File No: S7-23-18

December 4, 2018

Commissioners:

We are a working group comprised of 8 attorneys from 6 insurance companies that offer variable products. This Variable Insurance Products Working Group meets quarterly to discuss the issues of the day. Please accept our input on this important rulemaking. These views do not necessarily represent the view of our employers. We support the summary prospectus initiative and believe the changes are largely appropriate and benefit investors.

We also believe that variable products provide valuable protections to investors and it is unfortunate that just a few sales people and insurance companies take certain actions to hurt their investors. The SEC should take swift action to prevent or punish bad actors in this space.

We have the following questions and comments on the proposal:

1. Consider whether you need to use the name of the separate account on the cover page of the summary prospectuses and whether the separate account needs to be the entity under which variable insurance contracts are filed on EDGAR. It is jargon and an accounting fiction and is of little value to the investor.
2. Consider whether the term "prospectus" is the best term. Consider alternatives such as "Key Information Document".
3. Consider whether thee s too much of an emphasis in surrender charges in the summary prospectus and your educational materials. These are long term products such that surrenders in the short term should be unlikely. In addition, purchasing a home or a car and later trying to offload these purchase have substantially costs, yet no special disclosures are required. We agree that these fees should be prominently disclosed. However, over-prominence suggests that it is the largest risk of the investment, which is just not the case.
4. How should an insurance company treat a fund facilitation fee? A fund facilitation fee is a fee charged by the insurance company for offering a low cost fund (that would not otherwise provide enough 12b-1 fees or revenue sharing to the insurance company). This fee only applies to certain funds and varies by fund. How should those fees be treated in the summary table (*i.e.*, base contract fee, optional benefit fee, or underlying fund expense?)
5. We like the summary fee tables. They are well-conceived. Consider additional ways to streamline the fee table in the statutory prospectus. Some are quite long (pushing 7 pages), and others are quite complex (see e.g., https://www.sec.gov/Archives/edgar/data/1048606/000110465918023508/a18-5325_1485bpos.htm#fc180e87-fe2f-41aa-8876-9ae7126751c3_1 which has a fee table with its own table of contents).
6. With respect to including credit ratings in the summary prospectus:

   a. Is the insurer required to keep that information up-to-date between registration statement updates or can the information speak as of the effectiveness date of the registration statement?
   b. Is a consent of the credit rating agency required under rule 436 of the Securities Act of 1933? If yes, can we include the rating in the summary prospectuses, but not the registration statement to avoid the need for a consent?

7. I think there needs to be more information in the summary table describing the optional benefits. The chart does not sufficiently described the differences between the benefits. Some insurance company offers 3 withdrawal benefits at the same time on a single contract that would be indistinguishable using the table. The table should describe the amount of the actual benefit. Also, consider whether a one-page description of each rider may be more appropriate.
8. Consider adding a brief description of the insurance company to the initial summary prospectus. Also, consider a disclaimer as to who is on the hook for the insurance obligations. For example, Nationwide may be a large company with a long history, but it is not the Nationwide we see on TV and at sporting events that is on the hook, it is a small subsidiary. This is not made clear to the investor. All they see if the Nationwide logo and a company with the term Nationwide in its name.
9. We like the reference to the policy specifications page. Please consider requiring a hyperlink to this page. (We realize these documents are custom to the investor and will require log-on to a website to access.)
10. There is some confusion as to whether the various fee presentations, like in the optional benefits table, present current or maximum fees.
11. The investment option tables include various investment restrictions. Consider removing this disclosure requirement if the insurance company imposes guardrails that prevents an investor from violating these investment restrictions. Also, note that in practice these restrictions can be very lengthy as these restrictions often change over time even for the same contract benefit.
12. Consider removing the AUV table requirement altogether. This information is not usable by investors based on how products operate today. In addition, remove the requirement to include separate account financial statements. For similar reasons, this information is not usable by the SEC or investors. Instead, treat these accounts like an advisory account or a credit card account and trust that the charges are deducted appropriately. Afterall, it is pretty simple math.
13. Consider permitting insurance companies to use their STAT financials as filed with the state insurance regulators in their registration statements instead of requiring financials to be modified to comply with Regulation S-X. This is a significant and unnecessary expense. Statutory financials statements are already used by regulators and insureds to review the financial strength of auto insurers, health insurers, homeowner insurers and the like. They can also be used by owners of variable insurance contracts.
14. Currently, if an insurance company intends to update its registration statement during the first 90 days of the fiscal year, the insurance company must show 3rd quarter financial statements. However, many insurance companies do not produce S-X compliant quarterly financial statements. As such, insurers must pay significant expense to produce these

financial statements or not make a registration statement filing during the first quarter of the year. You should not require stub financials or any updated financials until 120 days after the beginning of the fiscal year. It prevents insurers from updating registration statements and not providing this updated information does not disadvantage investors.

15. Since financial statements are so difficult to read, consider creating a risk metric to show the financial strength of the insurance company. One standard currently in use is the state-mandated risk-based capital ratio. Of course, insurers would need to explain this measure to investors.

16. Consider whether the "Calculation of Performance" item is still relevant or needs to be adjusted to reflect features such as optional benefits.

17. We like the new variable annuity and variable life guides posted to investor.gov. That said, we do not believe investors will click on the link and then seek out these documents. Perhaps you can let insurance companies brand these pieces and place them on their own website akin to the NAIC Buyers Guides.

18. We do not like the XBRL requirement. After being available for 8 years, there are no mutual fund tools available that rely on XBRL. No enforcement actions have been brought based on this data. It is simply not worth the cost. Variable annuities are even more complicated and less standardized than mutual funds. There is no reason to require this information to be tagged. Also, because there is an order and heading requirement, tagging may not even be necessary as a data mining tool should be able to pull the data without tagging. However, if you do tag, you should make sure you capture the class ID/tickers for the underlying funds so mutual fund information can easily be cross-referenced.

19. We like Alternative 2 with respect to discontinued contracts. We also think this should apply to active contracts, not just discontinued contracts. We also think a clean definitive statutory prospectus (and not just a pile of stickers) should be required to be made available each year.

20. Please clarify when the summary prospectuses and full prospectuses need to be updated, how they are updated, and who the information may be delivered to. For instance:

    a. Do rate sheets require a summary prospectus sticker since there is a material change to a rate or is the fact that the rate sheet approach is fully described in the prospectus sufficient?

    b. If there is a material change to the contract between annual updates, must an updating summary prospectus be mailed immediately or can it wait until the next annual update?

    c. If there is a buyout offer of exchange offer made for some period between annual updates, the investor may get no notice that these offers are described in the prospectus, and yet the insurance company gets all the protections of fulsome prospectus disclosure. This does not seem right.

    d. Consider requiring a principles-based approach to what to notify investors about in the updating summary prospectus.

    e. If a change only affects certain contract owners, can the change only be sent to those affected contract owners?

f. If a variable annuity is closed to new money, is there still a duty to deliver a prospectus, update a registration statement, or to keep financial statements up-to-date?

21. You propose removing the load limits in rules 6c-8 and 11a-2. While we generally do not like additional regulation, we think these limits are necessary to keep bad actors from acting badly. Nearly all other registered investment companies have some sort of limits on loads (whether imposed by the SEC or FINRA). It is unclear why these limits are being remove from these provisions. NSMIA did not expressly touch on these provisions; instead you are making a decision to remove a set of investor protections. Insurance products are a persistent source of sales practice violations and many of the issues involve sales loads and exchange offers. Do no weaken investor protections.
22. Make the web-posting requirements more principles-based and less regimented.
23. Consider permitting notice and access for the delivery of proxy materials in the variable insurance contract context.
24. The disclosure forms should do a better job of explaining how sales professionals are compensated and in what amount. This should include a discussion of up-front and trail commissions.
25. The SEC should consider whether all of the form requirements and exhibits are necessary. For instance, items 21 through 23 of Form N-4 are not particularly useful. Also, many of the exhibits have little value to investors and the SEC. Also consider whether an SAI is still needed, particularly under the Alternative 2 regime.
26. Clarify when underlying funds need to send stickers for changes to the fund. For instance, do they still need to provide 60-days notice under rule 35d-1? Is the insurance company the shareholder or the contract owner?
27. With respect to N-14 filings, certain information about the target and acquiring fund can be incorporated by reference into the N-14 from the fund's prospectus as long as the prospectus is delivered. The summary prospectus can be sent instead of the statutory prospectus because the summary prospectus satisfies the delivery obligation of the statutory prospectus (or at least this is what occurs in practice). If the variable contract summary prospectus is deemed delivery of the fund summary prospectus which is deemed delivery of the statutory prospectus, can an N-14 incorporate by reference a fund's prospectus without delivering the fund's statutory prospectus or summary prospectus so long as the variable contract prospectus is delivered?
28. Has the staff approached the state regulators to discuss harmonizing document delivery? Can the prospectus be the contract, or can the contract stand as a prospectus? Do we need two documents that describes the material features of the same product? We think this would be prudent.
29. With respect to rule 485(b), is it safe to assume that changes that are not required to be described in the variable contract summary prospectus are not material and can be filed pursuant to rule 485(b)? Also, it would be helpful if the Commission can provide more guidance on when a prospectus sticker is necessary, when an update to a registration statement is necessary, how does rule 430A/430C fit it, and when do stickers need to be delivered?

30. The SEC should develop a rule to permit fund substitutions under certain limited circumstances. Such a rule should provide appropriate investor protections, permit substitutions when necessary, and would benefit from public comment. The goal of any such rule should be to give great deference to the investment decisions of investors wherever possible. The problems with the current approach to fund substitutions ca be epitomized with a single example. In December of 2016, the SEC noticed 2 substitution applications for Hartford Life Insurance Company. This transaction would have replace 67 unaffiliated actively managed funds (from several funds groups) with 16 Hartford-managed passive funds. While this substitution met the historic standards applied to substitutions, both fund groups and others in the insurance industry (including us) were horrified that the Commission would notice these applications given the drastic change to the character of the available investment options. In a rare act of defiance, the fund groups challenged these substitutions which compelled Hartford to withdraw their application. If a transaction of this type could meet the historic standards applied to substitutions, then these standards need to be changed.
31. The SEC should update its guidance on e-delivery. For instance, in a variable annuity application, if the investor provides an email address, can the default delivery method be electronic delivery, unless the investor checks a box on the application to receive paper? Can an insurance company impose an additional fee for investors that select paper? The SEC should also update its 1995, 996 and 2001 guidance on e-delivery.
32. A few insurance companies have left the variable annuity business and have attempted to undermine (or lobotomize) their contracts to cause investors to redeem out of their contract. (e.g., https://www.investmentnews.com/article/20181114/FREE/181119949/ohio-national-offers-buyouts-ends-commission-trails-amid-jumbled). The SEC should take greater action to ensure that insurance companies honor the terms of their contract and the expectations of investors and ensure that contract owners are adequately serviced. Insurance companies taking these adverse measures hurt the entire insurance industry and faith in the investment markets.
33. Under the proposal, can an investor permanently elect to receive the full statutory prospectus and underlying fund documents akin to rule 30e-3? Such a mechanism should be available for those who want paper.
34. The SEC should approach the U.S. Treasury to encourage it to permit variable contracts to invest in retail funds. This will reduce the cost of funds and facilitate economies of scale and improve the fund selections available.
35. Has the SEC considered whether insurance companies would continue to use the summary prospectus as more and more investors opt for e-delivery?
36. The SEC and FINRA should increase the penalties associated with the sale practice violations. For example, H. Beck was fined $400,000 for unsuitable sales that brought in more than $10 million in revenue. A fine that is equal to 4% of the ill-gotten revenue is not a deterrent or a meaningful punishment. See https://www.investmentnews.com/article/20181121/FREE/181129977/finra-fines-h-beck-400000-for-unsuitable-sale-of-variable-annuities.

37. The SEC should review the marketing materials associated with variable annuities including whether the benefits of tax deferral and living benefits are honest presentations of the operation of these products under normal (and not cherry-picked) market conditions.

38. Many SEC examiners perform good reviews of variable insurance product and fund filings. However, in our experience, the reviews of certain examiners are quite lax and others are over the top in terms of the number and tone of comments. We think the staff could work on comment consistency both with respect to variable contracts and all fund filing reviews. There are also rumors that various staff checklists exist to help review disclosures. It would be helpful to the industry and a better use of the staff's time if these review materials would be made available to the public, just as the Division of Corporation Finance has done with their Financial Reporting Manual and telephone interpretations.

39. Variable annuities are both securities, insurance products, and are often sold through retirement plans. Please be mindful of this when developing standards of conduct for the sale of these products. Having these products subject to three separate standards of conduct may kill these products. That should be avoided.

40. The SEC should consider whether a similar summary prospectus regime may be appropriate for non-separate account insurance products and for products that include securities that would otherwise be fled on both forms S-1/S-3 and N-4.

41. Until recently, the Division of Investment Management had an office dedicated to insurance products, we believe it may be prudent to reconstitute such an office to help deal with the many unique issues faced by these products.

Thank you.