



Insured Retirement Institute
1100 Vermont Avenue, NW | 10th Floor
Washington, DC 20005

t | 202.469.3000
f | 202.469.3030

www.IRlonline.org
www.myIRlonline.org

Submitted electronically to rule-comments@sec.gov

March 15, 2019

Ms. Vanessa Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

**Re: File No. S7-23-18: Updated Disclosure Requirements and Summary Prospectus
for Variable Annuity and Variable Life Insurance Contracts**

Dear Ms. Countryman:

On behalf of our members, the Insured Retirement Institute (“IRI”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission” or the “SEC”) on the above-referenced rulemaking proposal, which would permit the use of summary prospectuses for variable annuity contracts and variable life insurance policies (collectively, “variable contracts”) (the “Proposal”).²

¹ IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

² Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33286 (Oct. 30, 2018) (proposing Rule 498A under the Securities Act of 1933, as amended (“Securities Act”) and related rule and form amendments). Respectfully, we submit that Rule 498A should be designated Rule 499 because it is separate and distinct from Rule 498, the mutual fund summary prospectus rule.

I. Introduction

The Proposal reflects an outstanding effort by the Commission, and Director Blass and the Commission staff (the “Staff”), to improve the disclosure framework applicable to variable contracts. We commend the Commission and its Staff on the thoughtful approach to the matters covered in the Proposal and their willingness to engage the industry in constructive dialogues and meetings ever since IRI first submitted its variable annuity summary prospectus rulemaking proposal over a decade ago. We have greatly appreciated the opportunity to engage with the Staff on this important topic throughout this process, and we look forward to helping the Commission and the Staff bring this rulemaking initiative across the finish line.

The protection of investors through full and fair disclosure is a fundamental cornerstone of the regulatory framework imposed by the federal securities laws.³ The Proposal represents the latest in over three decades of serious analysis and rulemaking by the Commission and its Staff to ensure that investors understand the various investment features and guarantees that, while at times complex, make variable annuity contracts and life insurance policies such powerful tools for ensuring lifetime retirement income and family protection. To their credit, the Commission and its Staff have undertaken extensive efforts to determine how best to provide investors with effective disclosure documents for variable contracts, as evidenced by, among other things, the adoption in 1985 of Form N-4 tailored for variable annuities, the legislative and disclosure proposals set forth in the Staff’s 1992 *Protecting Investors Report*,⁴ the adoption

³ In its comment letter on the Proposal, Better Markets asserts that the Commission “unjustifiably and unfortunately remains too reliant on a disclosure regime” and suggests a non-existent requirement that the Commission “demonstrate that the average retail investor would actually read the proposed summary disclosure.” Better Markets, Comment Letter on Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts (Feb. 14, 2019), available at <https://www.sec.gov/comments/s7-23-18/s72318-4935670-178451.pdf>.

Nowhere does the Securities Act require an investor to read a statutory or other prospectus before investing, and the Commission has no authority to compel an investor to do so. Rather, the Securities Act requires issuers to make material information available to investors. In view of this statutory framework, the Commission, to its credit, has long been mindful of the need to ensure that prospectuses are not so lengthy that they discourage investors from reading them and that they do not obscure essential information. See, e.g., Registration Form Used by Open-End Management Investment Companies, Securities Act Release No. 7512 (Mar. 13, 1998), available at <https://www.sec.gov/rules/final/33-7512r.htm>, noting that “[a]lthough the prospectus remains the most complete source of information about a fund, technical and unnecessarily long prospectus disclosure often obscures important information about a fund investment and does not serve the informational needs of the majority of fund investors.” *Id.* at n.5 and accompanying text.

⁴ SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation (May 1992).

in 2002 of Form N-6 tailored for variable life insurance policies, and most recently, the Proposal.⁵

The extensive and robust study results cited throughout the Proposal,⁶ and the Commission's extensive experience not only with the mutual fund summary prospectus but also with the use of the Internet as a means to provide information to investors, provide strong support for the Proposal's layered disclosure approach. As noted in the Proposal, "approximately 95% of mutual funds currently use a summary prospectus."⁷ In addition, the Proposal "draws on the Commission's investor testing efforts, outreach, and empirical research concerning investors' preferences."⁸

Furthermore, IRI has conducted studies that indicate that investors strongly prefer a variable annuity summary prospectus over the longer statutory prospectus. According to IRI's research:

- Ninety-five percent of investors would prefer to receive a shorter summary prospectus instead of a full prospectus if details are online or upon request.
- Fifty-nine percent of investors would be more likely to consider a variable annuity as part of their investment portfolio or discuss it with their financial advisor if they had access to a short summary prospectus written in easy to understand language.⁹

With all this in mind, IRI is pleased to provide its strong general support for the Proposal.

II. Summary of Recommendations

Given that a number of other organizations, including the Committee of Annuity Insurers, have already submitted comments with which we generally agree (including several of the "big picture" recommendations developed by the IRI working group as it reviewed the Proposal, such as our suggested amendment of Rule 172 to provide a broad "access equals delivery" model), we have focused our efforts on developing the following three recommendations in response to Director Blass's request for constructive feedback to "future-proof" the Proposal:

⁵ IRI categorically disagrees with the unsupported assertions in the *Better Markets* comment letter that the Proposal reflects a "lack of serious analysis of the exceedingly complex and expensive nature of these variable contracts" and that "there is no basis, and the Release itself reveals none, that the new summary disclosure will in fact be read by reasonable investors, and when read, it will be understood."

⁶ See, e.g., SEC Staff, Study Regarding Financial Literacy Among Investors (Aug. 2012)), available at <https://www.investor.gov/sites/default/files/917-financial-literacy-study-part1.pdf>. One conclusion of the Staff's 2012 Financial Literacy Study was that "[i]nvestors favor 'layered' disclosure and, wherever possible, the use of a summary document containing key information about an investment product or service." *Id.* at iv.

⁷ Proposal at 28.

⁸ *Id.* at 20.

⁹ IRI, Variable Annuity Summary Prospectus High in Demand by Consumers (June 2011). With the increased use of the Internet, discussed herein, it is reasonable to expect that consumer preference for the delivery of key information in a concise format has grown stronger since the IRI conducted its study.

- Recommendation 1:** Extend the “access equals delivery” framework to all variable contract and mutual fund prospectuses, conditioned, if necessary or appropriate, on the filing and availability of summary prospectuses, or on the provision of an annual notice of the availability of statutory and summary prospectuses.
- Recommendation 2:** Codify the Great-West line of no-action letters for discontinued variable contracts, with certain practical modifications to eliminate current burdens.
- Recommendation 3:** Revise the “N” registration forms to accommodate the registration of insurance products other than variable contracts.

We discuss each of these recommendations below.

III. Discussion

A. *Recommendation 1 – Access Equals Delivery*

The Proposal contains many forward-thinking concepts, including the application of the access equals delivery framework to the delivery of variable contract and underlying fund statutory prospectuses, although this delivery method is conditioned on the “use” (including in many cases paper delivery) of variable contract and underlying fund summary prospectuses (“Summary Prospectuses”). We firmly believe this access equals delivery approach will promote better and greater access to contract and underlying fund information and enable investor choice. **At the same time, we respectfully submit that the time is right to extend the access equals delivery approach more broadly to the delivery of variable contract and mutual fund prospectuses, consistent with the goal of “future-proofing” the Proposal.**

Our recommendation, discussed more fully below, would enable registrants to fully leverage existing and future technologies while promoting the Commission’s layered disclosure framework.

1. The Digital Future

Any “future-proofing” of the Proposal should recognize that the digital future will leverage technology more, not less.

In 2005, when the Commission adopted the access equals delivery framework for non-investment company securities offerings, it noted that “[m]odern communications technology, including the Internet, provides a powerful, versatile, and cost-effective medium to

communicate quickly and broadly.”¹⁰ The Commission also noted that “[u]nder...an ‘access equals delivery’ model, *investors are presumed to have access to the Internet.*”¹¹ The Commission concluded that “*Internet usage has increased sufficiently to allow us to adopt a final prospectus delivery model* for issuers and their intermediaries that relies on timely access to filed information and documents.”¹² In reaching that conclusion, the Commission considered information showing “that 75% of Americans have access to the Internet in their homes, and that those numbers are increasing steadily among all age groups.”¹³

Since 2005, the usage, availability, and speed of the Internet have grown dramatically. According to the Pew Research Center, Internet usage by U.S. adults grew from 68% in 2005 to 89% in 2018, supporting the conclusion that “roughly nine-in-ten American adults use the internet.”¹⁴ This dramatic growth in Internet usage is reflected in the wide availability of the Internet, which has expanded beyond the home and work to include restaurants, coffee shops,

¹⁰ Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) at 41 (“Securities Offering Reform”).

¹¹ *Id.* at 244 (emphasis added).

¹² *Id.* (emphasis added).

¹³ *Id.* at n. 559 (citations omitted).

¹⁴ Internet/Broadband Fact Sheet, Pew Research Center (Feb. 5, 2018) *available at* <http://www.pewinternet.org/fact-sheet/internet-broadband/>. According to the Pew Research Center, Internet usage has grown significantly across all groups, whether based on age, race, gender, income, education, or community (percentage changes computed by the author):

Category	2005	2018	Change
Age -- 65+	32%	66%	106%
Age -- 50-64	66%	87%	32%
Age -- 30-49	79%	97%	23%
Age -- 18-29	83%	98%	18%
Race – White	70%	89%	27%
Race – Black	55%	87%	58%
Race – Hispanic	Not available	88%	n/a
Gender – Male	69%	89%	29%
Gender – Female	67%	88%	31%
Income – Less than \$30,000	49%	81%	65%
Income – \$30,000 – \$49,999	73%	93%	27%
Income -- \$50,000 – \$74,999	86%	97%	13%
Income – \$75,000 and over	92%	98%	7%
Education – Less than high school	32%	65%	103%
Education – High school graduate	58%	84%	46%
Education – Some college	80%	93%	16%
Education – College Graduate	89%	97%	9%
Community – Rural	60%	78%	30%
Community – Suburban	70%	90%	29%
Community – Urban	69%	92%	33%

airports, libraries, cars, and in some cases whole cities.¹⁵ In addition, Internet access has expanded beyond computers to tablets, phones, and wearable devices such as eyeglasses and watches. The Internet is also increasingly becoming a part of daily life through the “Internet of Things,” *i.e.*, the linking of the Internet to everything from vehicles to household appliances and devices such as coffee makers, washing machines, thermostats, and lights.¹⁶

Internet speeds have experienced an even greater growth trajectory, having increased by a factor of more than five since the Commission adopted the Securities Offering Reform rulemaking in 2005.¹⁷ From 2017 to 2018 alone, the average U.S. fixed broadband speed, *i.e.*, high-speed Internet access transmitted to a fixed location, improved by over 37% while U.S. mobile broadband speed, *i.e.*, high-speed Internet access transmitted to computers, mobile phones, and other digital devices, improved by over 22%.¹⁸ Further improvements in technology will bring even faster speeds. For example, the new fifth generation or “5G” standard for mobile phones has the potential to offer downloads that are 20 times faster than the “4G” standard, allowing mobile phone users to download an entire feature film in a matter of seconds.¹⁹

¹⁵ For example, **free** Internet wireless access has been available in all company-operated Starbucks stores since 2010. K. Hansen and A. Chang, [Free, unlimited Wi-Fi policy begins at Starbucks](#), Los Angeles Times (July 2, 2010). See also T. Hamm, [Where to Find Free WiFi in Any Neighborhood](#), The Simple Dollar (December 13, 2017) (citing many businesses that provide **free** Internet wireless access, including McDonald’s, Dunkin’ Donuts, Marriot Hotels, Staples, Target, and Barnes & Noble, as well as public libraries, airports, gyms, trains and buses, and hospitals. U.S. cities with **free** Internet wireless access in public places include, for example, Boston, New York, and San Francisco. L. Marcus, [San Francisco Gets Free Wi-Fi: Check Out These 9 Other Connected Cities](#) (Oct. 3, 2014).

¹⁶ See, J. Morgan, [A Simple Explanation Of ‘The Internet Of Things’](#), Forbes (May 13, 2014) available at <https://www.forbes.com/sites/jacobmorgan/2014/05/13/simple-explanation-internet-things-that-anyone-can-understand/>. (“Simply put, this is the concept of basically connecting any device with an on and off switch to the Internet (and/or to each other). This includes everything from cellphones, coffee makers, washing machines, headphones, lamps, wearable devices and almost anything else you can think of. This also applies to components of machines, for example a jet engine of an airplane or the drill of an oil rig.”); A. Meola, [What is the Internet of Things \(IoT\)? Meaning & Definition](#), Business Insider (May 10, 2018) available at <https://www.businessinsider.com/internet-of-things-definition>. (“The Internet of Things, commonly abbreviated as “IoT,” refers to the connection of devices (other than typical fare such as computers and smartphones) to the Internet. Cars, kitchen appliances, and even heart monitors can all be connected through the IoT. And as the Internet of Things grows in the next few years, more devices will join that list.”).

¹⁷ In 2007, the average Internet connection speed in the U.S. was 3.7 megabits per second (“mps”), whereas in 2017 it was 18.75 mps, a greater than five-fold increase in speed. [Average internet connection speed in the United States from 2007 – 2017 quarter by quarter](#), available at <https://www.statista.com/statistics/616210/average-internet-connection-speed-in-the-us/>. The difference between 2005 and 2018 undoubtedly was even greater.

¹⁸ See I. McKetta, [The World’s Internet in 2018: Faster, Modernizing and Always On](#), at <https://www.speedtest.net/insights/blog/2018-internet-speeds-global/>.

¹⁹ See, J. Fleck, [The Shift from 4G to 5G Will Change Just About Everything -- Including speed, bandwidth and low latency](#), AdWeek (June 18, 2018) available at <https://www.adweek.com/digital/the-shift-from-4g-to-5g-will-change-just-about-everything/>; A. Moscaritolo, [5G will Save You Almost 24 Hours of Download Time Per Month](#),

With the convenience of faster Internet speeds, it is not surprising that the number of adults bringing high-speed Internet into their homes and their phones has dramatically increased. According to the Pew Research Center, in March 2005 only 30% of all adults had high-speed internet in their homes.²⁰ As of March 2006, that figure had grown to 42%.²¹ By 2016, the U.S. Census Bureau estimated that approximately 81% of U.S. households had high-speed internet.²²

We believe that these dramatic increases in Internet use, availability, and speed fully support the broader extension of the access equals delivery framework to variable contracts and mutual fund prospectuses today. We respectfully submit that these advancements in technology and usage provide the Commission with a far more robust basis for applying the access equals delivery framework than did the state of affairs in 2005.

We, of course, understand that the Commission adopted the access equals delivery framework in its Securities Offering Reform rulemaking to address concerns about constraints under the Securities Act that limited written offers during a securities offering to a statutory prospectus, particularly given advances in technology. In this regard, the Commission stated that “the **multiplicity of means of communication** has led us to recognize that restricting written offers to a statutory prospectus inhibits desirable methods of timely communication of information.”²³

By contrast, as the Commission noted at the time, registered investment companies “are subject to a separate framework governing communications with investors.”²⁴ Although that separate framework currently permits registered investment companies to provide variable contract and mutual fund investors with communications that go beyond the information contained in a statutory prospectus, it also has locked them into receiving annual disclosures that are cumbersome, acutely so for variable contracts, pursuant to an inefficient print-based delivery model that prevents variable contract and mutual fund issuers from leveraging advances in technology. The Commission deferred extending Rule 172 to investment companies

PCMag (Oct. 16, 2018) available at <https://www.pcmag.com/news/364392/5g-will-save-you-almost-24-hours-of-download-time-per-month> (“With 5G, movie download times will decrease from 7 minutes to just 6 seconds.”).

²⁰ Home Broadband Adoption 2006, Pew Internet & American Life Project (May 28, 2006) at 1, available at http://www.pewinternet.org/wp-content/uploads/sites/9/media/Files/Reports/2006/PIP_Broadband_trends2006.pdf.pdf. The Securities Offering Reform rulemaking was adopted in July 2005.

²¹ *Id.*

²² Computer and Internet Use in the United States: 2016, American Community Survey Reports, U.S. Census Bureau (release date Aug. 2018) available at <https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf>.

²³ *Securities Offering Reform*, *supra* note 13, at 281.

²⁴ *Id.* at 54 (citing Securities Act Rules 156, 482, and 498 and Rule 34b-1 under the Investment Company Act of 1940, as amended (“1940 Act”).

in 2005 until it could consider such extension “in the context of a broader reconsideration of this framework.”²⁵ We respectfully submit that the Proposal constitutes a robust opportunity for such reconsideration and that there is ample evidence to support such an extension.

2. Specific Changes

We recommend that the Commission revise the Proposal in one of the following three ways, in order of IRI members’ preference:

- a. Amend the Proposal to permit variable contract issuers and mutual funds to rely on Rule 172 under the Securities Act.²⁶
- b. Alternatively, if the Commission deems it necessary or appropriate, amend the Proposal to permit all variable contract issuers and mutual funds to satisfy their statutory prospectus delivery obligations under Sections 2(a)(10) and 5(b)(2) of the Securities Act through the filing and availability, rather than the “use,” of summary prospectuses. This change would require amendments to Rule 498 and Rule 498A(f) and (j) as proposed.
- c. Alternatively, if the Commission deems it necessary or appropriate, amend the Proposal to permit all variable contract issuers and mutual funds to satisfy their statutory prospectus delivery obligations under Sections 2(a)(10) and 5(b)(2) of the Securities Act through the delivery of the notice already required to be sent annually regarding the availability of mutual fund (including underlying fund) shareholder reports under Rule 30e-3 of the 1940 Act, to also advise investors of the availability of variable contract and mutual fund prospectuses and summary prospectuses.

In furtherance of the foregoing, we would recommend that the Proposal be amended to establish the date of filing of the Summary Prospectus, rather than the date it is sent or given, as the relevant date for purposes of Securities Act Rule 159.

Together with the foregoing changes, we also would recommend that the Commission amend Securities Act Rule 482 on investment company advertising to eliminate the current prohibition in subparagraph (c) against applications accompanying such advertisements. This prohibition would no longer be necessary under an access equals delivery framework.

We would be happy to provide the Commission with specific recommended edits to the Proposal to reflect the foregoing alternatives upon request.

²⁵*Securities Offering Reform*, *supra* note 13, at 248, 249 (citation omitted).

²⁶ This approach would require a simple amendment of Rule 172 to eliminate the ineligibility of investment companies registered under the 1940 Act to use the rule.

Finally, to facilitate comparability, we recommend that the Commission consider developing an application or other web-based tool to enable investors to compare the key information contained in Summary Prospectuses of different issuers in a manner similar to the way websites today enable consumers looking to purchase a new car to compare key features of vehicles of different manufacturers. Rather than relying on investors or third parties to harness modern technology to give investors the ability to efficiently analyze and compare available information, the Commission, as the repository of all Summary Prospectus data, should itself harness such technology.

3. Benefits and Safeguards

Among its many benefits, our access equals delivery recommendations would:

- a. Promote the development and availability of Summary Prospectuses, due to significant cost-saving incentives,
- b. Facilitate investor choice regarding the methods by which to receive information,²⁷
- c. Maintain a level playing field between variable contracts and mutual funds in regards to document delivery,
- d. Eliminate the disparate treatment between variable contracts that are precluded from relying on Securities Act Rule 172 and non-variable contracts that are registered only under the Securities Act and can take advantage of Rule 172,
- e. Reduce or eliminate the expense and other burdens of printing and delivering massive numbers of variable contract and mutual fund prospectuses annually,
- f. Give insurers and mutual funds the flexibility to leverage new technologies as they emerge, and
- g. Avoid the perpetuation of a paper-based framework that has long been antiquated and will only become more so over time.

Our access equals delivery recommendation also builds on existing investor safeguards, including:

- i. For variable contracts, the delivery of a variable contract form that embodies the terms and conditions of the security being sold,

²⁷ We recognize that, as a practical matter, applying an “access equals delivery” model to variable contract and mutual fund disclosure documents generally will require insurers and funds to carefully consider how they post documents to what websites, and how they link documents. We provide several supplemental recommendations regarding this and related collateral matters in Section III.A.4., below.

- ii. For variable contracts, the so-called “free look” period required under state insurance law that gives investors the right to examine the variable contract for a minimum of 10 days and, if desired, exit without incurring a surrender charge and receive a full refund,
- iii. For variable contracts and mutual funds, point-of-sale and other notices of the availability of prospectuses, whether statutory or summary, at various points in the life cycle of the investor’s relationship with the issuer, which notices are or can be included in rule 482 advertisements, rule 34b-1 sales literature, rule 30e-3 disclosures, and other types of communications, and
- iv. For variable contracts and mutual funds, the ability of investors to request paper at any time and at no cost.

If, notwithstanding advances in technology and Internet usage, the Commission desires to study the application of the access equals delivery framework to variable contract and mutual fund prospectuses, we would recommend that it consider adopting a two-year “glidepath” during which the access equals delivery framework would apply as discussed herein. During that two-year period, the Commission could observe the access equals delivery framework in operation and, at the end of the two-year period, the framework would automatically become permanent without further action by the Commission unless the Commission determines that the framework does not serve the public interest or the protection of investors. (The Commission, of course, could make subsequent changes to this rulemaking at any time.)

4. Supplemental Recommendations

As noted, we recognize that as a practical matter, the implementation of an access equals delivery or similar disclosure framework will require insurers and mutual funds to address technical questions such as how they will post disclosure documents to websites, which party will host which websites, and how documents are linked (*e.g.*, how underlying fund prospectuses are linked to listings of investment options in contract statutory prospectuses and Summary Prospectuses). To “future-proof” these types of presentation-related aspects of the Proposal, we recommend that the Commission and its Staff provide guidance confirming that such requirements are technology-neutral and should be interpreted flexibly to accommodate future changes and advancements in technology and investor preferences. Our members would be pleased to share our thoughts and experience in this regard with the Commission and its Staff at any time.

We would also be interested in engaging with the Staff to discuss possible technology approaches to support Rule 498A document hosting and would look forward to future discussions on the topic. Preliminarily, one of our members has suggested that the Commission might consider a linking and layering model to facilitate easy access to product documents as

well as documents related to the underlying funds associated with those products. At this time, we are not prepared to suggest a specific defined model, though we do believe a technology-neutral approach would be preferable.

Some of our members have suggested that the Initial Summary Prospectus (“ISP”) and Updating Summary Prospectus (“USP”) be filed under form type designations that differentiate between the two, such as 497K(I) and 497K(U), respectively. These members believe the use of distinct form type designations would enable investors to more easily locate an ISP or USP when searching on EDGAR. Other IRI members have expressed concern that separate filing designations could cause unnecessary filing errors, however, and we would encourage the Commission to take this concern into consideration if it decides to adopt this approach.

Finally, with respect to the proposed requirement for variable contract registrants to submit certain information in the “Inline XBRL” format, our members respectfully request that the Commission provide additional guidance as to whether a new XBRL taxonomy will be developed and if a draft of the taxonomy will be circulated for comment. In this regard, we note that XBRL US recently unveiled the “Variable Annuity Taxonomy, Demonstration Release” and would welcome clarification from the Commission as to whether this Demonstration Release might be an indicator of the actual taxonomy. Furthermore, because XBRL is new to variable contracts, our members would recommend a minimum phase-in period of 12 months after the Proposal is finalized to give filers sufficient time to adapt to the new XBRL requirements. In this regard, we note that the tagging and filing requirements for the Mutual Fund Risk/Return Summary were phased-in after those requirements were adopted. Such additional lead time will also be necessary to enable vendor systems and client self-service tools to be developed that can generate Inline XBRL tagged documents from the document content.

B. Recommendation 2 – Codification of Great-West No-Action Position

In “future-proofing” the treatment of discontinued variable contracts, rather than adopting either Approach 1 or Approach 2 as described in the Proposal, we recommend that the Commission codify the relief from the annual registration updating requirements of the Securities Act provided by the Great-West line of no-action letters to variable contract issuers, but with certain refinements discussed below.

1. Specific Changes

We recommend that the Commission revise Proposed Rule 498A to add a new paragraph that codifies the Great-West no-action relief, with the following changes:

- a. remove the 5,000 contract limit,
- b. permit website or other electronic delivery of disclosures required by the no-action relief,

- c. permit the use and forward incorporation by reference of Rule 497 supplements to:
 - disclose changes in the investment options,
 - disclose any material changes affecting the variable contract, such as a change in depositor in connection with a merger or similar transaction, and
- d. permit limited purpose post-effective amendments or 1940 Act only amendments to:
 - include new or revised exhibits, *e.g.*, participation agreements with new funds, and
 - comply with any new legal requirements, *e.g.*, addition of Section 26(f) representation.

2. Benefits and Safeguards

One significant benefit of this recommendation is that it continues an existing practice that has worked for many decades and with which the entire variable contract industry is familiar. Another benefit is that it removes the 5,000 contract limitation that perhaps may have served a purpose for the Staff in granting individual no-action relief, but that is not necessary for industry-wide rulemaking by the Commission. In addition, this recommendation has the benefit of leveraging the use of electronic means to deliver financial statements and other disclosures, thereby substantially lowering costs to variable contract issuers. In this regard, we note that variable contract issuers in the regular course of business seldom, if ever, receive requests for statements of additional information containing their financial statements and those of their separate accounts through which the variable contracts are issued. It stands to reason that variable contract issuers should not have to incur the costs of offering and delivering printed financial statements to those same investors merely as a condition to reliance on the Great-West no-action position.

In terms of safeguards, this recommendation does not alter or diminish the types of information required by the Great-West no-action position. In this regard, once an offering of a variable contract has “come to rest,” and where there are no material changes to the contract, the only category of information that may regularly change and that likely would be of interest to investors is mutual fund performance and other information. This type of information will continue to be made available under this recommendation, albeit more efficiently by electronic means.

In addition, by allowing forward incorporation by reference of material disclosures, this recommendation would enable variable contract issuers to, in effect, “keep up” their registration statements but without the burden of going through the annual update process.

C. Recommendation 3 – Revise the “N” Forms to Allow Non-Variable Contracts

Finally, our third recommendation is intended to “future-proof” the Proposal by permitting the use of the Commission’s “N” registration forms to register non-variable contracts, which are increasing in popularity but are currently registered on “S” forms that are not tailored for insurance products.

1. Specific Changes

We recommend that the Commission revise Forms N-3, N-4, and N-6, as proposed, to:

- add a general instruction permitting the use of the Form to register offerings under the Securities Act of annuities and life insurance products, as the case may be, that are not funded by a separate account that is registered as an investment company under the Investment Company Act of 1940, or that would be registered except for an exemption from registration,
- revise the general instructions to permit issuers of non-variable contracts to rely on the Rule 24f-2 method of paying registration fees,
- make conforming changes throughout to accommodate the same, and
- revise the general instructions to allow registrants issuing variable and non-variable contracts to use alternative terminology in their summary prospectuses and updated registration statements, provided that all terms sufficiently disclose the content required by the Form and applicable rules, have substantially similar meanings, and are included in the Special Terms or Glossary sections of the prospectuses.

2. Benefits and Safeguards

Our recommendation would alleviate the substantial burdens of registering on Form S-1, the Commission’s “catch-all” registration form, which calls for information that is not tailored to the offering of an insurance product and is not the chief focus of insurance product investors. Such information includes executive compensation, management’s discussion and analysis of financial condition and results of operations (MD&A), and other items that focus on the operations of the issuer as opposed to the features of the insurance product.

This recommendation would also allow issuers of non-variable contracts to rely on Form instructions that permit the filing of financial statements prepared in accordance with statutory accounting principles (“statutory financials”) instead of generally accepted accounting principles in the United States (GAAP). In this regard, we note that the Commission staff

recently issued letters permitting insurers to file statutory financials in connection with securities offerings of non-variable contracts.²⁸

In addition, this recommendation would allow issuers of both variable and non-variable contracts to use terminology that is different from that prescribed in the Forms to accommodate new terms that may develop or terms that better describe the features, subject to the conditions noted above. In this regard, this recommendation would help to “future-proof” the Forms and facilitate innovation and the continuous development of better disclosure over time. This change would also recognize the industry’s ongoing efforts to better serve investors by clarifying and simplifying the language used to explain and describe their investments in variable contracts. As currently drafted, the Proposal would require summary prospectuses to include many long-standing industry terms and phrases that recent studies have shown are confusing and difficult for consumers to understand, such as “death benefit” and “surrender charge.” The industry is in the early stages of a consumer-focused effort to provide important information to investors using simpler and more transparent language. The result will be terminology designed to make variable contracts more easily understandable for investors.

Finally, this recommendation would permit issuers of non-variable contracts to register an indefinite amount of securities, consistent with the continuous basis on which such contracts are offered. By so doing, non-variable contract issuers would avoid the risk of inadvertently overselling securities and would also be able to net redemptions against purchases, thereby avoiding excess registration fees on reinvestments.

The foregoing matters are significant and costly impediments to issuers of non-variable contracts and their removal will spur innovation and market competition, thereby resulting in greater investor choice. In this regard, it bears noting that sales of non-variable contracts, such as “buffered” or “structured” annuities, are taking on an increasing importance in the marketplace.

In addition, this recommendation will facilitate the registration process inasmuch as both the Staff and issuers of non-variable contracts are familiar with the disclosure standards of the “N” registration forms, which are tailored to elicit insurance product information.

²⁸ Allianz Life Insurance Company of North America, SEC Accounting Staff Letter (Sept. 28, 2018); Athene Annuity and Life Company, Accounting Staff Letter (Sept. 28, 2018); Great West Life & Annuity Insurance Company, Accounting Staff Letter (Sept. 28, 2018); and Midland National Life Insurance Company, Accounting Staff Letter (Sept. 28, 2018).

IV. Conclusion

Once again, we commend the Commission and its Staff for their forward-thinking on improvements to the disclosure framework for variable contracts. We thank you for the opportunity to share our comments and recommendations, and we hope the thoughts and ideas presented in this letter are helpful to the Commission as it moves to finalize the Proposal.

If you have questions about anything in this letter, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact me or Jason Berkowitz, IRI's Chief Legal and Regulatory Affairs Officer, or Richard Choi or Tom Conner, Co-Chairs of IRI's Summary Prospectus Working Group.

Sincerely,



Wayne Chopus
President & CEO
Insured Retirement Institute

cc: The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Ms. Dalia Blass, Director, Division of Investment Management
Mr. Paul G. Cellupica, Deputy Director, Division of Investment Management