UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8456 / August 9, 2004

SECURITIES EXCHANGE ACT OF 1934
Release No. 50166 / August 9, 2004

INVESTMENT COMPANY ACT OF 1940
Release No. 26527 / August 9, 2004

ADMINISTRATIVE PROCEEDING
File No. 3-11579

In the Matter of

INVIVA, INC. and
JEFFERSON NATIONAL LIFE
INSURANCE COMPANY,

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, SECTION 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"), Section 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 Inviva, Inc. ("Inviva") and Jefferson National Life Insurance Company ("Jefferson National") (together, "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, Section 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 in or about October 2002 through September 2003, Respondents Inviva, a private New York-based insurance holding company, and Jefferson National, an Inviva subsidiary that issued variable annuities, allowed a group of hedge funds and customers of registered representatives to engage in market timing trading on behalf of Jefferson National variable annuity contract owners.

2. In October 2002, Inviva purchased Conseco Variable Life Insurance Company ("CVIC") from Conseco Life Insurance Company of Texas ("Conseco Life"), an affiliate of Conseco, Inc. ("Conseco"). Among other products, CVIC issued the Monument Series Individual and Group Fixed and Variable Annuity ("Monument") and Advantage Plus Fixed and Variable Annuity ("Advantage Plus") products. Purchasers of the Monument and Advantage Plus products could invest in mutual fund portfolios managed by various fund complexes. The prospectuses for the Monument and Advantage Plus products indicated that CVIC reserved the right to take steps to prevent detrimental market timing. In fact, as of the time Inviva purchased CVIC, CVIC had permitted select clients to purchase Monument and Advantage Plus variable annuities for the express purpose of market timing certain unaffiliated mutual fund portfolios. By October 2002, these clients had invested approximately $100 million in Monument and Advantage Plus variable annuities. Ultimately, market timers invested approximately $120 million in the Monument and Advantage Plus products.

3. After Inviva's purchase of CVIC, Conseco Services, LLC ("Conseco Services"), a Conseco affiliate, continued to provide services pursuant to a transition services agreement through the end of April 2003, and continued to allow market timing throughout the transition period. During the transition period, Inviva was aware that CVIC customers were engaged in market timing, and Inviva earned the fees that the variable annuity business generated. In May 2003, Inviva renamed CVIC as Jefferson National, and took over day-to-day management of the business. The market timing conduct continued.

4. As had been the case with CVIC's prospectuses, Jefferson National's prospectuses for the Monument and Advantage Plus products reserved Jefferson National's right to take steps to prevent detrimental market timing. Inviva, however, permitted hedge funds and brokerage

customers, and registered representatives who traded on their behalf, to continue to engage in market timing through Jefferson National variable annuities. Through their frequent trading, these market timers diluted the value of the underlying mutual funds that were timed.

Respondents

5. **Inviva**, a Delaware corporation, is a privately-held holding company. Inviva is headquartered in New York, New York, with substantial operations in Louisville, Kentucky. Inviva purchased the stock of CVIC from Conseco Life in October 2002. Inviva operates primarily through two subsidiary insurance companies, one of which is Jefferson National.

6. **Jefferson National**, the former CVIC, is a life insurance company incorporated in Texas. Jefferson National is licensed to sell insurance products in forty-nine states and the District of Columbia. Jefferson National is an indirect wholly-owned subsidiary of Inviva. Jefferson National served as the depositor of Jefferson National Life Annuity Account G and Jefferson National Life 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. Inviva administers Jefferson National's life and annuity products pursuant to an Administrative Services Agreement.

Background

A. Market Timing

7. 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

8. 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.

9. 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 managed similarly to the corresponding retail funds offered by the fund complex. The insurance company and mutual fund complexes enter into participation agreements. In general, the annuity contracts allow the contract owner to place securities orders with the insurance company. Typically, the variable annuity company combines all buy and sell orders for a particular portfolio, and submits a single net order to the mutual fund complex.

10. 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 prospective 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.

11. 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. Thus, market timing through variable annuities can cause harm not only to other variable annuity purchasers at the insurance company that issued the variable annuities, but also to purchasers at other insurance companies invested in the portfolios being timed.

C. Inviva Facilitated Market Timing

Inviva acquired CVIC

12. In October 2002, Inviva purchased the stock of CVIC from Conseco Life. Inviva then began to make arrangements to take over operation of the variable annuity business. From October 2002 to April 30, 2003, Conseco Services provided various services to help with the transition of the business pursuant to a services contract.

13. Throughout the transition period, Inviva offered the Monument and Advantage Plus products under the CVIC name, and received all fees from the sale and maintenance of the variable annuity contracts. Inviva paid certain administrative fees to Conseco Services for administering the business during that time. The transition was completed concurrently with Jefferson National's filing with the Commission the May 1, 2003 prospectuses for the Monument and Advantage Plus variable annuity products.

14. At the time Inviva acquired CVIC, market timing assets constituted the vast majority of assets invested through the Monument product. Market timing assets continued to dominate the Monument product, both through the transition period and after Inviva assumed full control of the variable annuity business, until September 2003.

15. Inviva and Jefferson National continued to allow market timing in the Monument and Advantage Plus products until approximately September 2003. After the New York Attorney General's office filed its complaint against Canary Capital LLC in September 2003, market timing contract owners surrendered their contracts and withdrew funds constituting a majority of the assets in the Monument product.

<u>The Monument and Advantage Plus prospectuses</u>

16. The Monument and Advantage Plus variable annuity products made available approximately sixty mutual fund portfolios offered by nineteen different fund complexes, none of which were affiliated with Jefferson National. 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 a penalty. In contrast, Advantage Plus had a surrender fee that decreased over time.

17. During the transition period, the Inviva-owned CVIC issued the Monument and Advantage Plus variable annuities pursuant to prospectuses dated May 1, 2002, which had been prepared before Inviva purchased CVIC. Under a section entitled "Highlights," the Monument and Advantage Plus prospectuses stated that the product was "intended to be used to accumulate money for retirement or other long-term tax-deferred investment purposes."

18. The Monument and Advantage Plus prospectuses also 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. Further, the Monument prospectus provided that, for any additional transfers, a transfer fee of the lesser of $25 or 2% of the amount transferred may be deducted. Similarly, under a section entitled "Transfer Fee," the Advantage Plus prospectus indicated contract owners might be charged a transfer fee of $25 per transfer for any additional transfers. In a different section, the Advantage Plus prospectus indicated that a $25 fee may be deducted for additional transfers.

19. The May 1, 2002 Monument prospectus further 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 May 1, 2002 Advantage Plus prospectus contained substantially similar language.

20. Finally, the Monument and Advantage Plus May 1, 2002 prospectuses contained a section entitled "Excessive Trading Limits." This section contained language indicating that CVIC was monitoring excessive trading with a view toward protecting all contract owners' investments. Specifically, the Monument and Advantage Plus prospectuses stated the following:

> 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.

21. Starting on May 1, 2003, Inviva and Jefferson National began to issue the Monument and Advantage Plus products under the Jefferson National name, and filed new prospectuses with the Commission.

22. The May 1, 2003 Jefferson National Monument and Advantage Plus prospectuses again contained language that discouraged market timing. The prospectuses indicated that the products were "not designed for professional market timing organizations" and that Jefferson National reserved "the right to modify" the transfer privileges. Specifically, the prospectuses contained the following:

> Your right to make transfers is subject to modification if we determine, in our sole opinion, that the exercise of the right by one or more owners is, or would be, to the disadvantage of other owners. Restrictions may be applied in any manner reasonably designed to prevent any use of the transfer right, which is considered by us to be to the disadvantage of other owners. A modification could be applied to transfers to, or from, one or more of the investment portfolios and could include, but is not limited to:
>
> > a. the requirement of a minimum time period between each transfer;
> > b. not accepting a transfer request from an agent acting under a power of attorney on behalf of more than one owner; or
> > c. limiting the dollar amount that may be transferred between investment portfolios by an owner at any one time.

We reserve the right, at any time, and without prior notice to any party, to terminate, suspend or modify the transfer privilege during the accumulation period.

23. Further, the Jefferson National Monument and Advantage Plus prospectuses reiterated the "Excessive Trading Limits" (set forth above) from the CVIC prospectuses. In addition, the Jefferson National prospectuses identified an additional basis for limiting transfers. In particular, Jefferson National reserved the right to limit transfers under the following circumstances:

> [Y]our transfer request would result in a redemption of a "substantive" amount from an investment portfolio that had been allocated to that portfolio for less than 30 days; "substantive" means a dollar amount that Jefferson National determines, in its sole discretion, could adversely affect the management of the investment portfolio.

24. Finally, the Jefferson National Monument prospectus indicated (as CVIC's May 1, 2002 prospectus had done) that contract owners were permitted twelve free transfers per year, and that Jefferson National might impose a fee of $25 or 2%, whichever was less, for additional transfers. The Advantage Plus prospectus indicated that contract owners could make up to twelve transfers per year without charge, and that a $25 transfer fee might be deducted for additional transfers.

25. The Jefferson National Monument and Advantage Plus prospectuses failed to disclose, however, that Jefferson National was selling the products to market timers. Further, the prospectuses failed to disclose that Jefferson National was facilitating the market timing customers in carrying out a market timing strategy. In addition, the prospectuses failed to disclose the risk that the market timers' rapid trading might have a negative impact on the other variable annuity purchasers' investment returns.

<u>Inviva facilitated market timing</u>

26. During the October 2002-May 2003 transition period, two Conseco Services employees introduced Inviva employees to certain of CVIC's market timing customers and brokers, whom the Conseco Services employees referred to as "big ticket" customers. The Conseco Services employees informed Inviva employees about how to deal with the "big ticket" traders. The Conseco Services employees gave Inviva employees information identifying both CVIC's market timing customers and the amount of timing capacity available at unaffiliated fund complexes that had permitted timing in their funds. Inviva did not disclose the existence of the permitted capacity, or its arrangements with funds that permitted market timing, to its other annuitants.

27. In January 2003, a registered representative at a broker-dealer who represented market timers requested additional market timing capacity for the representative's customers. An Inviva employee then spoke with a fund representative, who agreed that Inviva could have an additional $10 million in timing capacity. The registered representative's customers invested the

assets, and Inviva agreed to pay the registered representative an "override," or extra commission, of 35 basis points of the value of assets the customers invested. According to an Inviva employee, the fund representative that had granted the request for additional timing capacity subsequently requested that Inviva add the fund complex's short term bond fund to the Jefferson National Monument and Advantage Plus mutual fund offerings and thereafter required big ticket customers to keep their timing assets in the short term bond fund when not being used to time other funds. Doing this had the effect of increasing the fees that the fund complex earned.

28. After the transition period, Inviva and Jefferson National allowed the market timing to continue in accordance with the limits CVIC had received from the unaffiliated mutual funds. Inviva's Director of Sales and Marketing apparently recognized the advantages of managing market timing assets, and suggested obtaining timing capacity at other mutual fund complexes. A May 19, 2003 e-mail from the director to another Inviva employee indicated that "we should probably put together a list of funds people want to use that won't let us and go tour the fund [companies] explaining how it is a harmless and cheap way to take in some money."

29. Although the market timers executed significantly more than the permissible number of free transfers, Jefferson National did not exercise the right to impose the transfer fee set out in the Monument and Advantage Plus prospectuses. Further, Jefferson National did not make any independent effort to determine whether market timing was harmful to other Jefferson National variable annuity purchasers.

30. With respect to funds that had not agreed to provide capacity for timing assets, Inviva did not prevent timers from trading in those funds unless the fund complained. Instead, Jefferson National simply followed the various unaffiliated mutual fund complexes' instructions, including instructions to block trades, when the fund complexes identified a Jefferson National customer as a market timer. Moreover, Jefferson National did not inform these fund complexes that certain Monument and Advantage Plus customers were executing a market timing strategy.

31. 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 CVIC had identified the timers and that CVIC "do[es] not tolerate timers." Both the Conseco Services and Inviva employees knew, however, that CVIC not only tolerated market timers, but also solicited market timers.

32. In late April 2003, a representative of a fund that had not agreed to provide timing capacity, and indeed had previously closed a Europe fund portfolio to CVIC investors due to market timing, sent an e-mail to the same Inviva employee. In the e-mail, the fund representative confirmed that the fund would reopen the portfolio to Jefferson National investors "based on your 'zero tolerance policy' and procedures you communicated to me with respect to kicking out timers from the products where [the fund's] portfolios are available." In fact, Jefferson National did not maintain a zero tolerance policy and did not kick timers out of the Monument and Advantage Plus products.

33. In early May 2003, one of the funds that had agreed to provide capacity for timing assets informed Inviva that the allowed timing capacity in the fund's emerging markets portfolio needed to be reduced from approximately $50 million to $30 million, i.e., a decrease of $20 million. The Inviva employee that had received the March 12, 2003 e-mail then divided the $30 million in available capacity among certain favored timing clients. The timers advised the Inviva employee that they intended to invest the $20 million that was no longer permitted in the emerging markets portfolio in other international funds, which had not agreed to provide timing capacity, until additional capacity became available in the emerging markets portfolio. Although the Inviva employee warned the timers that the international funds might complain if they traded in and out, the employee did not inform these international funds that timers intended to use their funds.

34. In a May 16, 2003 e-mail, the same Inviva employee asked another Inviva employee whether there was "any way to verify if big dollars are going to the illegal international funds?" The other Inviva employee replied that "I know there is (sic) a number of timers playing in and out of [a worldwide growth portfolio that had not agreed to provide timing capacity] with moves of $250k or less. Just enough to stay below the radar."

35. In August 2003, the Inviva employee who had divided the $30 million in timing capacity learned that there was no more timing capacity in the emerging markets portfolio. The Inviva employee sent an e-mail on August 13, 2003 to the employee's supervisor, the Director of Sales and Marketing, indicating that the employee had accommodated some of the market timers by allowing them to trade in other international mutual funds that had not agreed to provide timing capacity. The message concluded as follows: "Since our Int'l [international] funds are sensitive, it's been a bit of a juggle."

<u>Inviva profited from annuity contract owners' market timing</u>

36. Inviva and Jefferson National earned fees on the Monument and Advantage Plus products while they were allowing market timing. Inviva earned approximately $1.9 million in fees during the transition period from October 23, 2002 through April 30, 2003, and approximately $2.5 million during the period from May 1, 2003 through November 7, 2003.

<u>Dilution caused by the market timing activity</u>

37. As a result of the market timing activity in Monument and Advantage Plus variable annuities, the value of annuitants' investments was diluted.

Violations

38. As a result of the conduct described above, Respondents willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in that Respondents made untrue statements of material fact or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading. Specifically, the Monument and Advantage Plus prospectuses falsely

stated that these products were not designed for professional market timing organizations, and gave the misleading impression that Respondents would act independently to monitor or block detrimental trades. Further, Monument and Advantage Plus prospectuses failed to disclose that Jefferson National was selling the products to market timers, that Jefferson National was 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.

39. As a result of the conduct described above, Respondents 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, Respondents 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 Respondents would act independently to monitor or block detrimental trades. Further, Monument and Advantage Plus prospectuses failed to disclose that Jefferson National was selling the products to market timers, that Jefferson National was 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.

Undertaking

40. Ongoing Cooperation. In determining to accept the Offer, the Commission has considered the following undertaking 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 their 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 their 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, Joseph Moodhe, Esq., Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022; 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.

41. <u>Independent Compliance Consultant</u>. Respondents shall retain, within 30 days of the date of entry of the Order, 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 related practices that may violate the federal securities laws. This review shall include, but shall not be limited to, a review of Respondents' market timing controls across all areas of its business, and a review of Respondents' utilization of short term trading fees or 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 entry of the Order, 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 41 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 entry of the Order, 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 entry of the Order. 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.

42. Periodic Compliance Review. Commencing in 2005, 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 related practices that may violate the federal securities laws as they apply to Respondents’ variable annuity business. Each such report shall be promptly delivered to the Respondents’ Chief Compliance Officer.

43. 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 Section 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 Jefferson National's 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.

44. 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 paragraphs 41 through this paragraph 43 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

45. 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 41 through this paragraph 44.

46. 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, Inviva and Jefferson National 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 41 through 45.

C. Disgorgement and Civil Money Penalties

1. Respondents shall be jointly and severally liable to pay disgorgement in the total amount of $3,500,000 ("Disgorgement") and Jefferson National shall pay civil money penalties in the amount of $1,500,000 ("Penalties"), for a total payment of $5,000,000.

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, Respondents shall, within 175 days of the entry of this Order, pay the Disgorgement and Penalties into an 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