April 4, 2005

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

RE: File No. S7-06-04

Dear Mr. Katz:

On February 28, 2005, the Securities and Exchange Commission (the "Commission") reopened the comment period on proposed rules, published in January 2004, that would require broker-dealers to provide their customers with information regarding the costs and conflicts of interest that arise from the distribution of mutual fund shares, 529 college savings plan interests, and variable insurance products.[1] The Commission also attached to the supplemental release revised point of sale and confirmation disclosure forms and requested comment on the proposed disclosures and revised forms.

This letter of comment on the proposed rules is respectfully submitted by the National Association for Variable Annuities ("NAVA").[2] Given the relatively short comment period and the number of specific questions raised in the supplemental release, we are not able to address all of the Commission's questions and are concentrating our comments on those areas of the supplemental release and the proposed variable annuity disclosure forms that are most problematic for our members.

We are pleased to see that the Commission has considered the comments of NAVA and other insurance industry commenters and developed disclosure requirements tailored specifically for transactions involving variable annuities. As we discussed in our comment letter to the original release, the initial disclosure regime and proposed forms appeared to be designed primarily for

[1] Release Nos. 33-8544 and 34-51274 (February 28, 2005) (the "supplemental release"); Original Release - Release Nos. 33-8358 and 34-49148 (January 29, 2004) (the "original release").

[2] NAVA is a not-for-profit organization dedicated to the growth and understanding of annuity and variable life insurance products. NAVA represents all segments of the annuity and variable life industry with over 350 member organizations, including insurance companies, banks, investment management firms, distribution firms, and industry service providers.

mutual fund transactions and, in our opinion, were not workable for transactions involving variable insurance products because of their significant differences in structure, complexity and distribution.

NAVA continues to support the Commission's efforts to improve investor access to information regarding costs and conflicts of interest in connection with the distribution of "covered securities," including variable annuities and variable life insurance.

However, we are very concerned that since its original release in 2004, the scope of the proposal has changed significantly, apparently based on feedback from investor focus groups gathered by outside consultants. The purpose of the originally proposed rules was to "respond to concerns that investors lack adequate information about certain distribution-related costs, as well as conflicts of interest for brokers, dealers, municipal securities dealers, and their associated persons."[3] The proposal has now been transformed into a requirement for comprehensive, detailed cost disclosure.

The revised proposal would require disclosure of a substantial amount of information at the point of sale – upfront sales fees, surrender charges, ongoing fund fees and insurance charges, annual contract charges, narrative information, and the existence of conflicts of interest. We feel strongly that requiring that this be done by a separate written disclosure document will be extremely expensive, difficult to manage and supervise, and could unduly burden competition, resulting in fewer investment choices for consumers.

As we explain below, we believe that disclosure regarding sales fees and ongoing annual fees and charges for variable annuities should be provided in the contract prospectus or, in those instances when a prospectus is not delivered at the time of application, by the Internet. Quantified details of the broker-dealer's compensation practices and conflicts of interest would also be disclosed on the broker-dealer's Internet web site.

I. Prospectus Disclosure Rather than Additional Point of Sale Document

Unlike transactions involving mutual funds, in the vast majority of variable annuity sales, a contract prospectus is delivered to the customer at the time of the application. Because a variable annuity is generally more complex than a mutual fund, broker-dealers recommending a variable annuity to a customer will usually provide the customer with a sales kit or other supplemental sales literature explaining the features of the product. Section 5(b) of the Securities Act of 1933 requires that such sales literature be preceded or accompanied by a statutory prospectus meeting the requirements of section 10(a) of the Act.

Pursuant to the requirement of Form N-4, all variable annuity prospectuses must include the following information in tabular form in what is commonly referred to as the "fee table":

[3] See the original release, at page 4.

1. Contractowner Transaction Expenses

    - sales load imposed on purchases (as a percentage of purchase payments)
    - deferred sales load (as a percentage of purchase payments or amount surrendered, as applicable)
    - surrender fees (as a percentage of amount surrendered, as applicable)
    - exchange fee

2. Annual Account Expenses

    - annual contract fee
    - mortality and expense risk fees
    - all other recurring fees and charges, including fees and charges for all optional features
    - total separate account annual expenses (the maximum guaranteed charge for each item must be disclosed)

3. Portfolio Company Expenses

    - the range of total operating expenses charged by the portfolio companies or funds offered through the separate account.

4. Expense Example

    - An expense example for a $10,000 investment based on the maximum expenses charged by any of the funds; an additional example based on the minimum expenses charged by any of the funds may also be included.

As seen above, much of the information proposed by the Commission to be disclosed on its point of sale form is already included in the prospectus, such as upfront and back-end sales fees, the minimum and maximum investment option fees, maximum insurance charges, and total expenses based on a $10,000 standardized purchase amount. Any other standardized fee and charge information proposed by the Commission that is not already included in the prospectus could be required by form amendments.

We propose that this additional information and the current fee table information be placed at the front of the prospectus. In this way, purchasers of variable annuities will be provided with all relevant fee and expense information in one prominently displayed format at the time of their application. NAVA's Prospectus Simplification Subcommittee will make itself available to work with the Commission staff on appropriate amendments to Form N-4 to implement this new disclosure, as it previously did in 1999 when it submitted research and recommendations relating to a variable annuity profile and simplified prospectus.

In addition to the expanded fee and expense disclosure in the prospectus, we propose that a narrative statement be required advising investors that the broker-dealer selling them the variable annuity may have conflicts of interest as a result of revenue sharing and/or differential compensation arrangements, and instructing them to ask their broker-dealer how they can obtain additional information regarding such conflicts from the broker-dealer's web site.

We believe that utilizing the prospectus to provide the disclosures being considered by the Commission will accomplish its goal of enhancing investor access to material information in a much more cost efficient manner. In its original release, the Commission estimated that the cost to implement the point of sale disclosure requirements would be approximately $450 million, and annual recurring costs would be another $1 billion.[4] Our members believe these cost estimates were too low and the actual cost to implement the proposed rules will be much higher, particularly when the additional compliance costs that will be necessitated are factored in. In contrast, adding new information and reorganizing the prospectus can be accomplished at little expense.

We also believe that requiring separate point of sale disclosure forms would be virtually unmanageable for many broker-dealers. The Commission's proposal would require broker-dealers to maintain forms for each class of each mutual fund they sell. As will be explained below, we believe that separate disclosure forms for different share types of variable annuities would also be needed if written disclosure is mandated. As a result, given the number of different mutual funds and variable annuity contracts they sell, some broker-dealers would have to maintain and use a thousand or more different forms. These forms would likely have to be modified regularly as changes are made to the fees and expenses of the funds and contracts or new options or features are added to the variable annuities. Broker-dealers will also have to implement policies and procedures to ensure that the multitude of forms are kept current and the correct versions are being delivered to investors.

NAVA fears that an unintended consequence of these expense and management issues is that broker-dealers will reduce the number of products they will offer to their customers. In fact, one of NAVA's broker-dealer members has indicated that it has already had preliminary internal discussions about the possibility of reducing the number of products to be offered because of the demands of the proposed rules.

Adding additional disclosure documents to what is already required to be provided to purchasers of variable annuities at the point of sale will likely lead to confusion and "information overload." We are not sure the Commission appreciates the vast amount of documents that are presently provided at the time of application for a variable annuity. Samples of the required paperwork assembled by NAVA members will be provided in a subsequent filing.

Finally, we have serious concerns about the nature of the proposed disclosure form itself. It is unclear exactly what this new document is; is it an omitting prospectus; is it supplemental sales

[4] Original Release, page 63.

literature? Would it need to be filed with the NASD under NASD Rule 2210 or with the Commission pursuant to Section 24 of the Investment Company Act of 1940?

II. Internet Disclosure

For those variable annuity transactions where a prospectus is not delivered at the time of the application, i.e., direct sales via the telephone or over the Internet, we propose that the point of sale disclosures be made on the web site of either the insurer or the selling broker-dealer. For Internet disclosure, we recommend that only standardized cost disclosure be required. Companies should have the option of also providing transaction specific information through the use of a personalized calculator and drop-down boxes whereby the investor would specify the purchase amount and the underlying funds and insurance features chosen, but we do not believe this should be mandated in all instances.

Use of the Internet to deliver the cost information is extremely efficient and will successfully reach most investors. As the Commission noted in a previous release, research in March 2004 found that nearly 75% of Americans had access to the Internet in their homes.[5] This amounted to 204.3 million people and represented a 9% increase over the previous year.[6] A year later, in 2005, the numbers of people using the Internet to obtain information is likely even higher. Although we are not aware of any empirical data in this regard, we would anticipate that purchasers of variable annuities would have an even higher utilization of the Internet given their demographic characteristics. For example, 88% of all non-qualified annuity owners have at least a high school education, 23% have a college degree and another 20% have done post-graduate work or has a post-graduate degree.[7]

As previously mentioned, we support the concept of Internet disclosure of quantified information regarding the compensation practices of the broker-dealer. We believe companies should be accorded flexibility in the design of their web sites and the manner in which the required disclosures are made. This flexibility should be reflected in any final rule regarding Internet disclosure.

Finally, any rule regarding Internet delivery of information should, of course, provide for written point of sale disclosure for those investors who lack Internet access.

III. Separate Point of Sale Disclosures (Attachment 7)

As discussed above, NAVA recommends that the point of sale disclosures proposed by the Commission be incorporated into the variable annuity contract prospectus or made via the Internet in those rare instances when a prospectus is not delivered at the time of application. However, in the event the Commission decides to require written disclosure, we recommend the following revisions to the proposed disclosure forms for variable insurance products in order for them to most efficiently and effectively provide meaningful disclosure to investors.

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[5] SEC Release Nos. 33-8501; 34-50624, (November 3, 2004) at fn. 353.
[6] Nielsen/NetRatings, *Three out of Four Americans Have Access to the Internet*, (March 18, 2004).
[7] See NAVA 2004 *Annuity Fact Book*, page 74 (third edition 2004).

Section 1 – Fees

The proposed point of sale form for transactions in variable annuities (Attachment 7) would be used for all types of variable annuity contracts, regardless of how their sales charges are structured. Variable annuities are offered in a variety of share types. Most variable annuity contracts are "B-share" products which are sold with no initial sales load, but cancellation of the contract during its early years triggers a contingent deferred sales load or surrender fee. These charges typically range from 5-7% in the first year, and subsequently decline 1% per year to zero after 5-7 years. On the other hand, "A-share" products have up-front sales charges instead of surrender fees. Like Class A mutual funds, A-share variable annuities usually offer breakpoint pricing, which means the sales charges decrease depending on the cumulative amount of purchase payments that have been made. A-share contracts also typically have lower ongoing M&E fees than annuities with surrender fees. Finally, there are "C-share" contracts that have no front load or surrender fee.

Because of the differences between B-share, A-share and C-share fee structures, we believe that there should be separate forms for each. This is the approach taken by the Commission with regard to Class A, Class B and Class C mutual fund shares. Further, as with the proposed forms for mutual fund transactions, the forms should be tailored so that only the relevant sales fee information is provided; that is, either the upfront sales fee paid when an A-share variable annuity is purchased, or the surrender fee when a withdrawal is made from a B-share annuity, and only the ongoing annual charges in the case of a C-share variable annuity.

A-share Variable Annuities

As discussed above, a point of sale form patterned after the Mutual Fund Class A share form (attachment 1) should be devised for transactions in A-share variable annuities. The "Volume discount" section contained on Attachment 1 should be included at the top of the A-share form. As with Attachment 1, the A-share variable annuity form should not contain any reference to surrender charges since such charges are not applicable to A-share products.

B-share Variable Annuities

The point of sale disclosure form for a B-share variable annuity should only require disclosure of the potential surrender charges that might be incurred if money is withdrawn within the surrender period. The proposed disclosure regarding surrender charges on Attachment 7 includes a narrative description that states: "You pay a surrender charge if you withdraw money from your contract within a certain period of time…" This is not completely accurate. As the Commission is aware, variable annuity contracts with surrender charges typically permit free withdrawals of certain amounts, such as 10% or 15% of the contract value. Contracts also generally waive surrender charges for withdrawals associated with certain events such as confinement to a nursing home or the contraction of a critical illness. Language such as that contained on the proposed confirmation disclosure form ("You may be able to make a partial surrender of your contract without incurring a surrender charge; see the prospectus for details.") should be added to the narrative on the B-share point of sale disclosure form.

We recommend that the disclosure of the maximum surrender charge not require disclosure of the potential recapture of bonus credits. Bonus recapture in the case of surrenders is complex and can vary significantly from contract to contract. For example, some contracts provide for the recapture of bonus payments according to a declining schedule.

C-share Variable Annuities

Finally, since C-share variable annuity contracts charge neither an upfront sales fee nor a surrender charge, a point of sale disclosure form similar to Attachment 3, the point of sale disclosure form for mutual fund class C shares, should be used and only include the ongoing fees that may be paid each year.

Combination of standardized and transaction-specific cost disclosure

The proposed disclosure of up-front sales fees and surrender charges would require disclosure of costs using standardized $1,000, $50,000 and $100,000 payment or investment amounts. In addition, upon the request of the customer, the broker-dealer would also be required to use "fill in the blank" boxes to disclose cost information reflecting the customer's anticipated payment amount for his or her particular transaction. The Commission stated that this format represented an attempt to balance the cost efficiency associated with standardized disclosure with the effectiveness of transaction-specific information.

Initially, we note that the fill in the blank disclosure regarding potential surrender charges on B-share variable annuities is confusing since it is based on the "amount withdrawn." Obviously, few investors will know at the time of application how much money they may withdraw from their annuity or whether they will make any withdrawals at all. Does the form require an assumption that the entire premium payment that is being made is the "amount withdrawn" for purposes of disclosing the transaction-specific surrender charge? We don't believe this assumption is warranted since variable annuities are intended as long-term investments.

We recommend that the transaction-specific, fill in the blank information not be required for either upfront sales fees or surrender charges. With the standardized information only, investors will still be able to easily calculate an accurate estimate of what the sales fees associated with their particular transaction will likely be. Standardized cost information also offers the advantage that it can be pre-printed which will result in cost savings for broker-dealers and investors.

We believe that the benefit to investors of receiving personalized fee information is greatly outweighed by the costs that would be required by the broker-dealer. Significant and costly compliance issues would be raised if the Commission requires personalized calculations to be performed by the registered representative. It would be our expectation that broker-dealers would have to develop and implement procedures to make sure that transaction-specific numbers were, in fact, filled in by the registered representative when requested by the investor, and were calculated accurately. Procedures would also be needed on how to provide corrected information if errors are found. Our members believe the additional compliance costs that would be incurred

by this requirement would be extremely high and we are attempting to obtain cost estimates. We note that the supplemental release does not provide any estimate of expected costs for any part of the revised proposal.

The requirement for personalized fee information also raises potential liability issues. Notwithstanding the Commission's assertion that it would not expect private rights of action to result from non-fraudulent or negligent errors in calculating transaction-specific cost estimates, broker-dealer exposure to liability for inaccurate disclosure might in practice be substantially increased. If written transaction-specific cost disclosures are required, NAVA believes the Commission should provide for an appropriate safe harbor.

Ongoing Annual Fees

As we noted earlier, the revised point of sale disclosure forms have been expanded significantly and now require broker-dealers to disclose comprehensive information about all of the costs of owning the covered securities. In the case of variable annuities, this would include investment option fees and insurance charges. Disclosure of these two components would be made in both dollar terms and as a percentage of investment value for each $1,000 of contract value and reflect the minimum and maximum fees that could be incurred. Total minimum and maximum fees would also be expressed in dollars for standardized values of $1,000, $50,000 and $100,000.

As described above, the new proposed disclosure of ongoing costs would show the minimum and maximum charges that might be incurred for standardized contract value amounts. The insurance charges that will be disclosed in this manner may result in a wide range in many variable annuity contracts because of the different optional features or riders that are offered, such as enhanced guaranteed minimum death benefits and various living benefits. The maximum insurance charge that could be incurred if all of the various options are chosen will likely greatly exceed the actual insurance charges for most variable annuity contract purchases, and therefore could be misleading.

Another way in which the use of a minimum and maximum format for annual fees and charges may result in misleading information is that some contract fees decline over time, eventually going away completely (for example, premium credit charges). This may not be the best way to illustrate the annual charges that an investor can expect to incur.

Some companies have the technological capability to quickly and accurately calculate the actual insurance charges and investment option fees based on the selections made by the investor. Those companies possessing this capability should have the option of disclosing the actual ongoing annual fees and charges in lieu of standardized minimum and maximum amounts.

The Commission asked several questions regarding how much detail about the costs of owning variable insurance products should be disclosed in the point of sale form: should each component of the insurance charges and underlying fund fees be listed separately rather than in the aggregate; should there be an explanation as to how the fees and charges are calculated, that is, daily, quarterly or annually; and should there be a description of the features and risks

particular to variable insurance products, such as their insurance aspects, tax treatment and penalties for early withdrawal?

All of this information is already included in the variable annuity prospectus which, as we explained above, is usually provided to the investor at the time of the application. Requiring this information in the point of sale disclosure form as well would be duplicative, potentially add several pages to what is intended to be a short, one-page form, and likely detract attention from the important material contained in the prospectus. Moreover, Attachment 7 as presently designed refers investors to the contract prospectus for more information.

Section 2 - Conflicts of Interest

The proposed variable annuity point of sale disclosure form would require disclosure of the existence of any revenue sharing arrangements or special incentives to broker-dealer personnel in connection with sales of the product. We believe these disclosures are appropriate. In response to a question posed in the supplemental release, we do not think payments from an underlying fund, its adviser or its affiliates to an issuing insurance company need to be disclosed. In contrast to retail mutual fund revenue sharing arrangements, these payments rarely go the selling broker-dealer and, therefore, do not create a conflict of interest for the broker-dealer that needs to be disclosed to the investor. Rather, it is the commission payments from the insurer to the broker-dealer that can provide an incentive to the broker-dealer to sell the insurer's products and this potential conflict is required to be disclosed by the proposed form.

We also recommend that the definition of revenue sharing be revised to exclude insurance companies supporting broker-dealer subsidiaries in accordance with Securities Exchange Act Release No. 34-8389 and the regulatory guidance that followed.

Variable Life Insurance

In the Supplemental Release, the Commission asked for comment on how to tailor point of sale disclosure for variable life insurance, or alternatively, whether it should instead mandate uniformity among personalized illustrations. We believe it is not feasible to tailor the point of sale disclosure form to accommodate variable life insurance transactions. Unlike transactions in variable annuities and mutual funds, charges on variable life insurance transactions are not based on the amount invested, but on a number of other factors that will vary from one transaction to the next, such as age, gender, risk or underwriting classification, smoking status, purchase rate, premium payment pattern, and optional riders selected. Additionally, many variable life insurance issuers price their products in different manners. Variable life insurance may also be issued other than as applied for, a feature that makes a point of sale disclosure particularly problematic. As a result, a single, standardized point of sale disclosure form would not work for variable life insurance products or provide meaningful disclosure for investors.

We agree with the Commission that personalized illustrations which are based on the investor's particular circumstances are really the only practical way to provide point of sale disclosure regarding charges for variable life insurance contracts. Such personalized illustrations are

commonly used now to provide important, relevant information to prospective variable life insurance purchasers.

The primary focus of the Commission's regulation with respect to variable life insurance illustrations has been with non-personalized illustrations contained in the prospectus. Amendments to Form N-6 in 2002 set standards for certain items in connection with hypothetical illustrations in either the prospectus or SAI: required narrative information, headings, premiums, ages, rating classifications, years, illustrated values, rates of return, portfolio company charges and other charges.

Personalized illustrations, on the other hand, have mainly fallen under the purview of the NASD which set forth standards for such illustrations in IM-2210-2. The NASD requires that the format of hypothetical illustrations be filed with its Advertising/Investment Companies Regulation Department within ten days of first use as required by NASD Conduct Rule 2210(c)(1). In practice, illustrations are usually filed with the NASD prior to use.

The current procedure with the NASD regulating personalized illustrations has proven to be efficient. Accordingly, we do not believe it is necessary for the Commission to impose uniform standards for personalized illustrations or otherwise regulate their content. Moreover, we believe that there should be flexibility in the format for personalized illustrations to allow companies to tailor them to their particular products so long as the current standards are satisfied. Personalized illustrations do not typically include disclosure regarding the existence of potential conflicts of interest on the part of the selling broker-dealer, as would be required on the Commission's revised point of sale forms. In the case of variable life insurance, therefore, it would be necessary for this information to be disclosed by the broker-dealer on a separate form that would be provided with the personalized illustration.

Immediate Variable Annuities

Immediate variable annuities are purchased with a single premium and annuity payments begin immediately, or within one year of the date of purchase. The proposed variable annuity point of sale form also does not accommodate immediate variable annuity transactions.

Immediate variable annuities are structured quite differently than deferred products. It is uncommon to have upfront sales fees associated with the purchase of immediate variable annuities. The annual contract fee is taken into consideration as part of the AIR calculation before the initial benefit payment is determined and ongoing insurance charges and investment management fees are typically deducted as part of the calculation of net unit value.

In lieu of the Commission's proposed point of sale form, we recommend that a personalized illustration be developed which will advise purchasers of immediate variable annuities of what is most relevant to them, namely the amount of the initial payment, and the effects of potential investment returns in the future.

IV. Proposed Confirmation Disclosure (Attachment 14)

As with the proposed variable annuity point of sale disclosure form, the Commission has proposed a single variable annuity confirmation disclosure form for all variable annuity contracts, regardless of the fee structure. As we discussed above, we recommend that separate, tailored confirmation disclosure forms be used for A-share, B-share and C-share variable annuities. Again, this would be following the same format proposed for different mutual fund classes. Any fee category that is inapplicable to the particular variable annuity share type should be deleted from the disclosure form.

Confirmations of variable insurance product purchases are currently provided pursuant to Rule 10b-10 of the Securities Exchange Act of 1934. In the variable product area, the confirmations are generally prepared by the issuing insurance company on behalf of its selling firms.

These confirmations vary in size and format from one issuer to the next. We recommend that the Commission not mandate the use of a rigid, unvarying form, but, rather, allow companies flexibility in design and layout so long as the relevant areas are addressed.

We question the need for repeating the disclosures regarding the existence of conflicts of interest. These disclosures would already have been provided at the point of sale, which is the time when knowledge of potential conflicts might influence the investor's decision to purchase the contract. Providing the same disclosure a second time in the confirmation would seem to be of no additional benefit. Finally, as noted above, confirmations for variable insurance products are generally prepared by the insurer which may not have any knowledge of whether the broker-dealer pays its personnel differential compensation.

The Commission has issued a number of no-action letters addressing the unique characteristics and issues relating to confirmations of variable annuity and variable life insurance contracts and providing relief from certain requirements of present rule 10b-10. NAVA assumes that the proposed confirmation disclosures presently under consideration, if adopted, will not affect the relief provided by these letters. We request that this be clarified in any final rules.

V. Oral Disclosure

For mutual funds and variable insurance products sold without a face-to-face meeting between the customer and a registered representative, the original proposal would have required that the various point of sale disclosures be given orally.[8] This would have been largely unworkable for transactions involving variable insurance products given the extensiveness of information that would have been required because of their more complex structure, and the number and variety of underlying funds and product features.

[8] Original Release, page 39.

In the supplemental release, the Commission acknowledged that oral disclosure of complex information poses special challenges and outlined several alternatives to make oral point of sale disclosure more effective.

Our proposal that point of sale disclosure be provided through the Internet in those instances when a customer is not given a contract prospectus at the time of the application would adequately take the place of oral disclosure and eliminate the confusion that investors would likely have from an oral recitation of the point of sale disclosures.

If Internet disclosure is not feasible, we believe the Commission's option to require disclosure quantified to a standardized amount would be the best alternative. Using a standardized purchase amount of $1,000 would enable investors to quickly and easily estimate the costs for their particular transaction. We also support the provision of summary qualitative information about the existence of revenue sharing or differential compensation arrangements.

We believe this would be sufficient in the case of variable annuity contracts because they are required by state insurance laws to contain a free look provision that entitles the purchaser to examine the contract for a specified period of time and cancel it and obtain a refund. This free look period may vary from ten to thirty days after receipt of the contract depending on the laws of the state where the contract is sold. The contract is also accompanied by a prospectus which will contain the detailed information described in part I of this letter.

VI. Other Comments

Exception for Subsequent Premium Payments

The supplemental release noted that the originally proposed point of sale rule included an exception for periodic purchases.[9] The Commission has asked for comment on the appropriateness and necessity of point of sale disclosure for subsequent non-periodic purchases of a covered security.

Variable annuity contracts typically allow the owner to invest additional amounts in the contract at any time. This can be done on a regular or periodic basis, such as via automatic deposits, or on a non-periodic basis as personal financial circumstances permit.

We strongly recommend that in the case of variable insurance products, only the initial purchase of the contract should trigger an obligation for the broker-dealer to provide a point of sale disclosure document. New disclosures should not be required when additional amounts are invested in a variable annuity contract on either a periodic or non-periodic basis.

We agree with comments made in response to the original release that the critical decision related to an investment in a variable annuity is made when the investor first purchases the contract. At this time, a point of sale disclosure would be required by the proposed rule and the

[9] See, proposed rule 15c2-3(e)(3)

investor would be fully informed regarding any applicable sales fees, ongoing fees and charges and potential conflicts of interest. In addition, complete and detailed information about the fees and charges are noted in the contract prospectus that investors usually receive at the time of the initial application and purchase. Updated prospectuses are frequently provided to contract owners on an annual or as required basis. Providing additional point of sale disclosures every time additional premiums are paid would be entirely duplicative and of little or no value to the investor in deciding whether to make additional payments. Variable annuities are long-term retirement investments and are frequently purchased by investors with the intention of building a retirement account by making contributions over time. Further, as a practical matter, the proposal provides for the disclosures to be made by the broker-dealer. In most instances, subsequent or additional premiums are sent directly to the insurer and the broker-dealer may be completely unaware that they have been made.

The Commission questioned whether an exception for subsequent purchases could be subject to abuse by unscrupulous salespersons who seek to obscure the impact of distribution costs by following a relatively modest initial sale that bears small distribution costs with a much larger subsequent sale, without disclosure at the latter time. This abuse is unlikely in the case of variable annuities since issuers typically have minimum requirements for the initial premium. As of December 31, 2003, 73% of variable annuity contracts required minimum initial investments of $5,000 or more.[10] Some contracts set the minimum initial purchase amount at $10,000 or even $25,000.

We also recommend that subsequent premium payments be excepted from the proposed confirmation requirements. The surrender charge part of the form clearly doesn't work with subsequent payments – if the "investment value" to be used in the form is just the additional premium, how do you reflect potential surrender charges applicable to the money already in the contract if it is withdrawn?

Exception for Purchases by Institutional Investors

NAVA supports an exception for purchases by institutional investors. Variable annuities are frequently used as the funding vehicle in qualified plans and employee benefit plans pursuant to Sections 401(k), 403(b) and 457 of the Internal Revenue Code. We do not believe that there is any basis for limiting the exception in these circumstances to employee benefit plans or qualified plans that have at least 100 participants as provided in the NASD's definition of institutional investors in NASD Rules 2211(a)(3) and 3111(c)(4). We recommend that all such plans be covered by the exception, regardless of the number of participants.

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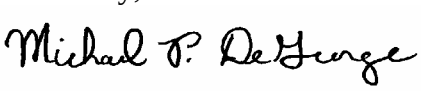
Again, we appreciate the opportunity to comment. If we can answer any questions or be of further assistance, please contact me at (703) 707-8830, extension 20, or Judith

[10] See NAVA 2004 *Annuity Fact Book*, page 24 (third edition 2004).

Hasenauer at (954) 545-9633. Ms. Hasenauer chairs NAVA's Regulatory Affairs Committee.

Sincerely,



Michael P. DeGeorge
General Counsel