



Carl B. Wilkerson
Vice President & Chief Counsel, Securities

December 20, 2018

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street
Washington, DC 20549

Re: Request for Comment Period Extension on Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts; Release Nos. 33-10569; 34-84508; IC-33286; File No. S7-23-18; RIN 3235-AK60

Dear Mr. Fields:

On October 30, 2018, the SEC invited comment on an initiative addressing Updated Disclosure Requirements and a Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts.¹ The proposal reflects a very constructive approach to streamlined, functional disclosure that is beneficial to consumers, life insurers, and salespersons alike. This detailed and significant initiative merits careful analysis that will be challenging to fully execute within the stated comment period. An extended comment period of 45-60 days would enable commenters to develop more valuable and informed input, as the Administrative Procedure Act intends.

I. Background

For many years, ACLI has actively participated in multiple regulatory initiatives addressing variable contract disclosure under the Federal securities laws. We have consistently supported layered disclosure as a better means to enable informed decision-making by consumers. The SEC's disclosure initiative reflects ACLI's long-advocated approach to summary disclosure: streamlined, simplified plain-English information through layered disclosure and access to more detailed

¹ The SEC invited comment on [proposed rule and form amendments](#) that are intended to help investors make informed investment decisions regarding variable annuity and variable life insurance contracts. The proposal would modernize disclosures by using a layered disclosure approach designed to provide investors with key information relating to the contract's terms, benefits, and risks in a concise and more reader-friendly presentation, with access to more detailed information available online and electronically or in paper format on request. The proposed new rule would permit registrants to satisfy their prospectus delivery obligations under the Securities Act of 1933 for a variable annuity or variable life insurance contract by sending or giving a summary prospectus to investors and making the statutory prospectus available online.

The proposed rule also would consider registrants to have met their prospectus delivery obligations for any portfolio companies associated with a variable annuity or variable life insurance contract if the portfolio company prospectuses are posted online. In addition, the SEC proposed amendments to the registration forms for variable annuity and variable life insurance contracts to update and enhance the disclosures to investors in these contracts, and to implement the proposed summary prospectus framework.

information through supplemental web-based or paper distribution on request.² We are, therefore, very interested in fully commenting on the SEC's proposed treatment of directly analogous issues.

ACLI promptly circulated the SEC's initiative to its membership and created a new 30-member Summary Disclosure Working Group that meets twice a week to dissect the proposal, develop consensus positions, and formulate recommended revisions. After our draft letter is completed, it will be further circulated to ACLI's Committee on Securities Regulation for review and approval. This important multi-layered process ensures broad, consensus-based policy development and provides valuable substantive feedback. It is, however, meticulous and time consuming.

The important task of identifying and thoroughly analyzing the full implications of the initiative requires concentrated analytical resources. We will continue to evaluate the regulatory, structural and financial implications of the proposals for life insurers, salespersons and consumers. Moreover, each of these considerations must be analyzed against unique fact patterns, business models, and organizational structures.

Industry groups like our trade association examine regulatory proposals, elicit membership input, develop a consensus, and circulate draft letters of comment before submission. This worthwhile, but time intensive, process is difficult to execute within the stated comment period, particularly given the proposals' significance and complexity.

The special time burdens confronting regulated industries and large organizations in digesting regulatory proposals were explicitly recognized by the Administrative Conference of the United States in its publication entitled *A Guide to Federal Agency Rulemaking*³ ("Guide"), which notes that:

² ACLI recommended positions on layered disclosure and electronic delivery in submissions to the SEC over many years, including:

- ACLI [submission](#) on the SEC's Best Interest [Initiative](#) (August 3, 2018) [beginning at page 31];
- ACLI's [response](#) to the SEC Chairman's [Request for Information about Standards of Conduct for Broker-Dealers and Investment Advisers](#) (Oct. 3, 2017) [beginning at page 6].
- ACLI's July 5, 2013 [Submission](#) in response to the SEC's [Request for Data and Information on Brokers, Dealers and Investment Advisers](#) [beginning at page 15];
- ACLI's August 30, 2010 [Submission](#) in response to the SEC's request for information on its [Study on the Responsibilities of Brokers, Dealers, and Investment Advisers](#) in fulfillment of Section 913 of the Dodd-Frank Act [beginning at page 10]; and,
- ACLI's December 13, 2007 Submission in response to the [RAND Study on Broker-Dealer and Investment Advisory Issues](#) [beginning at page 6]. ACLI's RAND Submission appears in [Appendix A](#) of our [Comments](#) on the SEC [Study on the Responsibilities of Brokers, Dealers, and Investment Advisers](#) beginning at page 14.

Another example of ACLI's advocacy for streamlined plain-English disclosure appears in the [recommendations](#) of our CEO Task-Force on Annuities on disclosure for fixed, index and variable annuities that we submitted to the SEC for consideration in 2007 . With this ACLI model, consumers could make apples-to-apples comparisons using a two-page document about core features. As part of this initiative, ACLI also developed instructional guidelines for life insurers on how to prepare this streamlined, transparent disclosure. ACLI's membership approved the final project for advancement with regulators. This [seminar outline](#) summarized ACLI's VA Disclosure Initiative.

[ACLI Rulemaking Petition on Inaugural Simplified Prospectus Form N-6 for Variable Life Insurance](#)

ACLI filed a [rulemaking petition](#) with the SEC that led to the adoption of Form N-6. This [seminar outline](#) explains the administrative history, purpose, intent and design of VLI Registration Form N-6. Form N-6 and these materials provide background for review of the SEC's summary VLI prospectus initiative.

³ See, *A Guide to Federal Agency Rulemaking* (1983) at 124 [hereinafter referred to as "Guide"]. The American Bar Association updated and republished this *Guide* in 1998 and 2012. See Lubbers, *A Guide to Federal Agency Rulemaking*, Fifth Edition

[i]nterested persons often are large organizations, which may need time to coordinate an organizational response, or to authorize expenditure of funds to do the research needed to produce informed comments.⁴

The *Guide* reviews the legislative history of the Administrative Procedure Act and emphasizes that the notice of proposed rulemaking “must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument.”⁵ The *Guide* further explains that rules developed through notice and comment procedures must be rational, and that notice and opportunity for comment under §553 of the APA should properly “give interested persons a chance to submit available information to an agency to enhance the agency’s knowledge of the subject matter of the rulemaking.”⁶

The *Guide* also points out that “informal rulemaking procedures should provide interested persons an opportunity to challenge the factual assumptions on which the agency is proceeding and to show in what respect such assumptions are erroneous.”⁷ Our request for an extended comment period comports with all the *Guide*’s goals referenced above.

II. Need for an Extended Comment Period

Unlike some other commentators, ACLI’s submission will reflect the views of over 290 life insurance companies representing 95% of the life insurance and annuities business. Our consensus-based position, therefore, will provide substantial, broad input for the SEC on this initiative. By the same token, however, the process of achieving consensus is more time consuming for a large organization representing diverse interests.⁸

The proposal’s stated comment period occurs as businesses face peak of year-end business responsibilities and extends over five Federal holidays that effectively shorten the business days available for analysis and commentary. The release totals 698 pages, with approximately 689 specific detailed questions, appendices and granular rule and form amendments. The initiative is profound, and merits thorough analysis and constructive input. In addition, the release invites input on quite a number of questions that that can only be responsibly answered through industry-wide surveys to our membership. Under the currently stated comment period, we do not believe we will have sufficient time or resources to compile the data surveys on which the SEC elicits input in this category of questions.

In responsibly formulating comment, our Working Group conducted multiple meetings to digest the initiative. This high-level examination of all the proposal’s features is essential, time consuming, and fundamental to any rulemaking review. Many of the specific requests for comment present valuable queries requiring substantial analytical investment and resources.

(2012), American Bar Association, Government and Public Lawyers Division and Section of Administrative Law and Regulatory Practice.

⁴ See *Guide* at 196.

⁵ Administrative Procedure Act: Legislative History, S. Doc. No.24879-258 (1946) [hereinafter legislative history of the APA].

⁶ See *Guide* at 197.

⁷ *Id.* at 182 and 196.

⁸ This sentiment is drawn directly from the *Guide* text cited in footnote 4 *supra*.

Detailed analysis will demand careful and time-consuming scrutiny that will be difficult to responsibly execute within the stated comment period. It makes sense, therefore, to elongate the SEC's comment period for these reasons by 45-60 days. An extended comment period is also justified because the significant time and energy the SEC invested in the initiative.

In addition to evaluating the initiative's substance, several other significant statutory, procedural and cost considerations merit careful analysis, such as:

- The proposal's cost-benefit analysis;
- Effects of the proposal on competition, efficiency and capital formation.
- Paperwork Reduction Act considerations; and,
- Regulatory Flexibility Act analysis.

Observations on Extending the Comment Period

Neither the APA⁹ nor the SEC's rules of conduct establish a "standard" period of comment on rulemakings. Rather, the goal of robust public comment on administrative rulemakings is best served by selecting a time period based on the unique factors and complexity of the individual initiative. Some proposals should properly have longer comment periods than others.

In this instance, an extended comment period of 45-60 days will promote the most informed feedback given the size and diversity of ACLI's membership, as well as the profound complexity and importance of the issues under examination. The depth and quality of comment are higher priorities than the speed of completing the project. The release acknowledges that the SEC will be unlikely to comprehensively reexamine variable product disclosure for some time due to the sheer depth and complexity of such a project.

ACLI has actively and constructively participated in numerous SEC rulemaking initiatives over many years. We will likewise devote substantial resources and time in developing policy positions and providing useful feedback. Our consensus-based process is neither dilatory nor obstructionist. Our request for a comment extension will allow the most useful feedback on this significant initiative.

We fully understand the SEC's need to execute rulemaking within a deliberative process allowing proper identification of issues and development of recommended solutions. A reasonable extension to the comment period dovetails with these goals.

III. Conclusion

In sum, ACLI strongly supports the SEC's commendable endeavors to implement streamlined, simplified, plain-English disclosure in a layered process. The Commission staff has obviously spent significant time and resources in conceptualizing and drafting this comprehensive, significant initiative. Life insurers are committed to providing constructive input that the proposal merits. A relatively short

⁹ See Guide at 196.

comment period extension would reasonably allow all interested parties to fulfill those goals and ensure that the initiative achieves its full promise.

We greatly appreciate your attention to our views. If any questions develop, please let me know.

Sincerely,

Carl B. Wilkerson

Carl B. Wilkerson

Cc: Daniel K. Chang, Senior Counsel, Division of Investment Management
James Maclean, Senior Counsel, Division of Investment Management
Amy Miller, Senior Counsel, Division of Investment Management
Amanda Hollander Wagner, Branch Chief, Division of Investment Management
Michael C. Pawlak, Senior Special Counsel, Division of Investment Management
Keith Carpenter, Senior Special Counsel, Division of Investment Management
Michael Kosoff, Senior Special Counsel, Division of Investment Management