



The Variable Annuity  
Life Insurance Company  
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Mary L. Cavanaugh  
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April 29, 2005

Jonathan G. Katz  
Secretary  
Securities and Exchange Commission  
450 5<sup>th</sup> Street, N.W.  
Washington, D.C. 20549-0609

Re: Supplemental Request for Comment: Point of Sale Disclosure Requirement and Confirmation Requirements for Transactions in Certain Mutual Funds and Other Securities, File No. S7-06-04

Dear Mr. Katz:

The Variable Annuity Life Insurance Company ("VALIC") appreciates the opportunity to comment on the above-referenced supplemental request for comment on a rule proposal which would require broker-dealers to make additional disclosures in connection with the sale of open-end mutual funds, variable annuities, variable life insurance policies, and 529 plans (the "Proposal").<sup>1</sup>

As described in our comment letter to the original proposing release ("original proposal"),<sup>2</sup> VALIC is a stock life insurance company engaged primarily in the sale of fixed and variable annuity contracts on a group and individual basis. A substantial part of our business involves contracts designed to provide retirement benefits under a variety of tax-sheltered retirement programs. Most contracts are group contracts or individual contracts administered as a group.

We endorse the comments made by the National Association for Variable Annuities ("NAVA")<sup>3</sup> and American Council of Life Insurers ("ACLI")<sup>4</sup> to the proposal and we provide below additional comments for your consideration with respect to the treatment of variable annuities, with particular emphasis on variable annuities that are utilized as funding vehicles in tax-qualified retirement plans ("group variable annuities").

We also would like to thank the Commission for considering our comments (and the comments of other insurance industry participants) to the original proposal by developing disclosure requirements and forms tailored specifically for transactions involving variable annuities. The following supplemental comments should not be construed as opposing these efforts, but only to suggest that further considerations would make the new disclosure rules more effective and useful to purchasers of variable annuities, including participants in group variable annuities. Because these issues are sufficiently complex from an operational standpoint, and because we are limited by a 30-day comment period, we have limited our comments to those issues presenting the most significant problems. A discussion of all relevant issues and concerns unique to variable products warrants an extended comment period.

<sup>1</sup> See Investment Company Act Rel. No. 26778 (Feb. 28, 2005), 70 Fed. Reg. 10521 (Mar. 4, 2005).

<sup>2</sup> See Comment Letter from David den Boer, VALIC, to Jonathan G. Katz, SEC (Apr. 12, 2004) (File No. S7-06-04).

<sup>3</sup> See Comment Letter from Michael P. George, NAVA, to Jonathan G. Katz, SEC (dated Apr. 4, 2005) (File No. S7-06-04).

<sup>4</sup> See Comment Letter from Carl B. Wilkerson, ACLI, to Jonathan G. Katz, SEC (dated Apr. 4, 2005) (File No. S7-06-04).

## A. POINT OF SALE DISCLOSURES

### 1. THE PROPOSED POINT OF SALE DISCLOSURES FOR VARIABLE ANNUITIES WOULD OVERLOAD CUSTOMERS WITH REDUNDANT INFORMATION

As a general matter, we applaud the Commission's intent to provide customers with a simplified and plain English disclosure form. VALIC believes that increased customer knowledge of the specific costs and features of the products that they are purchasing benefits all parties. We note, however, that much of the information contained in the point of sale disclosures for variable annuities is already contained in the prospectus (namely in the detailed "Fee Tables and Examples" section), which, as of last year, is required to be provided to customers at the point of sale. Indeed, the Commission recently simplified the disclosures required in variable annuity prospectuses by amending Form N-4 and the "fee tables" contained in the prospectuses.<sup>5</sup> These amendments were targeted at providing clear, concise and comparative disclosure of the multiple benefits, fees and risks associated with variable annuities. To add another layer of disclosure at the point of sale will only serve to complicate the disclosure process. Therefore, to prevent redundancy that results in "investor information overload" we strongly recommend that the existing integrated and amended variable annuity prospectus continue to be used as the point of sale document rather than the proposed, stand-alone point of sale disclosure form. We strongly prefer additional amendments to the prospectus or fee table that serve to clarify the features, risks and fees of a variable annuity over a stand-alone point of sale document that is separate from the prospectus.

In the event the Commission ultimately requires a stand-alone disclosure document for variable annuities, we alternatively request that broker-dealers be permitted to deliver the prospectus via the Internet. Internet disclosure of the prospectus will avoid multiple disclosure documents at the point of sale, yet provide the customer with the ability to quickly review more detailed information in context and conduct comparisons with other variable prospectuses. The Commission suggested this "access vs. delivery" approach for supplementing the point of sale and confirmation disclosure and delivery requirements with respect to conflicts associated with compensation issues and has proposed such an approach for other securities.<sup>6</sup> We believe it would be appropriate to extend this approach to the point of sale disclosure requirements as part of the Commission's "broader reconsideration" of the framework governing communications with investors, as mentioned in the Securities Offering Reform proposed rule. In that proposal, the SEC acknowledged that Internet usage in the United States has grown considerably, and electronic delivery of prospectuses is common. Many investors prefer Internet delivery for prospectuses and other regulatory documents, such as semi-annual and annual financial reports.

While we understand that the Commission generally has concerns about customer access to the Internet, it could remedy this problem by allowing customers to opt out of Internet delivery. This approach would be similar to the approach proposed by the NASD's Mutual Fund Task Force in its "Profile Plus" proposal whereby information would be posted on a Web site and investors would be referred to the disclosure, *unless an investor opts out of this form of delivery*. With the widespread availability of the Internet and the ability of customers to opt out of this service, all customers will be able to receive the pertinent information related to their investment. In an era of information overload and the Commission's desire to provide customers with easy to understand disclosures, we believe that the Commission should adopt the foregoing access equals delivery approach if it requires a stand alone point of sale document. To prevent investor information overload, VALIC believes that if broker-dealers must provide stand-alone point of sale disclosures to investors, the Commission should deem access to the prospectus via the Internet as adequate delivery.

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<sup>5</sup> See Investment Company Rel. No. 26802 (Nov. 13, 2002), 67 Fed. Reg. 69974 (Nov. 19, 2002).

<sup>6</sup> Exchange Act Rel. No. 50624 (Nov. 3, 2004), 69 Fed. Reg. 67392, 67439 (Nov. 17, 2004) (the "Securities Offering Reform" proposed rule).

## **2. STANDARDIZED DISCLOSURES**

As noted above (and by ACLI), Form N-4 already requires an example of comparative variable annuity costs at several intervals between one and ten years. Assuming, however, that the Commission will require the proposed disclosure form to be provided together with the prospectus, standardized disclosure of the costs associated with variable annuities are preferred. By using \$1,000, \$50,000, and \$100,000 payment or investment amounts, customers will easily be able to compare their investment amount. As discussed below, we agree that all subsequent purchases of a covered security should not be subject to point of sale disclosure. However, if the Commission determines that such sales should be subject to point of sale disclosure, then VALIC recommends that products offered as part of or in retirement plans be exempt from any personalized disclosure requirements. Group retirement plan programs include regular ongoing contributions (normally through payroll deductions and employer contributions) and providing personalized disclosure each and every time a customer contributes to his or her retirement plan would be unduly burdensome and ultimately more costly for customers.

## **3. THE PROPOSED DEFINITION OF "REVENUE SHARING" SHOULD BE REPLACED BY "PROMOTIONAL PAYMENT"**

VALIC believes that the Commission should use the term "Promotional Payment" because it more accurately reflects payments that raise potential conflicts of interest. The definition of "promotional payment," however, should not include any payments received by a broker-dealer, or an affiliate, for account services provided by the broker-dealer or affiliate, such as transfer agency services and any other services provided to customers that a fund would otherwise be required to provide, such as delivery of regulatory documents. We believe these costs should be specifically excluded from the definition of revenue sharing because they are incurred regardless of the party providing the services.

## **4. THE RECEIPT OF REVENUE SHARING PAYMENTS DOES NOT GENERALLY CREATE A CONFLICT OF INTEREST FOR RETIREMENT PLAN PROGRAMS**

As we noted in our comments to the original proposal, group variable annuities are significantly different from individual deferred variable annuities. Purchase payments under group variable annuities and other retirement plan programs are made by the employer (or other plan administrator) and typically by means of a salary reduction arrangement. Under VALIC's group variable annuity *and* mutual fund retirement fund programs, the employer is responsible for selecting the investment options (*e.g.*, mutual fund complexes) for the retirement plan. While VALIC may receive payments from certain fund complexes, the employer and/or plan sponsors select the investment options that their employees contribute to their retirement plans. The Commission's statement that "a broker-dealer's receipt of special payments from some fund complexes but not others gives the broker-dealer monetary incentives to promote the sale of securities of the fund complexes that make those payments" is not accurate for group variable annuities.<sup>7</sup> As noted in our earlier comment letter, VALIC reduces the separate annuity account charge by the percentage of the 12b-1 fees received and also may reduce the separate account charge by a percentage of the recordkeeping fees received. This benefits all contract owners. VALIC makes a similar reduction of plan administrative fees for its group mutual fund retirement plan program. In both examples, the employer or plan sponsor makes the investment option choices. The registered representatives for VALIC's broker-dealer are not compensated based on which investment option of chosen for a retirement plan program. Accordingly, there are no incentives for representatives to recommend one investment option over another and, as a result, the above described revenue sharing arrangements do not cause a conflict of interest.

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<sup>7</sup> See 70 Fed. Re. 10521, 10523 fn. 11 (Mar. 4, 2005).

## **5. SUBSEQUENT PURCHASES OF A COVERED SECURITY**

Although VALIC has certain concerns regarding the proposal's application to group variable annuities, it supports the Commissions proposal to except subsequent purchases of a covered security from the proposal's point of sale requirements. Indeed, we agree with commenters that the critical decisions related to an investment in a covered security is made prior to the investor's first purchase of that security, and requiring point of sale disclosure for subsequent purchases would be duplicative and unlikely to promote informed investment decision making.<sup>8</sup> This exception particularly affects VALIC, as we routinely receive subsequent purchases from participants in retirement plans. We believe that requiring a point of sale disclosure for every subsequent payroll deduction for a retirement would not only irritate customers, but also would dramatically increase costs for customers.

## **B. REVISED CONFIRMATION REQUIREMENTS**

### **1. THE COMMISSION'S 10B-10 AMENDMENTS ARE UNDULY BURDENSOME**

VALIC has concerns regarding the proposal's requirement that confirmation statements include disclosure of fees associated with underlying funds of a variable product. Currently, the ranges of these fees are provided in the contract prospectus, and more specific information is provided in the fund-level prospectus. As a result, consumers will receive this information, at a minimum, twice (depending on how long they have held the product). In addition, because mutual fund complexes may offer many funds, the fund year-ends may spread throughout the year. This means that fee information may be updated throughout the year for each mutual fund. As a result, the delivery of confirmation statements may be delayed because broker-dealers would be unable to pre-print confirmation statements. A requirement to continuously review and update the above information would significantly increase the cost of the confirmation process as well. Moreover, the requirement may be duplicative because the fee information is currently available via the Internet, on the insurance company websites, and on the fund complex's website). Consistent with our recommendations regarding the point of sale portion of the Commission's proposal, the Commission should also consider Internet access to be sufficient for confirmation delivery purposes unless the customer opts out.

### **2. THE COMMISSION'S PROPOSAL DOES NOT ADDRESS WHETHER ITS CONFIRMATION REQUIREMENTS APPLY TO PERIODIC CONFIRMATIONS**

In Attachment 14 of the proposal, the Commission provided a sample confirmation statement. It is not clear whether the confirmation was intended to be a sample "daily" confirmation or a sample "periodic" (monthly or quarterly) confirmation. If the sample is a daily confirmation, the proposal needs to address whether the same disclosures also must be provided on periodic confirmation statements (whether monthly or quarterly). Indeed, the proposed confirmation statement attachment does not include any information concerning detailed periodic transaction activity. Currently, broker-dealers are required to send a written statement disclosing each purchase or redemption, each dividend or distribution (whether credited or reinvested), the date of each transaction, the identity, number, and price of any securities purchased or redeemed, the total number of shares each customer's account and any remuneration received or to be received by the broker or dealer for such securities and transactions. We request clarification on whether broker-dealers must continue to provide such information or whether the proposal modifies the current requirement and only requires broker-dealers to provide opening balances, closing balances, and any allocations for both daily and periodic confirmations.

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<sup>8</sup> See 70 Fed. Reg. 10521, 10531 (Mar. 4, 2005).

**3. BROKER-DEALERS SHOULD BE ABLE TO DETERMINE THE FORMAT OF THEIR CONFIRMATION STATEMENTS**

VALIC believes that broker-dealers should be able to determine the format of their confirmation statements. As noted by the Commission, its proposal requiring delivery of the Commission proposed standardized confirmation statements would be costly because broker-dealers would need to update existing confirmation generation and delivery systems. Moreover, such a change also would be costly for the timely generation of delivery of periodic confirmation statements. Finally, we request clarification on whether the Commission is proposing to mandate a standardized format for all confirmation statements or merely "daily" confirmation statements.

**4. CONTINUANCE OF CURRENT NO-ACTION RELIEF**

The staff of the Division of Market Regulation (the "Staff") previously granted VALIC certain no-action relief with respect to inactive variable annuity retirement plan accounts (the "no-action letter").<sup>9</sup> Specifically, the Staff allowed VALIC to rely on annual account confirmation statements for non-active accounts, after the initial negative confirmation is mailed. We respectfully request confirmation that VALIC may continue to rely on its no-action letter after the adoption of the Proposal. In the alternative, we request that the Staff consider codifying the no-action letter in its final rule.<sup>10</sup>

**C. PROSPECTUS DISCLOSURE OF REVENUE SHARING PAYMENTS**

The Commission proposal contains modifications to Form N-1A, but fails to make corresponding changes to Form N-4. It is VALIC's experience that variable annuity providers may receive, under certain circumstances, 12b-1 fees and administrative or sub-transfer agency fees from mutual fund complexes. Moreover, some variable annuities also may receive promotional payments. Accordingly, VALIC recommends that the Commission make corresponding changes to Form N-4.

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We would be happy to assist the staff in designing an annuity-specific stand-alone disclosure document and a confirmation of sale for annuities. We are also available to meet and discuss these disclosure issues, particularly the impact on variable annuities, at your request.

Sincerely,



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<sup>9</sup> Variable Annuity Life Insurance Company, Variable Annuity Marketing Company, 2001 SEC No-Act. LEXIS 792 (Oct. 25, 2001).

<sup>10</sup> VALIC will be submitting under separate cover a request to extend this no-action position to inactive mutual fund retirement plan accounts.