

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8455 / August 9, 2004

SECURITIES EXCHANGE ACT OF 1934
Release No. 50165 / August 9, 2004

INVESTMENT COMPANY ACT OF 1940
Release No. 26526 / August 9, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11578

In the Matter of

**CIHC, INC., CONSECO SERVICES,
LLC, and CONSECO EQUITY
SALES, INC.,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS 15(b) and
21C OF THE SECURITIES EXCHANGE ACT OF
1934, and SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against CIHC, Inc., the former debtor in possession that filed for bankruptcy protection on December 17, 2002 (“CIHC”), Consecos Services, LLC (“Consecos Services”), and Consecos Equity Sales, Inc. (“CES”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for

the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

Overview

1. From late 1999 through at least September 2002, Consec Variable Insurance Company ("CVIC"), CES, and Consec Services issued, underwrote, marketed and sold variable annuity products to hedge funds and other individuals and entities that wanted to market time the mutual funds offered through these variable annuity products.

2. CVIC's immediate parent was Consec Life Insurance Company of Texas ("Consec Life"), which in turn was a wholly owned subsidiary of CIHC, the general holding company for the insurance businesses of Consec, Inc. ("Consec"), which also filed for bankruptcy on December 17, 2002. On October 23, 2002, Consec Life sold CVIC to Inviva, Inc. ("Inviva"), a private New York-based insurance company. Following the sale of CVIC, Consec no longer offered variable annuity products through any subsidiaries.

3. CVIC issued, and CES underwrote the sale of, the Consec Monument Series Fixed and Variable Annuity ("Monument"), and the Consec Advantage Plus Fixed and Variable Annuity ("Advantage Plus") products. Through these products, purchasers could invest in mutual funds managed by various fund companies. The prospectuses for the Monument and Advantage Plus variable annuity products falsely indicated that CVIC sought to prevent market timing. For example, the May 1, 2001 prospectus for the Monument variable annuity product indicated that investors were permitted twelve free transfers, or trades, per year, that the product was "not designed for professional market timing organizations," and that CVIC "reserve[d] the right to modify (including terminating) the transfer privileges." In addition, as modified in May 2002, the prospectus indicated that CVIC reserved the right to prohibit any trade if it determined that the trade would be detrimental to the Monument product or disadvantageous to other purchasers of Monument variable annuities. The prospectuses for the Advantage Plus product contained virtually identical language.

4. Despite these statements, CVIC, CES, and employees of Consec Services, marketed the Monument and Advantage Plus variable annuity products to market timing organizations, actively solicited market timing assets, sold and underwrote the sale of the product to market timers, and entered into agreements with fund complexes to facilitate market timing.

The prospectuses for the Monument and Advantage Plus products, however, did not disclose these facts. Thus, the prospectuses were materially misleading in that they failed to disclose that CVIC and employees of Conseco Services were actively marketing and selling, and CES was underwriting, the products to market timers, they failed to disclose that CVIC and Conseco Services allowed hedge funds and other market timers to engage in market timing in the Monument and Advantage Plus products, and they failed to disclose the risk that the market timers' strategies might have a detrimental impact on the other variable annuity purchasers' investment returns.

5. Ultimately, hedge funds and other market timers invested approximately \$120 million in Monument and Advantage Plus variable annuities. In the Monument product, the market timing assets dwarfed the assets of other variable annuity purchasers. Specifically, as of October 2002, although market timers did not own the majority of the Monument contracts, market timing assets constituted a majority of assets in the Monument product. Through their frequent trading, the market timers diluted the value of the underlying mutual funds that were timed, and caused the funds to incur additional costs.

Respondents

6. **CIHC** was an insurance holding company based in Carmel, Indiana. During the time of the conduct described in this Order, CIHC was a subsidiary of Conseco, and was the immediate corporate parent of Conseco Life. CIHC served as the holding company for Conseco's various insurance businesses. In December 2002, CIHC filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code, and emerged from bankruptcy on September 9, 2003. Subsequent to its emergence from bankruptcy, CIHC went through several mergers with other Conseco entities. CIHC is amenable to suit under the Investment Company Act because it is a company subject to a Chapter 11 proceeding. CIHC is subject and amenable to claims in its bankruptcy case for financial liability for pre-petition conduct pursuant to its Chapter 11 plan.

7. **Conseco Services**, a subsidiary of Conseco, is based in Carmel, Indiana. The prospectuses for the Conseco Monument and Advantage Plus products identified Conseco Services as an entity under common control with Conseco and CVIC. Conseco Services was not included in the Conseco bankruptcy, and Conseco Services is not a releasee under the court's bankruptcy plan.

8. **CES**, a subsidiary of Conseco, is a registered broker-dealer. CES served as the principal underwriter and distributor for Conseco's Monument and Advantage Plus products. The prospectus for the Monument product identified CES as an entity under common control with Conseco and CVIC. CES was not included in the Conseco bankruptcy, and it is not a releasee under the court's bankruptcy plan.

Other Relevant Entities

9. **Conseco** is a financial services company incorporated in Indiana and headquartered in Carmel, Indiana. At all relevant times, Conseco's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the New York Stock Exchange. In August 2002, Conseco's common stock was delisted. On October 23, 2002, Conseco sold CVIC and the variable annuity business to Inviva. In December 2002, Conseco filed for protection under Chapter 11 of the U.S. Bankruptcy Code, reorganizing around its insurance operations. Conseco emerged from bankruptcy protection in September 2003, and is no longer engaged in the business that is the subject of this Order. Additionally, all of the conduct described in this order predated, and did not involve the reorganized Conseco.

10. **CVIC** was a wholly-owned subsidiary of Conseco Life until October 2002. CVIC, a Texas corporation, was licensed to sell insurance products in 49 states and the District of Columbia. In October 2002, Conseco Life sold all the stock of CVIC to Inviva, which renamed the company Jefferson National Life Insurance Company on May 1, 2003. CVIC served as the depositor of Conseco Variable Insurance Company Annuity Account G and Conseco Variable Insurance Company Annuity Account H, which are registered with the Commission as unit investment trusts and are the issuers of the Monument and Advantage Plus products, respectively.

Background

A. Market Timing

11. Market timing includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal per se, can harm other mutual fund shareholders because (a) it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, (b) it can disrupt the management of the mutual fund's investment portfolio, and (c) it can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate the market timer's frequent buying and selling of shares.

B. Variable Annuities

12. Variable annuities are securities. Variable annuities are insurance contracts that provide for tax-deferred accumulation during the accumulation period and various payout options, including a series of payments to be made to a person named as the "annuitant" in the contract. The payments typically come at the annuitant's retirement. Hedge funds and others that engage in market timing through variable annuities, however, do not purchase the products in order to obtain the retirement income. Rather, they purchase variable annuities to be able to market time the underlying mutual fund portfolios.

13. CVIC, CES, and Conseco Services were aware that the market timing contract owners were not typical annuitants. They were aware, for example, that the contract owners

never intended the annuitants named in these annuity contracts to receive the annuity payments, and that the same entities (such as Canary Capital Management, LLC (“Canary”), a prolific and well-known market timer) executed multiple annuity contracts with an employee as the annuitant. These arrangements with hedge funds and other entities that were engaged in market timing were never disclosed to the underlying funds or to other annuitants.

14. Assets invested in variable annuities are used to purchase securities, and the size of the payments to the annuitant typically depends on the performance of the underlying securities. Variable annuity products typically offer access to mutual funds. Contract owners are able to invest in a variety of mutual funds at several mutual fund complexes through subaccounts of the insurance company that hold shares of the funds. Funds underlying variable annuity products are offered to insurance company separate accounts and certain tax-qualified retirement plans, but are not sold to the general public. In some cases, the funds are patterned on and managed similarly to corresponding retail funds offered by the fund complex. The variable insurance company and a mutual fund complex enter into participation agreements. In general, the annuity contracts allow the contract owner to place securities orders with the variable insurance company. These orders are then aggregated and transmitted to the mutual fund complex on a net basis.

15. Insurance companies offer their variable annuity products through prospectuses filed with the Commission. Among other things, the product prospectuses set out the costs of the annuity, the funds offered, and language concerning executing orders. The prospectuses may also describe the insurance companies’ policies on market timing. The insurance companies deliver the variable annuity prospectuses to purchasers of variable annuity contracts together with the prospectuses for the various mutual funds available for investment. The fund prospectuses provide additional information on the particular fund, and may include policies about excessive trading or market timing.

16. As with market timing of mutual funds, market timing through variable annuities can result in increased expense to, and cause dilution in, the underlying mutual fund portfolios. Additionally, market timing through variable annuities may harm not only investors holding the same variable annuity, but also other investors in the underlying mutual funds being timed, such as investors in variable annuities issued by other insurance companies.

C. CVIC, CES, and Conseco Services Permitted Investors to Engage in Market Timing

17. CVIC issued, and CES underwrote the sale of, several variable annuity products. For example, CVIC issued a product that was specifically designed for market timers. The prospectus for the Conseco Advisor Series Fixed and Variable Annuity (“Advisor”) variable annuity product stated that it was “sold only to individuals who wish to accumulate assets by engaging in strategic or tactical asset allocation investing with the assistance of a professional money manager.” The Advisor prospectus did not contain any language restricting the number of transfers per year, or otherwise limiting trading. In contrast, CVIC issued the Monument and Advantage Plus variable annuity products, which were not designed for professional market timing organizations. During 2002, the Monument and Advantage Plus variable annuity

products made available approximately sixty mutual fund portfolios offered by nineteen different fund complexes. Significantly, the Monument product had no surrender fee, which permitted the annuity contract owner to redeem the variable annuity at any time without having to pay this fee. Advantage Plus did have a surrender fee that decreased over time.

The Monument and Advantage Plus
Prospectuses Contained Language Discouraging Timing

18. During 2000-2002, the Monument and Advantage Plus prospectuses indicated that CVIC discouraged market timing. For example, under a section entitled "Highlights," the Monument prospectus stated that the product was "intended to be used to accumulate money for retirement or other long-term tax-deferred investment purposes." The Monument product was designed for individuals between the ages of 51 and 70, with the average Monument variable annuity funded with approximately \$50,000.

19. During 2000-2002, the prospectuses for the Monument product contained a section entitled "Transfers," which were defined as movements of money between investment options. This section provided that contract owners were permitted one free transfer between subaccounts per 30-day period, and that additional transfers may be subject to a fee of the lesser of \$25 or 2% of the amount transferred. The language in the Advantage Plus product was substantially similar.

20. During 2000-2002, the Monument prospectuses stated as follows:

This product is not designed for professional market timing organizations. [CVIC] reserves the right to modify (including terminating) the transfer privileges described above.

The Advantage Plus prospectus contained substantially similar language.

21. Beginning in May 2002, CVIC added a section to the prospectuses entitled "Excessive Trading Limits" that contained language implying that CVIC was monitoring excessive trading with a view toward protecting all contract owners' investments. Specifically, the May 1, 2002 Monument and Advantage Plus prospectuses contained the following language:

We reserve the right to limit transfers in any Contract year, or to refuse any transfer request for a Contract owner, or third party advisor acting under a limited Power of Attorney, if:

we believe, in our sole discretion, that excessive trading by the Contract owner, or a specific transfer request, submitted by a third party advisor, or a group of transfer requests, may have a detrimental effect on the accumulation unit values of any subaccount or the share prices of any portfolio or would be detrimental to other Contract owners; or

we are informed by one or more portfolios that they intend to restrict the purchase of portfolio shares because of excessive trading or because they believe that a specific transfer or group of transfers would have a detrimental effect on the price of portfolio shares.

We may apply the restrictions in any manner reasonably designed to prevent transfers that we consider disadvantageous to other Contract owners.

22. As explained below, CVIC and Conseco Services employees failed to apply these provisions to prohibit market timing. Importantly, the Monument and Advantage Plus prospectuses failed to make any disclosure that CVIC and Conseco Services marketed and sold, and CES underwrote the sale of, the products to market timers, they failed to disclose that CVIC and Conseco Services employees were facilitating these market timers' trading activities, and they failed to disclose the risk that the market timers' rapid trading might have a negative impact on the other variable annuity purchasers' investment returns.

CVIC, CES, and Conseco Services Permitted Market Timing

23. In late 2000, a registered representative based in Chicago, Illinois, approached a CVIC wholesaler about a hedge fund customer that wanted to invest \$9 million in the Monument product for market timing. An annuity contract for this investment was opened in early December 2000.

24. Shortly after this hedge fund's investment, a Conseco Services vice president in charge of sales and distribution of variable annuities and other Conseco Services employees began considering ways to augment CVIC's ability to attract market timers.

25. For example, the Conseco Services vice president approached the vice chairman responsible for insurance product sales at a fund complex about obtaining timing capacity in that complex's mutual funds. The vice chairman told the Conseco Services vice president that the fund complex had unlimited timing capacity in a fund offered to insurance company separate accounts, and that purchasers of Monument variable annuities could engage in market timing of this fund through CVIC's subaccounts. Conseco Services employees also made arrangements with another fund complex for variable annuity purchasers to market time that fund complex's portfolios, which were offered to insurance company separate accounts, in the Monument and Advantage Plus products.

26. One of the customers to whom the Conseco Services vice president sold the variable annuity product was Canary. Canary ultimately invested \$25 million in five variable annuity contracts at CVIC in early 2002, with a Canary employee serving as the annuitant on the contracts. Canary used the variable annuity contracts to time mutual funds.

27. Ultimately, CVIC sold, and CES underwrote the sale of, over \$120 million of variable annuities through approximately 100 contracts to hedge funds and other investors that were used to time mutual funds, including funds that explicitly prohibited timing.

CVIC, CES and Conseco Services Became Aware that Market Timing Could Be Harmful to Annuitants

28. CVIC, CES, and Conseco Services were aware of the potential detrimental effects of market timing in at least two ways. First, certain of the fund prospectuses contained within the Monument product referred to the disruptive effects of market timing.

29. Secondly, fund companies themselves informed CVIC and Conseco Services of their concerns over the effect of market timing in their funds. For example, at the beginning of 2002, a fund complex that had certain portfolios offered within the Monument product became concerned about market timing in its funds. In the summer of 2002, the fund complex informed Conseco Services employees that it was closing its European fund to CVIC investors because market timing “has negatively impacted both the ability to manage the portfolio as well as the existing shareholders.” The European fund prospectus contained within the May 2002 Monument prospectus stated that the fund complex reserved the right to refuse trades if those trades, by their size or frequency, “would disrupt the management of [the] portfolio.” The fund complex employee involved in maintaining the relationship with CVIC advised a Conseco Services employee about the fund complex’s “zero tolerance” policy with respect to timing.

30. Beginning in August 2001, a national accounts vice president at another fund complex communicated to Conseco Services employees concerns about possible timing in that complex’s mutual funds. The fund complex informed a Conseco Services employee that market timing “drives trading costs up for remaining shareholders, it is extremely time consuming and difficult for the PM’s [portfolio managers] to manage the huge swings in cash positions,” and “possibly violates Conseco’s own trading rules.” On February 13, 2002, the fund complex employee told a Conseco Services employee that “I would encourage you and your distribution people to take all steps necessary to eliminate the market timers executing these trades.” The fund complex informed Conseco Services that it expected that CVIC would assume the burden of monitoring timers. Nevertheless, at least through January 2003, timers continued to time this fund complex’s funds with the knowledge of Conseco Services.

31. In May 2002, an employee at another fund complex that offered funds through the Monument product, informed Conseco Services employees that the fund complex had a “zero tolerance for timing policy” and that the fund complex “look[ed] to the insurance companies to help us keep these individuals out of our funds and protect the other shareowners.” Nevertheless, timers continued to time this fund complex’s funds with the knowledge of Conseco Services.

CVIC and Conseco Services Established Procedures to Accept Assets from
Market Timing Clients and to Facilitate Their Trading

32. Meanwhile, Conseco Services established procedures to monitor and assist market timers. Conseco Services employees negotiated capacity arrangements with certain fund complexes, which enabled timers to invest a particular amount of assets in these funds. Conseco Services employees then tracked the timers' trades in these funds' subaccounts, and informed the funds about timing trades on a daily basis. The Conseco Services employees further monitored whether timers were timing any other funds, including funds that prohibited timing. A Conseco Services employee also worked directly with Canary, and provided Canary with daily updates of the accumulation unit values for the portfolios Canary was timing.

33. When a fund complex identified a trade as a timing trade, a Conseco Services employee would follow the fund complex's instructions to deal with the trader, including blocking the trade or prohibiting the trader from future trades in the funds. Typically, the Conseco Services employee would inform the contract owner or the registered representative whose customer owned the contract that a fund complex had identified market timing activity, and ask the registered representative or contract owner to stop timing that fund. However, the Conseco Services employee also advised certain timers to keep the amount of a timing trade below a certain dollar amount.

34. In July 2001, for example, a Conseco Services employee wrote a letter to a registered representative who represented a market timing customer. The Conseco Services employee then set forth "our proposal for your client who wishes to actively trade within our Monument product." The Conseco Services employee informed the registered representative that "trades into each subaccount selected will be limited to \$500,000." The letter also identified numerous portfolios that were available for timing, including portfolios at fund complexes that had not agreed to provide capacity for timing assets.

35. While CVIC would block individual trades at the request of a fund company, and would occasionally warn the timer, CVIC did not take any action to eliminate the particular timers who were responsible. Indeed, Conseco Services employees falsely stated to fund companies that they did not permit timing when they knew timers were in the Monument and Advantage Plus products. For example, in March 2003 Conseco Services employees were still managing CVIC's day-to-day operations pursuant to a transition services agreement. On March 12, 2003, a Conseco Services employee sent an e-mail to an Inviva employee concerning timers that the Conseco Services employee had identified as having traded in a fund that had not agreed to provide timing capacity. The Conseco Services employee asked the Inviva employee to advise the fund complex that "we have identified these individuals" and "that we do not tolerate timers." Further, the Conseco Services employee asked the Inviva employee to provide the same information to another fund complex that had not agreed to provide timing capacity. Both the Conseco Services and Inviva employees knew, however, that they not only tolerated market timers, but also solicited market timers.

36. CVIC and Consecos Services did not independently take any steps to determine whether market timing, in general or with respect to particular trades, was detrimental or disadvantageous to other annuitants. Additionally, the Monument and Advantage Plus prospectuses did not disclose the relationships with market timers, the efforts to assist the market timers' activities, or the risk that market timing trades might be detrimental to other annuitants' investment returns.

CVIC Earned Fees from Annuity Contract Owners' Market Timing

37. CVIC earned approximately \$6.6 million in fees from all Monument and Advantage Plus products, for the period January 2000 through October 22, 2002. Of that amount, approximately \$1.5 million is attributable to market timing contracts. In addition, Inviva paid Consecos Services approximately \$4.1 million in fees for providing services during the transition period from October 2002 through May 2003.

Annuitants were Harmed by the Market Timing Activity

38. Annuitants suffered harm as a result of the market timing activity in Monument and Advantage Plus.

CIHC is Liable for the Conduct of CVIC

39. CIHC was the holding company for Consecos' insurance businesses, including CVIC. CIHC and CVIC operated as a single business enterprise. Additionally, it is appropriate to pierce the corporate veil and hold CIHC liable for the conduct of CVIC.

Violations

40. As a result of the conduct described above, CES, Consecos Services, and CIHC (through CVIC), willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in that CVIC, CES and Consecos Services made untrue statements of material fact, omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit. Specifically, CVIC's prospectuses falsely stated that these products were not designed for professional market timing organizations, and gave the misleading impression that CVIC and Consecos Services would act independently to monitor or block detrimental trades. CES underwrote and distributed every annuity contract sold, including the contracts sold to market timers. Further, the Monument and Advantage Plus prospectuses failed to disclose that CVIC was marketing and selling, and that CES was underwriting and distributing, the products to market timers, that CVIC and Consecos Services were facilitating the market timing customers in carrying out a market timing strategy, and the risk that the market timers' rapid trading might have a negative impact on the other variable annuity purchasers' investment returns.

41. As a result of the conduct described above, CES, Conseco Services, and CIHC (through CVIC), willfully violated Section 34(b) of the Investment Company Act in that they made an untrue statement of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. Specifically, CVIC and Conseco Services filed registration statements with the Commission containing prospectuses that falsely stated that these products were not designed for professional market timing organizations, and gave the misleading impression that CVIC and Conseco Services would act independently to monitor or block detrimental trades. CES underwrote and distributed every annuity contract sold, including the contracts sold to market timers. Further, Monument and Advantage Plus prospectuses failed to disclose that CVIC and Conseco Services were marketing and selling, and that CES was underwriting and distributing the products to market timers, that CVIC and Conseco Services were facilitating the market timing customers in carrying out a market timing strategy, and the risk that the market timers' rapid trading might have a negative impact on the other variable annuity purchasers' investment returns.

Undertakings

42. Ongoing Cooperation. In determining to accept the Offer, the Commission has considered the following undertakings by Respondents:

Respondents shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents have undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- b. To use their best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. To use their best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. That in connection with any testimony of Respondents to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondents:
 - i. Agree that any such notice or subpoena for Respondents' appearance and testimony may be served by regular mail on their attorney, William S. Kirsch, P.C., Kirkland & Ellis, 200 East Randolph Drive, Chicago, IL 60601; and

- ii. Agree that any such notice or subpoena for Respondents' appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

43. Independent Compliance Consultant. In the event that Respondents, or any of their parents, subsidiaries, affiliates, or successors reenter the business of issuing variable annuities within three years from the date of this Order, the Respondents (or an appropriate parent, subsidiary, affiliate or successor) shall retain, within 30 days of the date of the reentry into such business, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by Respondents or their affiliates. The Respondents shall require the Independent Compliance Consultant to conduct a comprehensive review of Respondents' supervisory, compliance, and other policies and procedures designed to prevent and detect market timing and federal securities law violations by Respondents and their employees in the variable annuity business. This review shall include, but shall not be limited to, a review of Respondents' market timing controls across all areas of its variable annuity business, and a review of Respondents' utilization of short term trading fees and other controls for deterring excessive short term trading. Respondents shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to their files, books, records, and personnel as reasonably requested for the review.

a. Respondents shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of the reentry into the business of issuing variable annuities, the Independent Compliance Consultant shall submit a Report to Respondents and the staff of the Commission. The Report shall address the issues described in paragraph III.43 of these undertakings, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of Respondents and a procedure for implementing the recommended changes in or improvements to Respondents' policies and procedures.

b. Respondents shall adopt all recommendations with respect to Respondents contained in the Report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of the reentry into the variable annuity business, Respondents shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that Respondents consider unnecessary or inappropriate, Respondents need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

c. As to any recommendation with respect to Respondents' policies and procedures on which Respondents and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of

the date of reentry into the business of issuing variable annuities. In the event Respondents and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Respondents will abide by the determinations of the Independent Compliance Consultant.

d. Respondents (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the staff of the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and, (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Commission.

e. Respondents shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

44. Periodic Compliance Review. If Respondents or any of their parents, subsidiaries, affiliates or successors reenter the business of issuing variable annuities within three years from the date of this Order, one year after the Independent Compliance Consultant completes his review, and at least once every other year thereafter, Respondents shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of Respondents. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning Respondents' supervisory, compliance, and other policies and procedures designed to prevent and detect market timing and federal securities law violations by Respondents and their employees in connection with their duties and activities on behalf of and related to the Respondents' variable annuity products. Each such report shall be delivered to the Respondents' Chief Compliance Officer.

45. Independent Distribution Consultant. Respondents shall retain, within 30 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission. The Independent Distribution Consultant's compensation and expenses shall be borne by Respondents. Respondents shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution

Consultant with access to their files, books, records, and personnel as reasonably requested for the review. Respondents shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalty ordered in Paragraph IV.C.1 of the Order, and any interest or earnings thereon, according to a methodology developed in consultation with Respondents and acceptable to the staff of the Commission. The Distribution Plan shall provide for investors to receive, from the monies available for distribution their proportionate share of losses suffered by virtue of the market timing through variable annuity products.

a. Respondents shall require that the Independent Distribution Consultant submit a Distribution Plan to Respondents and the staff of the Commission no more than 100 days after the date of entry of the Order.

b. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 130 days after the date of entry of the Order, Respondents or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.

c. With respect to any determination or calculation with which Respondents or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 160 days of the date of entry of the Order. In the event that Respondents and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.

d. Within 175 days of the date of entry of the Order, Respondents shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules of Practice. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules of Practice, Respondents shall require that the Independent Distribution Consultant, with Respondents, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

e. Respondents shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-

client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

46. Certification. No later than twenty-four months after the date of entry of the Order, the chief executive officer of each Respondent shall certify to the Commission in writing that the Respondents have fully adopted and complied in all material respects with the undertakings set forth in this section and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

47. Recordkeeping. Respondents shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Respondents' compliance with the undertakings set forth in paragraphs III.43-45.

48. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer. Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 9(f) of the Investment Company Act, Respondents CES and Conseco Services shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 34(b) of the Investment Company Act.

B. Respondents shall comply with the undertakings enumerated in Section III, paragraphs 43 through 48.

C. Disgorgement and Civil Money Penalties

1. Respondents shall pay disgorgement in the total amount of \$7,500,000 ("Disgorgement") and civil money penalties in the amount of \$7,500,000 ("Penalties"), for a total payment of \$15,000,000. Specifically, CES and Conseco Services shall pay, on a joint and several basis, \$2,500,000 in disgorgement, and CES shall pay \$2,500,000 as a civil penalty. The remaining \$10,000,000 shall be paid, if allowed, through a claim the Commission will file in the Bankruptcy Court against the estate of CIHC in the amount of \$10,000,000. Respondents agree to act in good faith and use their best efforts to seek approval of the claim in the Bankruptcy Court. The \$10,000,000 payment (if the Bankruptcy Court approves the claim) shall be deemed to be one-half disgorgement (\$5,000,000) and one-half civil penalty (\$5,000,000). Respondents

shall not be required to pay the \$10,000,000 portion of disgorgement and civil penalties if the claim against CIHC is not approved by the Bankruptcy Court.

2. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section IV.C.1. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this proceeding that is proportionately attributable to the civil penalty paid by Respondents ("Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, Respondents agree that they shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed against Respondents in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as those set forth in the Order.

3. Pursuant to an escrow agreement not unacceptable to the staff of the Commission, Conseco Services and CES shall, within 20 days of the entry of this Order, pay the \$5,000,000 in disgorgement and penalties into an escrow account. With respect to the claim for \$10,000,000 being submitted in the Bankruptcy Court, CIHC shall, within 20 days of the entry of any order allowing such claim, pay the disgorgement and penalties into the escrow account. The escrow agreement shall, among other things: (1) require that all funds in escrow be invested in short-term U.S. Treasury securities with maturities not to exceed six months; (2) name an escrow agent who shall be appropriately bonded; and (3) provide that escrowed funds be disbursed only pursuant to an order of the Commission. Respondents shall be responsible for all costs associated with the escrow agreement.

D. Other Obligations and Requirements. Nothing in this Order shall relieve Respondents of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this Order.

By the Commission.

Jonathan G. Katz
Secretary