetra Financial Corporation
Transamerica
TIAA-CREF
USAA Life Insurance Company
Voya Financial, Inc.