Insured Retirement Institute
1100 Vermont Avenue, NW | 10th Floor
Washington, DC 20005
t | 202.469.3000 f | 202.469.3030
www.IRIonline.org

November 6, 2019

Submitted electronically to rule-comments@sec.gov

Ms. Vanessa Countryman
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 supplement our initial comment letter filed with the Commission on March 15, 2019 (the "Initial Letter") on the above-rulemaking proposal ("Proposal"), which would permit the use of summary prospectuses for variable annuity and variable life insurance contracts ("variable contracts").[2] We are submitting this letter following discussions we have had with the

---

[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., 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] In our Initial Letter, we noted that because other trade associations have been, or will be, submitting their own comments with which we generally agree, we focused our efforts in developing three recommendations in response to Director Blass's request for constructive feedback to "future-proof" the Proposal. One of those recommendations was that the Commission codify the so-called "Great-West" line of no-action letters for discontinued variable contracts (referred to as "Staff Letters" in the Proposal), with certain practical modifications to eliminate current burdens. The other two recommendations were (1) that the Commission extend the "access equals delivery" framework to variable contract and all 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, and (2) revise the "N" registration forms to accommodate registered non-variable annuity contracts such as "index-linked annuities."

Commission staff ("Staff"). For convenience, capitalized terms in this letter have the same meanings as set out in the Initial Letter or in the Proposal, except as otherwise noted.

A. SUPPLEMENTAL COMMENTS

1. The Staff Letters Should Be Codified in Rule 498A Itself and Not Through Agency Guidance.

We recommend that the Commission codify the position taken in the Staff Letters in Rule 498A itself and not through agency guidance as proposed, particularly in light of the recently-issued Executive Orders described below.

According to the Proposal, if "the proposed summary prospectus framework is adopted, the Commission would take the position that if an issuer of an existing contract that provides alternative disclosures does not file post-effective amendments to update a variable contract registration statement and does not provide updated prospectuses to existing investors, this would not provide a basis for enforcement action so long as investors receive the alternative disclosures."[3]

Under this position, the Commission, in effect, would grandfather any variable contracts operating in accordance with the Staff Letters prior to the effective date of any final summary prospectus rules. The Proposal describes these grandfathered variable contracts as "Alternative Disclosure Contracts."[4] Issuers of variable contracts issued on or after the effective date would be subject to regular annual registration statement updating requirements and could avail themselves of the summary prospectus framework as adopted.

The Commission described the foregoing position on Alternative Disclosure Contracts as "***an agency statement of general applicability with future effect designed to implement, interpret, or prescribe law or policy***."[5]

---

[3] Proposal at 167-168.

[4] The Commission noted that a registration statement would have to be filed for an Alternative Disclosure Contract that undergoes a "material change," after which the Contract "would no longer be permitted to operate as an Alternative Disclosure Contract." Proposal at n. 374. Because of the substantial undertaking that would be involved with this type of transition, we recommend the standard be changed to "fundamental change" if the final rule is adopted by the Commission as proposed. However, for the reasons discussed below, we strongly believe the Commission should allow Alternative Disclosure Contracts to continue to rely on the Staff Letters and resume such reliance even after a material (or fundamental) change has occurred.

[5] Proposal at n. 374 (emphasis added). According to the Commission, "[t]his position would be consistent with the Staff Letters up to the effective date of any final rule and effectively would moot those letters. The Commission's longstanding position is that all staff statements are nonbinding and create no enforceable legal rights or obligations of the Commission or other parties. See, *e.g.*, Statement by

On October 9, 2019, President Trump issued an executive order that affects statements of general application issued by regulatory agencies, including the Commission (the "Executive Order").[6] Specifically, the Executive Order applies to "guidance documents," which are defined to mean "***an agency statement of general applicability, intended to have future effect*** on the behavior of regulated parties, ***that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation***,"[7] with certain exceptions that do not appear to apply here.

The Executive Order contains provisions that could cast doubt on the ability of variable contract issuers to rely on the Commission's statement of general applicability concerning Alternative Disclosure Contracts in not annually updating registration statements. For example, Section 3 of the Executive Order states that "[g]uidance documents may not be used to impose new standards of conduct on persons outside the executive branch except as expressly authorized by law or as expressly incorporated into a contract." This language can be read to require the existence of a law that expressly authorizes the issuance of guidance documents to alleviate registration obligations under the Securities Act of 1933, as amended ("Securities Act"). In the same vein, Section 28 of the Securities Act provides the Commission with authority to exempt persons from the Act only pursuant to rule or regulation, not by a statement of general applicability.

In addition, Section 3 of the Executive Order states that "[w]hen an agency uses a guidance document to state the legal applicability of a statute or regulation, that document can do no more, with respect to prohibition of conduct, than articulate the agency's understanding of

---

Chairman Jay Clayton Regarding Staff Views. Securities and Exchange Commission (Sept. 13, 2018), available at https://www.sec.gov/news/public-statement/statement-clayton-091318.

[6] Exec. Order No. 13,892, 84 Fed. Reg. 55,239 (Oct. 9, 2019) *available at* https://www.federalregister.gov/documents/2019/10/15/2019-22624/promoting-the-rule-of-law-through-transparency-and-fairness-in-civil-administrative-enforcement-and. The Executive Order applies to agencies and defines "agency" to have the meaning given to an "'Executive agency' in section 105 of title 5, United States Code," but excludes the Government Accountability Office." Executive Order 13892, § 2(a). Section 105 defines "Executive agency" to mean "an Executive department, a Government corporation, ***and an independent establishment***." (Emphasis added.) Section 104 of title 5 of the United States Code defines "independent establishment," as relevant here, in a somewhat obtuse manner to mean "(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment." The federal courts have concluded that the Commission is an independent establishment. *See, e.g.*, *SEC v. Syron*, 934 F.Supp.2d 609, 624 (S.D.N.Y. 2013) (discussing *OKC Corp. v. Williams*, 461 F.Supp. 540, 549 (N.D. Tex. 1978) (holding that Section 3(c) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), which exempts officers and employees of independent establishments and executive departments from Exchange Act liability, applied to officers and employees of the Commission acting in the course of their official duties).

[7] Exec. Order No. 13,892, § 2(c).

how a statute or regulation applies to particular circumstances." This language can be read to call into question whether a statement of general applicability can even be used to provide an exemption from the Securities Act prohibitions against selling securities that are not registered in the manner contemplated by that Act.[8]

Accordingly, we would recommend that any codification of the Staff Letters be included in Rule 498A itself, rather than any statement of general applicability. Such codification would enable variable contract issuers, which rely extensively on the Staff Letters, as noted in the Proposal,[9] to more assuredly avoid the ongoing costs of annually updating registration statements for variable contracts that are no longer offered ("Discontinued Contracts"). In addition, as discussed below, variable contract issuers should be allowed to rely on the Staff Letters on a going forward basis.

2. **The Staff Letters Adequately Address the Policy Concerns Identified in the Proposal and Should Be Codified Going Forward.**

   a. **Investor Protection – Disclosure**.

As noted above, the Commission's proposed position on Alternative Disclosure Contracts (*i.e.*, the Staff Letters) is limited to those Contracts existing before the effective date of any final summary prospectus rules. In this regard, the Commission stated that "[a]s a general matter, we believe that all variable contract investors should receive the ***same information***."[10] The

---

[8] President Trump also issued another executive order on October 9, 2019, that raises similar questions but its application to the Commission is less clear. Exec. Order No. 13,891, 84 Fed. Reg. 55,235 (Oct. 9, 2019) ("Executive Order 13891") *available at* https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents. Executive Order 13891 applies to agencies, which, unlike Executive Order 13892, it defines to have the meaning given in "section 3(b) of Executive Order 12866 (Regulatory Planning and Review), as amended." Section 3(b) of Executive Order 12866 defines "Agency" to mean "any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), ***other than*** those considered to be ***independent regulatory agencies***, as defined in 44 U.S.C. 3502(10)." (Emphasis added.) Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Jan. 18, 2011). Although Section 3502(10) does not refer to independent regulatory agencies, Section 3502(5) defines that term to include the Commission. Accordingly, it would appear that independent regulatory agencies, such as the Commission, are outside the intended scope of Executive Order 13891. It bears noting, however, that Section 4 of Executive Order 13891 requires agencies to adopt or amend regulations for issuing guidance documents that include: "(i) a requirement for each guidance document to clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract" and "(ii) procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to which petitions should be directed." These provisions, if they were to apply, would seem to call into question the viability of reliance on a guidance document that is not binding on the public and is susceptible to change other than through formal rulemaking.

[9] *See* the chart on page 166 of the Proposal, which shows that more than half of all variable contract registration statements operate under the Staff Letters.

[10] Proposal at 168 (emphasis added).

Commission also stated that its position is based on its "belief that the summary prospectus framework could give investors more pertinent information to ***monitor*** their contract investment than the alternative disclosures."[11] Examples of such information included a brief description of contract changes, key information about the contract, and key summary information about underlying funds.

Respectfully, we submit that over 40 years of administrative history and experience with the Staff Letters amply demonstrate the absence of any need to provide variable contract investors the "same information" or "more pertinent information" for "monitoring" purposes. The crux of the investor protection framework of the Securities Act is to provide investors with information necessary for them to make an informed decision about the ***purchase*** of a security,[12] which is ***exactly*** what the Staff Letters require.[13] By contrast, there is no requirement under the Securities Act to provide information to investors for "***monitoring***" purposes.

The Staff Letters in effect ensure that all necessary information is available to variable contract owners without the issuers of such variable contracts having to annually update their registration statements. Specifically, because the variable contracts covered by the Staff Letters rarely undergo change,[14] much of the information about them, of course, remains unchanged and requires no further updating. At the same time, to the extent the Commission and its Staff may view separate account units of interest ("units") as the relevant security for purposes of

---

[11] *Id.* at 168-169 (emphasis added).

[12] The preamble to the Securities Act describes the purposes of the Act as follows: "AN ACT To provide full and fair disclosure of the character of securities sold in Interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes." Noting the foregoing preamble, the Supreme Court explained that "[t]he design of the [Securities Act] is to protect investors by promoting full disclosure of information thought necessary to informed investment decisions." *SEC v. Ralston Purina Co.*, 73 S.Ct. 981, 984 (June 8, 1953), *citing A. C. Frost & Co. v. Coeur D'Alene Mines Corp.*, 312 U.S. 38, 40, 61 S.Ct. 414, 415, 85 L.Ed. 500 (1941). In *A.C. Frost*, the Supreme Court observed that "[t]he essential purpose of the [Securities Act] is to protect investors by requiring publication of certain information concerning securities before offered for sale." *Id.*

[13] For the sake of brevity, we do not repeat the many disclosures and predicate circumstances necessary for reliance on the Staff Letters, which are summarized on pages 165-166 of the Proposal. We do note, however, that in the analogous situation of non-registration, the federal courts have examined the availability of information of the type contained in a registration statement in determining whether an *exemption* from the Securities Act applies. *See, e.g., Van Dyke v. Coburn Enterprises, Inc.,* 873 F.2d 1094 (8th Cir. 1989). In determining that the private offering exemption of Section 4(2) of the Securities Act applied, the *Van Dyke* court noted that "[t]he question turns on the need of the offerees for the protections afforded by registration. ***If the offerees have access to such information, registration is unnecessary, and the section 4(2) exemption should apply***. If the offerees have a relationship with the offeror—such as employment, family or economic bargaining power—that enables the offerees to obtain all necessary information, the offering should also be exempt." *Id.* at 1098 (citations omitted) (emphasis added).

[14] Although the Staff Letters refer to "changes," our recommendation would be to codify the Staff Letters in Rule 498A using "material changes" to avoid unnecessary burden.

this analysis, we respectfully submit that the purchase of additional units, whether through the investment of subsequent premium payments ("sub-pays") or the transfer of existing variable contract values among one or more subaccounts of the separate account, fundamentally reflects decisions by contract owners to purchase additional shares of the corresponding underlying funds, for which updated statutory prospectuses would continue to be available under the Staff Letters *going forward*.

Accordingly, the Commission should codify the Staff Letters into Rule 498A on a *going forward* basis.

b. Investor Protection – Liability.

In the Proposal, the Commission expressed the view that "while a variable contract summary prospectus under the proposed rule would not itself be deemed a part of the registration statement for purposes of section 11 [of the Securities Act], the information in the summary prospectus will generally be subject to liability under section 11."[15] The Commission also stated that "the [variable contract] summary prospectus would be subject to liability under section 12(a)(2) of the Securities Act and the general antifraud provisions of the federal securities laws.[16]

By contrast, the Commission noted that "[p]roviding the alternative disclosures described in the Staff Letters may have the effect of potentially limiting issuers' liability under certain provisions of the federal securities laws requiring a registration statement or prospectus to contain whatever information may be necessary or appropriate to avoid material misstatements or omissions."[17] At the same time, the Commission acknowledged that such issuers would be subject to the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[18] In addition, the Commission noted that "[t]here may also be additional remedies for investors, for example, under state insurance law, state securities law, and contract law."[19]

As a practical matter, because the discontinuation of the offering of a variable contract and the absence of changes to such a variable contract are necessary predicates for reliance on the Staff Letters, there typically is little if any need to update the disclosure in the statutory prospectus regarding the variable contract. Moreover, in its long-time administration of the

---

[15] Proposal at p. 149.

[16] *Id.* at 150 (footnotes omitted).

[17] *Id.* at 166-167.

[18] *Id.* at 167.

[19] *Id.* at n. 373.

Staff Letters, the Staff has permitted variable contract issuers to file Rule 497 prospectus supplements to disclose material changes in the offering (as opposed to the variable contract). Examples of these set out in the Proposal include "changes in investment options, investment restrictions, fees, and other matters."[20] These practical considerations may explain why the Proposal does not identify any specific problem concerning, or any broader need to address, liability under the federal securities laws relating to the Staff Letters.

Notably, unlike the annual "notices" proposed under Approaches 1 and 2 of the Proposal for Discontinued Contracts, the Commission has taken the position that Rule 497 prospectus supplements are subject to liability under both Section 11 and Section 12(a)(2) of the Securities Act. In this respect, we note that in the analogous situation of shelf offerings, when the Commission adopted Rule 415 under the Securities Act, it took account of the fact that prospectuses that are not filed as part of a registration statement would nevertheless be subject to liability under what is now Section 12(a)(2). Subsequently, the Commission also took the position that liability under Section 11 of the 1933 Act would apply:

> Because prospectus supplements are not set forth in post-effective amendments, it has been argued the Section 11 liability does not attach to them. It is [the Commission's view] that these supplements are part of the prospectus and Section 11 liability applies to the information in them.[21]

The Commission reaffirmed that position in 2005 when it adopted its Securities Offering Reform.[22] Under the foregoing Commission interpretive position, Rule 497 prospectus supplements filed by a variable contract issuer would be subject to Section 11 liability, as well as Section 12(a)(2) liability. Moreover, the anti-fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder would continue to apply.

More broadly, we believe that the Staff Letters are consistent with the protection of investors intended by the Securities Act. Section 13 of the Securities Act reflects Congress's determination that three years "after the security was bona fide offered to the public" is sufficient time for an investor in a security to determine whether the registration statement for

---

[20] *Id.* at n. 378.

[21] The Regulation of Securities Offerings, Securities Act Release No. 7606A at Section V.C.1. (Nov. 13, 1998).

[22] Securities Act Release No. 8591 at n. 445 (Jul. 19, 2005) (the "Securities Offering Reform Release") ("In the 1998 proposals, we expressed our belief that prospectus supplements and the information contained in them are subject to liability under Section 11. The rules we adopt today codify that position."). Rule 430C under the Securities Act, which was adopted pursuant to the Securities Offering Reform Release, appears, at least on its face, to have codified this position.

the security contains any material misstatement or omission for purposes of Section 11, or whether the offer or sale of the security was made in violation of Section 5 for purposes of Section 12(a)(1) of the Securities Act.[23] In the case of variable contracts, that three year period would begin to run no earlier than the last post-effective amendment to the variable contract registration statement.[24] As a result, variable contract owners often will have more than three years after purchasing the variable contract to make such a determination, bearing in mind that variable contract terms and conditions are ***contractually fixed***. The fact that reliance on the Staff Letters is predicated on the absence of changes to a variable contract underscores the absence of the need for any additional investor protection. The Staff Letters provide that if the variable contract were to again be offered to the public or if changes are made to such variable contract, the insurer "will file a post-effective amendment relating to such [c]ontracts and will comply with the prospectus delivery and annual updating requirements of the [Securities] Act in connection with the public offering of such [c]ontracts."[25]

Similarly, the statute of limitations for Section 12(a)(2) claims for material misstatements or omissions made by means of a prospectus or oral communication in the offer or sale of a security does not run until three years after the last "sale." Under the view that separate account units are the relevant securities for this purpose, the statute of limitations would not run any earlier than three years after the last separate account unit is sold to a variable contract owner, whether by sub-pay or transfer. Moreover, as discussed above, the continued use of Rule 497 supplements under the approach of Staff Letters would appear to provide more liability protection than the use of annual "notices" under Approaches 1 and 2. Therefore, it is not clear to us that the Staff Letters present any "liability gap" under Section 12(a)(2) that requires a change from the Staff Letters to either Approach 1 or Approach 2. In any case, should the Commission determine to proceed with one of the Approaches, we believe it would be

---

[23] Securities Act Section 13 provides that "[i]n no event shall any such action be brought to enforce a liability created under section 11 or section 12(a)(1) more than three years after the security was bona fide offered to the public, or under section 12(a)(2) more than three years after the sale."

[24] This result follows from Section 24(e) of the Investment Company Act of 1940, which provides, in pertinent part, that: "For the purposes of section 11 of the Securities Act of 1933, as amended, the effective date of the latest amendment filed shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of section 13 of the [Securities Act,] no such security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection." *See also* Section 2(a)(8) of the Securities Act, which defines "registration statement" to include "any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference."

[25] *See, e.g., Metropolitan Life Insurance Co.*, SEC Staff No-Action Letter (Apr. 26, 1995) at 3.

useful to the industry for the Commission to provide more detailed guidance than it did in the Proposal regarding how Section 12(a)(2) is applied and why a change is necessary.

Accordingly, the Commission should codify the Staff Letters, including the longstanding practice of filing Rule 497 prospectus supplements, into Rule 498A on a *going forward* basis. This practice would have the benefit of not only being familiar to the industry and variable contract owners alike, but also of avoiding questions that arise with respect to the "notices" proposed to be used in Approaches 1 and 2 of the Proposal. For example, according to the Proposal, the notices would not be Section 10(b) prospectuses, and would not be subject to Section 12(a)(2) liability, but the Proposal does not explain what they would be classified as or subject to from a liability perspective. One thing is clear, however; they would not be filed with the Commission and they also would not appear to be subject to Section 11 liability under the Securities Act.[26]

3. **The Staff Letters Should Continue Going Forward to Avoid Unnecessary Costs and Unintended Consequences.**

IRI members completely agree with the Commission's observation in the Proposal that "the proportion of fixed costs per [Discontinued Contract] and other burdens associated with maintaining a current registration statement and mailing prospectuses increase over a diminishing asset base." IRI members also agree that this situation is driven primarily by the fact that, unlike mutual funds and other registered investment companies that can liquidate when assets shrink below the point where the fund is economically viable, variable contracts cannot be liquidated or otherwise unilaterally terminated by an insurer until the last in-force contract terminates due to contract owner initiated surrender or death. Because the Staff Letters have permitted insurers to administer these small blocks of business in a manner that is economically feasible, the Staff Letters have proven critically important to the variable contract industry.

Imposing new or different requirements in respect of Discontinued Contracts could have a profound impact on the regulatory burdens and costs borne by variable contract issuers. IRI estimates that variable contract issuers would bear an aggregate cost of ***$12 million to $17 million annually*** to maintain registrations for Discontinued Contracts. Those costs would be in addition to the substantial costs of ***initially*** updating the registration statements for Discontinued Contracts if they are not grandfathered, which we believe would be equivalent to

[26] If the Commission concludes it should adopt Approach 1 or 2 as proposed, IRI strongly urges the Commission to explain in the adopting release details as to how the mechanics of these Approaches would work. Specifically, what type of document would the "notice" be – a Rule 482 advertisement, some other type of prospectus, supplemental sales literature, or something else?

the costs of drafting the registration statements anew given the significant impact of regulatory changes over the past several decades on disclosure.

For example, Form S-6 for variable life insurance products was replaced by Form N-6 in 2004. As a result, the prospectuses would have to be completely re-written, and a statement of additional information would have to be prepared. The legal work involved would be substantial. Furthermore, the prospectus page count for variable annuities since 2001 has risen from an average of 50 pages to approximately 80 pages as a result of regulatory and form changes, staff comments, and more product features. A 60% increase in page count would drive up costs even further.

These costs far outweigh the benefits of maintaining registration statements for Discontinued Contracts, because subsequent premiums are but a small fraction of annual premiums received by variable contract issuers. For example, in 2018, total additional premiums paid into in-force variable annuities were approximately $988 million, or 1.1% of total variable annuities premiums of $92.9 billion. Of these, only $4.6 million (0.5% of additional premiums or 0.005% of total premiums) were deposited into Discontinued Contracts.

In addition, if the Commission were to discontinue the Staff Letters and proceed with Approach 1 or Approach 2, one unintended but foreseeable consequence is that variable contract issuers may decide to stop accepting additional premiums altogether in order to avoid the costs of having to annually update old registration statements. Another unintended but foreseeable consequence is that variable contract issuers will refrain in the future from devoting significant assets to developing products that, if unsuccessful, would create a burdensome and economically unfeasible cost obligation long into the future. Instead, variable contract issuers may shift their attention to developing non-variable products that are registered solely under the Securities Act, which operate in a less expensive and burdensome "access equals delivery" environment that does not require the delivery of paper prospectuses.

Accordingly, the Staff Letters should be codified into Rule 498A on a *going forward* basis to avoid unnecessary costs and unintended consequences but modernized in the manner described in IRI's Initial Letter.

4. Phased-In Implementation of Inline XBRL

Our members support the proposed use of the Inline XBRL format to submit certain information about variable contracts to the Commission. Based on the perceived efficiencies and cost savings that Inline XBRL will provide, we agree that implementing Inline XBRL, rather than the current XBRL process, is the correct approach. However, because variable contracts have never been required to tag and file content in XBRL format, we believe that introducing XBRL, tagged and filed as a separate exhibit, and then transitioning to Inline XBRL tagging at a later date is not efficient and would require having to learn the tagging and review process all over again.

Accordingly, we recommend that the Commission adopt a phased approach that would enable variable contract issuers to initially adapt to certain of the complex elements of the Inline XBRL format and transition fully to Inline XBRL 12 months later. We note that the Inline XBRL tagging and filing requirements for the Mutual Fund Risk/Return Summary were implemented years after XBRL became a requirement. Such additional lead time will also be necessary to enable vendor systems and client tools to be developed to generate Inline XBRL tagged documents.

Specifically, we respectfully recommend the following sequence of steps:

a. Identification of the content to be tagged to provide meaningful and effective interactive data analysis.

b. Construction of a taxonomy consistent with the needs of the market and content to be tagged, to provide meaningful Inline XBRL tagged data.

c. Implementation of Inline XBRL tagging and filing beginning one (1) year after the publication of the final rule in the Federal Register, with the following considerations:

    1. Filers will be required to prepare and file their first Inline XBRL tagged content beginning with the first form type 485BPOS filed after the compliance date designated in the rule for this purpose ("compliance date").

    2. Definitive filings filed under form type 497 that are filed after the above-referenced compliance date but prior to the filing of the above-referenced 485BPOS will not require Inline XBRL.

    3. After the Inline XBRL tagged form 485BPOS is filed with the SEC, 497 filings that require changes to the inline tagged content must be tagged and filed inline.

IRI would be pleased to provide information and other assistance in identifying content to be tagged and developing the taxonomy.

5. Removal of the Condensed Financial Information / Accumulation Unit Value Tables from Printed Document

As a follow up to discussions with the Staff, we believe variable contract issuers should have the option to include the information presented as Condensed Financial Information, including the Accumulation Unit Value Tables, on a website as opposed to the statement of additional information as proposed. Variable contract issuers are dependent upon third party systems to provide this information, which often arrives late in the production cycle, thereby presenting challenges to meeting print and EDGAR filing deadlines. Accordingly, we believe variable contract issuers should have the option to incorporate this information by reference and make it available on a website, as opposed to in any printed document.

Current and future technology supports the ability to make the information available on a website, and discussions with issuers support making this option available. The information is often formatted in a manner that is inconsistent with the format of the printed document and adds unnecessary pages and cost to document production. The data for this information comes from third party systems that are outside the control of the issuer.

6. Summary Prospectus Filing Form Types

As stated in our Initial Letter, we recommend 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. The use of distinct form type designations will enable investors to easily locate an ISP or USP when searching on EDGAR. Discussions with variable contract issuers confirms our view that distinguishing the form types would provide better transparency for issuers, investors and the Commission staff.

7. Website Linking/Layering Modeling

Implementation of an access equals delivery or similar disclosure framework will require insurers and mutual funds to address a number of technical questions, including how regulatory documents will be posted on websites, who will host the documents, and how documents will be linked (*e.g.*, how underlying fund documents will be linked to Contract Prospectuses and Summary Prospectuses). A model consistent with Rule 498[27] would utilize existing technologies while "future-proofing" presentation-related aspects of the Proposal. Such a model would also have the benefit of being familiar to investors.

Rule 498 provides a framework for a linking disclosure model, though an additional layer of linking would be necessary in the context of variable products in order to associate product documents to underlying funds. While we do not believe the Commission should direct a specific linking and layering model, document hosting should be structured to facilitate easy access to both the product documents and the underlying funds associated with the product.

Specifically, we recommend the following technology-neutral approach:

a. The product list, including both annuity and life products, should be prominently displayed and easily accessed.

[27] 17 CFR § 230.498 (Summary Prospectuses for open-end management investment companies) ("Rule 498").

b. A "landing page" showing all products, with a link to the contract documents and associated underlying fund documents, should follow the US Mutual Fund "2-click" rule for navigation between documents.

c. Based on company preference, product alignment and company website(s), separate landing pages can be maintained for Annuity and Life products, especially if currently maintained separately.

d. When an investor is reviewing documents, they should easily be able to navigate between product documents and underlying funds.

e. When viewing product documents, the USP should be initially viewed, with a linking and layered model similar to Rule 498, providing navigation to and from the variable product Summary Prospectus, Product Prospectus and Product SAI.

f. Although the USP would be prominent, easy access to the ISP must be available.

B. <u>CONCLUSION</u>

Once again, we commend the Commission and its Staff for their forward-thinking approach to improving the disclosure framework for variable contracts. We thank you for the opportunity to supplement 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 the undersigned or Richard Choi or Tom Conner, Co-Chairs of IRI's Summary Prospectus Working Group.

Sincerely,

Jason Berkowitz
Chief Legal & Regulatory Affairs Officer